

## COMPANY INFORMATION SHEET

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Company Name (stock code): Yancoal Australia Ltd (3668)

Stock Short Name: YANCOAL AUS

This information sheet is provided for the purpose of giving information to the public about Yancoal Australia Ltd (the “**Company**”) as at the date hereof. It does not purport to be a complete summary of the information relevant to the Company and/or its securities.

Unless otherwise indicated, the capitalised terms have the same meanings as ascribed in the Company’s prospectus dated 26 November 2018 (the “**Prospectus**”).

### Responsibility statement

The directors of the Company as at the date hereof hereby collectively and individually accepts full responsibility for the accuracy of the information contained in this information sheet and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief the information is accurate and complete in all material respects and not misleading or deceptive and that there are no other matters the omission of which would make any information inaccurate or misleading.

The directors of the Company also collectively and individually undertakes to publish this information sheet on a yearly basis, when the Company publishes its annual report, this information sheet reflecting, if applicable, the changes made to the last publication.

### Summary Content

#### Document Type

#### Upload Date

#### **A. Summary of Waivers**

Latest version

5 December 2018

#### **B. Summary of Foreign Laws and Regulations**

Latest version

5 December 2018

#### **C. Articles of Association of the Company**

Latest version

5 December 2018

Date of this information sheet: 5 December 2018

## A. SUMMARY OF WAIVER

The following waiver has been applied for and granted by the Stock Exchange.

### 1. WAIVER IN RELATION TO SUBMISSION OF ANNOUNCEMENTS TO THE STOCK EXCHANGE AND DISCLOSURE OF INSIDE INFORMATION

Rule 2.07C(4)(a) of the Listing Rules provides that announcements and notices must not be published on the Stock Exchange's website between 8:30 a.m. and 12:00 noon and between 12:30 p.m. and 4:30 p.m. on a normal business day in Hong Kong. The Company is listed on the ASX. Under the ASX Listing Rules, once an ASX-listed issuer is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the issuer's securities (the "**ASX Price Sensitive Information**"), the issuer must immediately (i.e. promptly and without delay) announce that information on the ASX. The ASX Price Sensitive Information will, in general, also be inside information under the Listing Rules. Announcements on the ASX can be submitted at any time, and are processed and released between 7:30 a.m. and 7:30 p.m. (8:30 p.m. during daylight saving time in the summer) (Sydney time) on each ASX trading day, with announcements submitted outside of such periods queued for release on the morning of the following trading day beginning at 7:30 a.m.. As the Company is required under the ASX Listing Rules to announce ASX Price Sensitive Information immediately, compliance with the ASX Listing Rules could require an announcement of inside information to be made by the Company outside the permitted periods for submitting announcements to the Stock Exchange under Rule 2.07C(4)(a) of the Listing Rules.

Accordingly, the Company has applied for, and the Stock Exchange has granted, a waiver of strict compliance with the requirements under Rule 2.07C(4)(a) of the Listing Rules such that the Company is allowed to submit to the Stock Exchange any announcement which is required to be made under the ASX Listing Rules between 8:30 a.m. and 4:30 p.m. on a normal business day in Hong Kong simultaneously with the submission to the ASX of the same announcement pursuant to the ASX Listing Rules, without any suspension of dealings or trading halt in the Company's securities.

The waiver has been granted subject to the following conditions:

- (a) The Company discloses in the prospectus the grant of the waiver setting out relevant details including a clear indication of the impact of the waiver on the Hong Kong investing public following any announcement made under the waiver, i.e. that one effect of the waiver for investors in Hong Kong is that trading in the Shares will continue even if the Company releases an announcement containing inside information during normal trading hours in Hong Kong, and as a result, investors in Hong Kong should consider whether any inside information has been released during trading hours in Hong Kong prior to making an investment decision regarding the Shares;
- (b) The Company informs the Stock Exchange in the first instance in the event of any material change being made to the ASX Listing Rules on disclosure of ASX Price Sensitive Information as such information may be of material relevance to an assessment of the ongoing appropriateness of the waiver. The Stock Exchange will evaluate the impact of any of these changes and indicate to the Company whether or not we intend to amend or revoke the waiver;
- (c) The Company will comply with the relevant provisions in the event of changes to the Hong Kong regulatory regime and the rules in relation to disclosure of inside information and electronic disclosure unless the Stock Exchange

agrees to amend the waiver or grant a new waiver in the circumstances prevailing;

- (d) The Company notifies, and at the same time, submits electronic copies of the English and Chinese version of announcements to the Stock Exchange at least 10 minutes in advance of the expected time of release; and
- (e) The waiver will not apply to announcements published in discharge of the disclosure obligations under the Listing Rules for notifiable and/or connected transactions.

## **2. WAIVER IN RELATION TO THE QUALIFICATIONS OF REPORTING ACCOUNTANTS**

Rule 4.03 of the Listing Rules provides that all accountants' reports must normally be prepared by certified public accountants who are qualified under the Professional Accountants Ordinance ("PAO") for appointment as auditors of a company and who are independent both of the issuer and of any other company concerned to the same extent as that required of an auditor under the Companies Ordinance and in accordance with the requirements on independence issued by the Hong Kong Institute of Certified Public Accountants. Rule 4.05A of the Listing Rules provides that where a new applicant acquires any material subsidiary during the Track Record Period and such an acquisition if made by a listed issuer would have been classified at the date of application as a very substantial acquisition, it must disclose pre-acquisition financial information on that material subsidiary from the commencement of the Track Record Period to the date of acquisition. Pre-acquisition financial information on the material subsidiary must normally be drawn up in conformity with accounting policies adopted by the new applicant and be disclosed in the form of a note to the accountants' report or in a separate accountants' report.

The Company acquired C&A on 1 September 2017. The C&A Acquisition, if made by a listed issuer, would have constituted a very substantial acquisition (as defined by the Listing Rules). The C&A Acquisition constituted a very substantial acquisition of Yanzhou, a Controlling Shareholder of the Company. A circular to the shareholders of Yanzhou was issued on 2 June 2017 (the "**Yanzhou Circular**"). C&A was incorporated in Australia under the Australian Corporations Act. The accounting records of the C&A Group are maintained under the Australian equivalent of the International Financial Reporting Standards of the Australian Accounting Standards Board.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with Rule 4.03 of the Listing Rules to permit the Company to appoint ShineWing Australia as the reporting accountants for the purpose of issuing the accountants' report of the C&A Group included in the prospectus on the following grounds and conditions:

- (a) ShineWing Australia was appointed as the reporting accountants for the purpose of issuing the accountants' report of the C&A Group included in the Yanzhou Circular, which included the historical financial information of the C&A Group for the three years ended 31 December 2016. In view of the foregoing, it would be more cost and time effective to engage ShineWing Australia to issue the accountants' report of the C&A Group in accordance with IFRS which will cover the three years ended 31 December 2017;
- (b) ShineWing Australia is a member firm of ShineWing International, an accounting practice with an international name and reputation;

- (c) ShineWing Australia is registered under the applicable laws of Australia and is a member of the Chartered Accountants Australia and New Zealand, which is a member of the International Federation of Accountants (“IFAC”), a global organisation for the accountancy profession. ShineWing Australia is subject to the independent oversight of the Australian Securities and Investment Commission, a regulatory body of Australia which is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information;
- (d) ShineWing Australia is independent from the Group and the C&A Group under the statements on independence issued by the IFAC; and
- (e) ShineWing Australia will be named as an expert in the prospectus and will be liable under Companies (WUMP) Ordinance in the same way as reporting accountants qualified under the PAO.

### 3. WAIVER IN RELATION TO PRO FORMA FINANCIAL INFORMATION

Rule 4.29(1) of the Listing Rules provides that, where an issuer includes pro forma financial information in any document, the pro forma financial information must provide investors with information about the impact of the transaction which is the subject of the document. Rule 4.29(6)(b) of the Listing Rules provides that any adjustments made in relation to any pro forma statement must be directly attributable to the transaction concerned and not relating to future events or decisions.

Given the significance of the C&A Acquisition, Warkworth Transaction and Glencore Transaction (together, the “**Pro Forma Transactions**”) to the Group, the prospectus includes a pro forma income statement for the financial year ended 31 December 2017 showing the pro forma results of operations of the Group had the Pro Forma Transactions been completed on 1 January 2017 and a pro forma income statement for the six months ended 30 June 2018 showing the effects of the Warkworth Transaction and the Glencore Transaction. However, the Pro Forma Transactions are not the subject of this prospectus.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with Rule 4.29(1) of the Listing Rules to permit the inclusion of the C&A Pro Forma in the prospectus on the following grounds and conditions:

- (a) the Pro Forma Transactions are not the subject of the prospectus and the adjustments for the effects of Pro Forma Transactions made to the financial information set out in “*Appendix IIB – Unaudited Pro Forma Financial Information of the Enlarged Group*” are not directly attributable to the transaction concerned (i.e. the Global Offering), but for the reasons set out above, inclusion of the pro forma income statement showing the effect of Pro Forma Transactions in the prospectus would assist investors in analysing the future prospects of the Company; and
- (b) the reporting accountants will report on the Pro Forma Transactions in accordance with Rule 4.29(7) of the Listing Rules.

### 4. FINANCIAL INFORMATION MOOLARBEN

Paragraph 32 of the Third Schedule to the Companies (WUMP) Ordinance provides that, if the proceeds of the issue of shares are applied in the purchase of any business, a separate accountants’ report in relation to the business in respect of each of the three financial years immediately preceding the issue of the prospectus is required.

The Company has entered into an agreement with KORES, subject to satisfaction of certain conditions precedent, to acquire a 4% interest in Moolarben for a total consideration of A\$84 million, which the Company intends to fund using a portion of the expected proceeds from the Global Offering.

The Company has applied for a certificate of exemption pursuant to section 342A(1)(b) of the Companies (WUMP) Ordinance from strict compliance with the requirements of paragraph 32 of the Third schedule to the Companies (WUMP) Ordinance, in respect of the requirement to include a separate accountants report on the Moolarben JV on the following grounds:

- (a) the Company has consolidated 81% of the financial results of the Moolarben JV for each of the years ended 31 December 2015, 2016 and 2017 in its financial statements based on its current interest in the Moolarben JV. Therefore, the financial results of the Moolarben JV, insofar as the Company's 81% interest, have already been substantially disclosed in, among other sections, the "*Appendix IA – Accountants' Report of the Group*";
- (b) (i) the profit and loss information of the Moolarben JV in respect of the financial years ended 31 December 2015, 2016 and 2017 and the six months ended 30 June 2018 and (ii) the assets and liabilities information of the Moolarben JV as at the last date to which the financial statements of the business were prepared are disclosed in note 45 to "*Appendix IA – Accountants' Report of the Group*";
- (c) (i) the 81% of the financial results of the Moolarben JV pursuant to the Company's existing interest in the Moolarben JV and (ii) the income statement and balance sheet of the Moolarben JV will, when taken together, provide the investors with sufficient disclosure on the financial information of the Moolarben JV;
- (d) strict compliance with paragraph 32 of the Third Schedule to C(WUMP)O would be unduly burdensome given the time and cost involved in preparing a separate accountants' report. The Reporting Accountants has estimated and that it would take approximately one month for such accountants' report to be prepared. In addition, the Company is not otherwise required under the applicable accounting standards, the listing rules of the ASX (on which it has been listed since 2012) or the applicable laws of Australia (in which it was incorporated) to prepare a separate accountants' report on Moolarben; and
- (e) (i) financial information in relation to the Company's 81% interest in the Moolarben JV and (ii) the income statement and balance sheet of the Moolarben JV have already been disclosed in the "*Appendix IA – Accountants' Report of the Group*". Accordingly, the Directors consider that the exemption from the requirement to include a separate accountants' report on the Moolarben JV would not prejudice the interests of the investing public.

The SFC has granted a certificate of exemption from strict compliance with paragraph 32 of the Third Schedule to C(WUMP)O on the conditions that (a) the particulars of the exemption be set forth in this prospectus and (b) this prospectus be issued on or before 26 November 2018.

## **5. WAIVER IN RELATION TO THE PUBLIC FLOAT REQUIREMENTS**

Rule 8.08(1) of the Listing Rules requires that there must be an open market in the securities for which listing is sought and that a sufficient public float of an issuer's listed securities must be maintained.

The Company has applied to the Stock Exchange, and the Stock Exchange has granted us, a waiver under Rule 8.08(1)(d) that the minimum public float requirement under Rule 8.08(1)(a) be reduced subject to the following:

- (a) the minimum public float shall be the higher of (a) 15.05%; and (b) such percentage immediately after completion of the Global Offering and exercise of the Over-allotment Option;
- (b) the Company's market capitalisation at the time of listing is over HK\$10 billion;
- (c) appropriate disclosure of the lower prescribed percentage of public float be made in this prospectus together with a confirmation of sufficiency of public float in its successive annual reports after the listing;
- (d) there will be an open market in the Shares, and the number of Shares and the extent of their distribution would enable the market to operate properly; and
- (e) the Company will implement appropriate measures and mechanisms to ensure continual maintenance of the minimum percentage of public float.

## **6. WAIVER IN RELATION TO MANAGEMENT PRESENCE IN HONG KONG**

Pursuant to Rule 8.12 of the Listing Rules, the Company must have sufficient management presence in Hong Kong. This normally means that at least two of the Executive Directors must be ordinarily resident in Hong Kong.

The Group is an Australian-based coal producer which currently operates and manages mines in New South Wales, Queensland and Western Australia. The Group is registered in, headquartered in, and has its principal place of business in Australia. The Executive Director and the senior management team who are responsible for the management of the Group's operations are based in Australia or the PRC. Accordingly, the Company does not have, and for the foreseeable future will not have, sufficient management presence in Hong Kong for the purpose of satisfying the management presence requirement under Rule 8.12 of the Listing Rules.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirement for management presence in Hong Kong under Rule 8.12 of the Listing Rules, subject to the Company adopting the following arrangements to maintain regular communications with the Stock Exchange:

- (a) the Company has appointed Mr. Baocai ZHANG and Ms. Laura Ling ZHANG as its authorised representatives for the purpose of Rule 3.05 of the Listing Rules, who will act as the Company's principal channel of communication with the Stock Exchange. As and when the Stock Exchange wishes to contact the Directors on any matters, each of these authorised representatives will have the means to contact all of the Directors promptly at all times;

- (b) the Company has provided the Stock Exchange with the contact details of each Director (including their respective mobile phone number, office phone number, fax number and e-mail address) to facilitate communication with the Stock Exchange;
- (c) each Director who is not ordinarily resident in Hong Kong possesses or is able to apply for valid travel documents to visit Hong Kong and is able to meet with the Stock Exchange within a reasonable period; and
- (d) the Company has appointed Somerley Capital Limited as its compliance adviser in compliance with Rule 3A.19 of the Listing Rules, who will act as an additional channel of communication with the Stock Exchange.

## **7 WAIVER IN RELATION TO DEALING IN SECURITIES BY CORE CONNECTED PERSON DURING A LISTING APPLICATION PROCESS**

Rule 9.09(b) of the Listing Rules provides that in the case of a new applicant, there must be no dealing in the securities for which listing is sought by any core connected person of the issuer from 4 clear business days before the expected hearing date until listing is granted.

Under the JPS, a common waiver from strict compliance with Rule 9.09(b) of the Listing Rules in respect of dealing in securities by core connected persons for the period from four clear business days before the expected hearing date until listing is granted (the “**Restricted Period**”) is subject to the following conditions:

- (a) the core connected person(s):
  - (i) have no influence over the Global Offering process;
  - (ii) are not in possession of non-public inside information; and
  - (iii) can conduct dealings in the issuer’s securities on markets outside the Stock Exchange that cannot be controlled by the issuer (e.g. a public investor who may become a substantial shareholder before the issuer lists on the Stock Exchange or connected persons at the subsidiary level);
- (b) the issuer promptly releases any inside information to the public in its overseas jurisdiction(s) in accordance with the relevant laws and regulations; and
- (c) the issuer notifies the Stock Exchange of breaches of the dealing restriction by any of its connected persons during the Restricted Period.

On the grounds and subject to the conditions set out below, the Company has applied for, and the Stock Exchange has granted, such common waiver in respect of any dealing by core connected persons (excluding (i) Yankuang, Yanzhou, Cinda and their associates and (ii) the directors and the chief executive of the Company and its subsidiaries and their associates):

- (a) as the Shares are publicly traded on the ASX, the Company and its management are not in a position to control dealings in the Shares by any other person (whether or not an existing Shareholder) or their associates who may, as a result of such dealing, become a substantial shareholder of the Company (within the meaning of the Listing Rules) and who are currently not and will not after the Listing become directors or members of senior management of the Company or any of its subsidiaries (the “**new potential substantial shareholders**”);
- (b) the new potential substantial shareholders shall have no influence over the Global Offering and are not in possession of any non-public inside information;
- (c) the Company and its management do not have control over the investment decisions of the new potential substantial shareholder and its close associates;
- (d) the Company will promptly release any inside information to the public on the ASX in accordance with the ASX Listing Rules and the relevant Australian laws and regulations;
- (e) none of (i) Yankuang, Yanzhou, Cinda and their associates; and (ii) the Directors and the chief executive of the Company and its subsidiaries and their associates will deal in the Shares during the Restricted Period; and
- (f) the Company will notify the Stock Exchange if it has come to its knowledge that there are any dealings or suspected dealings in the Shares by any of its core connected persons during the Restricted Period.

## **8. WAIVER IN RELATION TO THE RESTRICTIONS ON EXISTING SHAREHOLDERS TO SUBSCRIBE FOR SHARES**

Rule 10.04 of the Listing Rules provides that a person who is an existing shareholder of the issuer may only subscribe for or purchase any securities for which listing is sought which are being marketed by or on behalf of a new applicant either in his or its own name or through nominees if the conditions in Rules 10.03(1) and (2) are fulfilled. Paragraph 5(2) of Appendix 6 to the Listing Rules provides that no allocations will be permitted, without the prior written consent of the Stock Exchange, to directors or existing shareholders of the applicant or their close associates unless the conditions set out in Rules 10.03 and 10.04 are fulfilled.

Under the JPS, a common waiver from strict compliance with Rule 10.04 and Paragraph 5(2) of Appendix 6 of the Listing Rules in respect of the restriction on existing shareholders to subscribe for or purchase securities for which listing is sought is subject to the following conditions that the existing shareholders are public investors who:

- (a) are not the issuer’s connected persons; and
- (b) have no influence over the offering process and will be treated the same as other places.

The Company has applied for, and the Stock Exchange has granted, such common waiver from strict compliance with the requirements of Rule 10.04 and Paragraph 5(2) of Appendix 6 of the Listing Rules in respect of the restriction on the existing Shareholders (excluding core connected persons of the Company and their close associates) (the “**Non-connected Existing Shareholders**”) to subscribe for or purchase Shares in the Global Offering and for existing Shareholders to exercise their right to take up their pro rata entitlement as existing Shareholders under the Australian Entitlement Offer on the following grounds and conditions:



- (a) the Company is listed on the ASX and its Shares are publicly traded. The Non-connected Existing Shareholders are public investors in the Company;
- (b) the Non-connected Existing Shareholders do not have the power to appoint directors or any other special rights;
- (c) the Non-connected Existing Shareholders have no influence over the offering process and will be treated the same as other placees in the Global Offering;
- (d) any allocation of Shares to the Non-connected Existing Shareholders and/or their close associates will not affect the Company's ability to satisfy the minimum public float requirement (as described in "*– Waiver in Relation to the Public Float Requirements*" above);
- (e) each of the Company, the Joint Global Coordinators and the Sponsors confirms to the Stock Exchange in writing that, based on their discussions with and confirmations from the Company and other Joint Global Coordinators, no preferential treatment has been, nor will be, given to the Non-connected Existing Shareholders and/or their close associates as a placee in the International Offering by virtue of their relationship with the Company;
- (f) the relevant information in respect of any allocation to Non-connected Existing Shareholders and/or their close associates will be disclosed in the allotment results announcement to be published by the Company; and
- (g) the connected persons of the Company will not subscribe for Shares in the Global Offering.

#### **9. WAIVER IN RELATION TO THE RESTRICTION ON DISPOSAL OF SHARES BY CONTROLLING SHAREHOLDERS AFTER A NEW LISTING**

Rule 10.07(1) of the Listing Rules provides that a person or group of persons shown by the listing document issued at the time of the issuer's application for listing to be controlling shareholders of the issuer shall not and shall procure that the relevant registered holder(s) shall not:

- (a) in the period commencing on the date by reference to which disclosure of the shareholding of the controlling shareholders is made in the listing document and ending on the date which is 6 months from the date on which dealings in the securities of a new applicant commence on the Stock Exchange (the "**First Six Month Period**"), dispose of, nor enter into any agreement to dispose of or otherwise create any options, rights, interests or encumbrances in respect of, any of those securities (the "**Securities**") of the issuer in respect of which he is or they are shown by that listing document to be the beneficial owner(s); or
- (b) in the period of 6 months commencing on the date on which the First Six Month Period expires, dispose of, nor enter into any agreement to dispose of or otherwise create any options, rights, interest or encumbrances in respect of, any of the Securities if, immediately following such disposal or upon the exercise or enforcement of such options, rights, interests or encumbrances, that person or group of persons would cease to be a controlling shareholder.

Under Australian law, a person has a relevant interest in a share if they (i) are the registered holder of the share, or (ii) have the power to control voting of the share or (iii) have the power to control disposal of the share. If the Controlling Shareholders give lock up undertakings in favour of the Stock Exchange, this will result in the Stock Exchange acquiring a “relevant interest” in 65.45% of the Shares.

Under Australian takeovers law, a person cannot acquire a relevant interest above 20% unless they fall within one of the permitted gateways (exceptions) or unless relief is provided by ASIC. Accordingly, the Company has sought and ASIC has granted relief to the Stock Exchange from the acquisition of a relevant interest in the Shares subject to the inclusion of the carve outs in paragraphs (a) and (b) below to be included in the lock up undertakings to be given by the Controlling Shareholders, on the basis that the relief is consistent with ASIC’s existing policy as it applies to the ASX.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirements of Rule 10.07(1) of the Listing Rules in respect of the restriction on disposal of Shares by the Controlling Shareholders to allow the Controlling Shareholder:

- (a) to accept a takeover bid that has been made for 100% (or some lesser percentage, in the event of a proportional takeover bid) of the Shares in the Company and in circumstances where at least 50% of the Shares held by non-locked up Shareholders that are the subject of the takeover bid have also accepted that takeover bid, provided that if the takeover bid is a conditional takeover bid and does not become unconditional, then the Shares which had been accepted into the takeover bid will not be released from the restrictions and undertakings referred to above; or
- (b) to have the Controlling Shareholders’ Shares in the Company acquired by a bidder following a scheme of arrangement in relation to the Company.

#### **10. WAIVER IN RELATION TO NON-EXEMPT CONTINUING CONNECTED TRANSACTIONS**

Certain members of the Group have entered into certain transactions which will constitute non-exempt continuing connected transactions of the Company under the Listing Rules following the Listing. The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the announcement and independent shareholders’ approval requirements in relation to the non-exempt continuing connected transactions under Chapter 14A of the Listing Rules. See “*Connected Transactions – Waiver Application for Non-exempt Continuing Connected Transactions*”.

## **11. WAIVER IN RELATION TO THE REQUIREMENT TO MAKE RELEVANT STATUTES OR REGULATIONS AVAILABLE FOR INSPECTION**

Rule 19.10(6) of the Listing Rules provides that an overseas issuer must offer for inspection a copy of any statutes or regulations which are relevant to the summary of the regulatory provisions of the jurisdiction in which the overseas issuer is incorporated. In the case of the Company, these include the Australia Corporations Act, ASX Listing Rules, ASX Settlement Operating Rules and the Australia Foreign Acquisitions and Takeovers Act. These copies of legislation are lengthy and it would be difficult to deliver copies to Hong Kong in physical format. In addition, these copies of legislation can be readily accessed via the internet. For further details about how to access these copies of legislation via the internet, please see "*Appendix VIII – Documents Delivered to the Registrar of Companies and Available for Inspection*". The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with Rule 19.10(6) of the Listing Rules.

## **12. WAIVER IN RELATION TO CERTAIN ARTICLES IN THE COMPANY'S CONSTITUTION**

The Company has applied for, and the Stock Exchange has granted, waivers from strict compliance of the Constitution with certain paragraphs of Appendix 3 of the Listing Rules, (see "*Appendix V – Summary of the Constitution of the Company and the Australia Corporations Act*" for further details), on the basis that:

- (a) the Company would be subject to the Australian laws and other relevant applicable rules and regulations;
- (b) the differences from the requirements of Appendix 3 to the Listing Rules are not considered material from the perspective of shareholders protection; and
- (c) relevant Australian laws and regulations and the Constitution are disclosed in this prospectus.

## **B. SUMMARY OF FOREIGN LAWS AND REGULATIONS**

### **1. SUMMARY OF KEY AUSTRALIAN CORPORATE LAWS**

The following is a summary of certain provisions of the Australia Corporations Act as at the date of this information sheet which are applicable to an Australian incorporated company whose shares are listed on an overseas stock exchange. The summary below is for general guidance only and does not constitute legal advice nor should it be used as a substitute for specific legal advice on the corporate laws of Australia. The summary does not purport to contain all applicable qualifications and exceptions or to be a complete review of all matters of the corporate laws of Australia, which may differ from equivalent provisions in jurisdictions with which interested parties may be more familiar.

#### **Objects**

The Company does not have an objects clause in its constitution because an Australian company, unlike companies incorporated under the laws of Hong Kong, is not required to have an objects clause. Pursuant to section 124 of the Australia Corporations Act, the Company has the legal capacity and powers of an individual and all powers of a body corporate.

#### **Voting rights**

Each Shareholder entitled to vote may vote in person or by proxy, attorney or representative of a body corporate. On a show of hands every person present who is a Shareholder or a proxy, attorney or representative of a Shareholder has one vote and on a poll every person present who is a Shareholder or proxy, attorney or representative of a Shareholder shall in respect of each fully paid share held by him have one vote per share but in respect of partly paid shares shall have such number of votes being equivalent to the proportion paid up on those shares.

#### **Dividends**

Section 254T of the Australia Corporations Act restricts the Company from paying a dividend unless (1) the Company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend; (2) the payment of the dividend is fair and reasonable to the Company's shareholders as a whole; and (3) the payment of the dividend does not materially prejudice the company's ability to pay its creditors.

Subject to the Australia Corporations Act, the ongoing cash needs of the business, the statutory and common law duties of the Directors and the Shareholders' rights under Article 7.10 of the Constitution, the Directors may pay interim and/or final dividends not less than 40% of net profit after tax (pre-Abnormal Items) in each financial year. However, if the directors determine that it is necessary in order to prudently manage the company's financial position, they must pay as interim and/or final dividends not less than 25% of net profit after tax (pre-Abnormal Items) in any given financial year. According to Article 7.10(b)(5) of the Constitution, the majority of Shareholders must approve the payment of a dividend (including the amount and date of payment).

The Directors may rescind a decision to pay a dividend if they decide, before the payment date, that the Company's financial position no longer justifies the payment.

The Directors, when paying or declaring a dividend, may direct payment of the dividend from any available source permitted by law, including wholly or partly by distribution of specific assets, including fully-paid shares in the Company and any other corporation.

The Directors may determine the method of payment of any dividend or other amount in respect of a share. Different methods of payment may apply to different Shareholders.

All dividends declared but unclaimed for at least 11 calendar months may be invested by the Directors as they think fit for the benefit of the Company until claimed. The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirement of paragraph 3(2) of Appendix 3 of the Listing Rules which requires that where there is a power to forfeit unclaimed dividends, that power shall not be exercised until six years or more after the date of declaration of the dividend, subject to the Directors agreeing that it would not exercise any of the rights under the provision of Rule 4.(o) of the Constitution until at least six years after the date of the declaration.

Under Australian law, a company is able to pay dividends out of current year profits even though it has accumulated losses, and there is no restriction in the Constitution that would prevent current year profits from being paid out as dividends in this way. Accordingly, the Company's accumulated losses do not prevent it from being able to pay dividends, provided that current year profits are not used to offset prior period losses and the Company is otherwise able to satisfy the other legal requirements of paying a dividend under Australian law.

### **Distribution of assets on a winding-up**

On winding up, the liquidators of the Company may divide by sanction of special resolution among the Shareholders in kind the whole or any part of the property of the Company and may determine how the division is to be carried out as between the Shareholders or different classes of Shareholders according to their rights and interests in the Company.

### **Transfer of shares**

The transfer document of any shares must be in writing in any usual form or in any other form which the Directors may approve or in such form as is required under the ASX Settlement Operating Rules. As set out in the Constitution, the Directors may refuse to register a transfer of Shares in accordance with the Australia Corporations Act and the ASX Listing Rules.

### **Variation of rights**

If at any time the share capital of the Company is divided into different classes of shares, the rights attached to any class may, whether or not the Company is being wound up, be varied or abrogated in any way with the consent in writing of the holders of three quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

The rights conferred on the holders of the shares of any class are deemed not to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

## **Borrowing powers**

The Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

Article 7.10(b)(14) of the Constitution requires that a majority of shareholders approve any borrowing by the Company which is (1) more than the value of 20% of the net assets of the consolidated group; or (2) causes the company to have a gearing (net debt/total assets) above 60%.

## **Issue of shares**

Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Australia Corporations Act and the ASX Listing Rules, shares are under the control of the Directors who may issue all or any of the same to such persons at such times and on such terms and conditions and having attached to them such preferred, deferred or other special rights or such restrictions, as the Directors think fit.

## **Pre-emptive rights on new issues of shares**

Under the Australia Corporations Act, Shareholders do not have the right to be offered any Shares which are newly issued for cash before those Shares can be offered to non-Shareholders.

## **Non marketable Parcels**

In certain circumstances the Company may sell unmarketable parcels of shares held by Shareholders (i.e. those that have a value of less than A\$500) ("**Non marketable Parcels**"). This is consistent with, and subject to, the ASX Listing Rules and the Australia Corporations Act.

The Constitution provides that the power of the Company to sell Non marketable Parcels may be invoked only once in any 12 month period.

The Company cannot require a Shareholder to sell a Non marketable Parcel. All Shareholders holding a Non marketable Parcel will be given an opportunity to request that it retain its Non marketable Parcel. The ASX Listing Rules also contain a number of safeguards that protect the holders of Non marketable Parcels including:

- the Company may only seek to sell any Non marketable Parcels once in any 12 month period;
- the Company must notify the relevant Shareholder of its intention to sell the Non marketable Parcel;
- the Shareholder must be given at least a six week notice period from the date that the notice is sent in which to tell the Company that it wishes to retain its Non marketable Parcel, and if the Shareholder does so inform the Company, the Non marketable Parcel will not be sold;

- the sale of the Non marketable Parcel must stop following the announcement of any takeover bid for the Company but may be started again after the close of offers made under the takeover bid;
- only the Unmarketable Parcels held by Shareholders who do not respond in writing to the Company during the notice period or who expressly state that they want their Unmarketable Parcel sold, may be sold by the Company; and
- the Company must pay the costs of the sale.

### **Remuneration of Directors**

Each Director is entitled to such remuneration from the Company for their service as approved by Shareholders. The total amount provided to all Directors for their services as directors must not exceed the aggregate in any financial year the amount fixed by the Company.

As at the Latest Practicable Date, the aggregate remuneration cap for all nonexecutive Directors is A\$3,500,000 per annum. Consistent with the Constitution, the remuneration payable to each non-executive Director has been approved by the company's majority Shareholder Yanzhou.

If a Director, with the concurrence of the Directors, performs extra services or makes any special exertions for the benefit of the Company, that Director may be paid out of the funds of the company such special and additional remuneration as the Directors decide is appropriate having regard to the value to the Company of the extra services or special exertions. However, the remuneration of a Director (who is not an executive Director) must not include a commission on, or a percentage of, profits or operating revenue.

### **Indemnity**

To the extent permitted by the Australia Corporations Act, the Company must indemnify every person who is or has been an Director, alternate director or senior executive officer of the Company and to such any other officer or former officer of the Company or of its related bodies corporate that the Directors in each case determine (each, an "**Officer**"). The Company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses incurred by the Officer as a director or an officer of the Company.

### **Pensions and benefits for former Directors**

The Directors may at any time after a Director dies or ceases to hold office as a Director for any other reason, pay or provide to the Director or a legal personal representative, spouse, relative or dependant of the Director, a pension or benefit for past services rendered by that director.

## **Directors' interests in contracts**

Article 8.5(h) of the Constitution provides that a director who has an interest in a matter that is being considered at a meeting of directors may, despite that interest, vote, be present and be counted in a quorum at the meeting, unless that is prohibited by the Australia Corporations Act. No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a director fails to comply with that prohibition. The Australia Corporations Act prescribes the circumstances where a director who has a material personal interest may be present at a board meeting and may vote on the relevant resolution. These exceptions are generally similar to the exceptions permitted by the Stock Exchange in Note 1 to Appendix 3 of the Listing Rules.

A Director is not disqualified from contracting or entering into an arrangement with the Company as vendor, purchaser or in another capacity, merely because the Director holds office as a director or because of the fiduciary obligations arising from that office.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirement of paragraph 4(1) of Appendix 3 to the Listing Rules which provides that subject to the exceptions specified in the articles of association as the Stock Exchange may approve, a director shall not vote on any board resolution approving any contract or arrangement or any other proposal in which he or any of his close associates has a material interest nor shall he be counted in the quorum present at the meeting, on the basis that the exceptions set out in the Australia Corporations Act are generally similar to those set out in Note 1 to Appendix 3 of the Listing Rules.

## **Restrictions on Directors' voting**

A Director who has a material personal interest in a matter that is being considered at a meeting of Directors will only be excluded or prohibited from voting on the matter, being counted in a quorum for the purposes of the meeting or being present while the matter is being considered, if the Director is so prohibited or excluded under the Australia Corporations Act. The ASX Listing Rules also contain restrictions on Directors voting in certain circumstances.

## **Number of Directors**

The number of directors must be such number not less than four and not more than eleven unless the Company resolves otherwise in a general meeting. All Directors shall be natural persons. At least two Directors must be persons who ordinarily reside within Australia.

A director is not required to hold any shares in the Company.

## **Directors' appointment and retirement by rotation**

No Director may hold office without re-election beyond the third annual general meeting following the meeting at which the director was last elected or re-elected. The Directors to retire at any annual general meeting must be those who have been longest in office since their last election, but, as between persons who became directors on the same day, those to retire must (unless they otherwise agree among themselves) be determined by lot. A retiring Director is eligible for re-election.



## **General meetings**

In accordance with the Australia Corporations Act, the Company must hold an annual general meeting at least once every calendar year, and within the period of 5 months after the end of the financial year, at such time and place as determined by the Directors.

A general meeting of the Company may also be convened by:

- the Directors, at any time they think fit; and
- Shareholder(s) holding at least 5% of the total votes (the Shareholder(s) must pay the expenses of calling and holding the meeting, except where the Shareholder(s) request the Directors to convene the meeting in accordance with the next paragraph).
- The Directors must also convene a general meeting on the request of Shareholder(s) entitled to at least 5% of the total voting rights of all Shareholders.

If the Directors do not convene a general meeting within 21 days of being requisitioned to do so, the Shareholder(s) representing more than 50% of the votes of all the Shareholders who requested the meeting may convene a meeting. The meeting must then be held within three months of the request being given to the Company. The Company must repay the requisitioning Shareholders any reasonable expenses incurred by them by reason of the failure of the Directors to convene a meeting. The Company may recover the amount of expenses from the Directors.

At least 28 days' notice must be given to the Shareholders of a general meeting.

In accordance with the Australia Corporations Act, while the Company has a financial year ending 31 December, the annual general meeting of the Company will be held by the end of May of each year.

## **Election of directors**

Article 8.1(i) of the Constitution provides that notices of intention to propose a person for election as a director (and the candidate's consent to be elected) may be lodged with the Company at least 35 business days (as defined in ASX Listing Rules) but no earlier than 90 business days before a general meeting at which the candidate seeks election.

Written notice of each annual general meeting will be given to all of the Company's shareholders (including those who are Hong Kong residents) at least 28 days prior to the annual general meeting. The notice of meeting will contain particulars of the proposed election of directors, including details of each candidate that has been nominated for election.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirements of paragraphs 4(4) and 4(5) of Appendix 3 of the Listing Rules which set out the minimum length of the period during which notice to the issuer of the intention to propose a person for election as a director and during which notice to the issuer by such person of his willingness to be elected may be given, on the basis that the Company has complied with the requirement of ASX Listing Rule 14.3 and the effect of the existing provision provides adequate protection to Shareholders.

## **Appointment of certain positions**

The Constitution provides that a shareholder or shareholders holding a majority of the issued voting shares of the Company (the “**Majority Shareholders**”) may by writing to the Company (1) nominate a Director to the office of Chairperson of the Directors and (2) elect one or more Directors to the office of Vice Chairperson of Directors.

The Vice Chairperson will be appointed by the Board to be the Chair of the Executive Committee.

## **Disclosure of shareholding**

The Australia Corporations Act requires that a Shareholder with a voting power of 5% or more of the Shares must give a prescribed notice to the Company and ASX of the fact, and that Shareholder must continue to give a prescribed notice if there is a movement of at least 1% in their holding (up or down).

## **Classes of shares**

A company may have only one class of ordinary shares unless the ASX approves the terms of an additional class. The Company has only one class of ordinary shares.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirement of paragraphs 10(1) and (2) of Appendix 3 of the Listing Rules to provide in the Constitution that where the share capital includes shares which do not carry voting rights or carry different voting rights, the words “non-voting” or “restricted voting” or “limited voting” must appear in the designation of such shares, on the basis that if the Company were to issue any such shares, it would include such words on the relevant share certificates.

## **Reductions of capital**

An ordinary resolution of Shareholders is required for an equal reduction of capital. A reduction of capital is an equal reduction of capital if:

- it relates only to ordinary shares;
- it applies to each holder of ordinary shares in proportion to the number of ordinary shares he/she holds; and
- the terms of the reduction are the same for each holder of ordinary shares.

Any other reduction of capital is a selective reduction. A selective reduction must be approved by either:

- A special resolution of Shareholders (excluding the votes of any person who is to received consideration as part of the reduction or whose liability to pay amounts unpaid on shares is to be reduced); or
- A resolution passed by all ordinary Shareholders.

## **Redeemable shares**

The Company may issue preference shares in accordance with the Australia Corporations Act and the Constitution. A company may only redeem redeemable preference shares on the terms on which they were issued. A company may only redeem redeemable preference shares if the shares are fully paid-up and out of profits or the proceeds of a new issue of shares made for the purpose of redemption.

The Company does not currently have any preference shares on issue.

## **Share repurchases**

Share repurchases must be authorised by the Company in a general meeting or by a special resolution, subject to limited exceptions. An exception applies where the proposed repurchase would not exceed 10% of the smallest number, at any time during the previous 12 months, of voting shares in the Company.

## **Financial assistance**

Financial assistance for the acquisition of a company's own shares is generally prohibited, except with shareholder approval by special resolution (excluding the votes of any person acquiring the shares) or approval by all ordinary shareholders, or where an exception applies. The principal exception is where the assistance does not materially prejudice:

- the interests of the company or its shareholders; or
- the company's ability to pay its creditors.

## **Statutory derivative actions**

A Shareholder or an officer (or a former Shareholder or officer) of the Company may bring proceedings on behalf of the Company where leave is granted by the Court. The Court must grant leave if it is satisfied that:

- it is probable that the Company will not itself bring the proceedings;
- the applicant is acting in good faith;
- it is in the best interests of the Company that the applicant be granted leave;
- there is a serious question to be tried; and
- at least 14 days written notice has been given to the Company of the intention to apply for leave (or it is appropriate to grant leave despite the notice requirement not being satisfied).

## **Protection of minorities**

A Shareholder may apply for a court order where the conduct of the Company's affairs is, among other things, oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a Shareholder or Shareholders. The orders that may be sought include winding up, amendment to the Constitution, orders regulating the conduct of the Company's affairs, orders for the purchase of shares, orders that the Company institute, defend or discontinue specified proceedings, and other similar orders.

## **Disposal of assets**

The Australia Corporations Act contains no specific restrictions on the powers of directors to dispose of the assets of a company. However, in the exercise of those powers, the Directors must discharge their duties of care to act in good faith, for a proper purpose and in the best interests of the company as required under the director duties in Chapter 2D of the Australia Corporations Act and fiduciary obligations under general law in Australia.

The Company cannot give a financial benefit to a related party of the Company without Shareholder approval, unless one of the exceptions specified in Part 2E of the Australia Corporations Act applies. A related party includes a director or a person or entity related to a director.

Under ASX Listing Rule 11.1, if the Company proposes to make a significant change to the nature or scale of its activities, the Company must comply with the requirements of the ASX, which are likely to include Shareholder approval, and may require the Company to reapply with the requirements for admission to the official list of the ASX.

Under ASX Listing Rule 10.1, the Company cannot acquire a "substantial asset" from, or dispose of a "substantial asset" including to, a director or an entity holding 10% or more of the Company's issued voting securities (or their respective associates) without shareholder approval. For this purpose, a "substantial asset" is an asset valued at 5% or more of the equity interests of the Company.

## **Accounting and auditing requirements**

An Australian public company that is listed on the ASX, such as the Company, must prepare half yearly and annual financial statements which must be audited. The annual financial statements and the auditors' report must also be laid before the annual general meeting of Shareholders.

## **Financial and other reports**

Under the Australia Corporations Act, the Company must send to its shareholders the financial report for the year, the directors' report and the auditors' report or (if the shareholder elects) a concise report for the year by the earlier of 21 days before the next annual general meeting after the end of the financial year or 4 months after the end of the financial year.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirement of paragraph 5 of Appendix 3 of the Listing Rules which provides that the articles of association should contain provisions relating to the sending of financial and other reports to shareholders, on the basis that the provision of such reports is governed by the Australia Corporations Act.

### **Register of members**

The Company must keep a register of its members in an up-to-date index form which sets out the member's name, address and date on which their name was entered into the register.

### **Inspection of books and records**

A Shareholder who is not a Director or company secretary does not have the right to inspect any of the Company's papers, books, records or documents, except as provided by law, the Constitution, or as authorised by the Directors or the Majority Shareholders.

On application by a Shareholder, an Australian court may make an order:

- authorising the applicant to inspect books of the Company; or
- authorising another person to inspect books of the Company on the applicant's behalf.

### **Special resolutions**

The Australia Corporations Act provides that a resolution is a special resolution when it has been passed by a majority of not less than 75% of the votes cast by members entitled to vote on the resolution.

### **Subsidiary owning shares in parent**

The Australia Corporations Act does not permit a company to hold shares in its parent company.

### **Reconstructions**

There are statutory provisions which facilitate reconstructions and amalgamations approved by:

- a majority in number of the members present and voting; and
- 75% of the votes cast on the resolution.

The transaction must also be approved by order of an Australia court.

### **Winding Up**

A company may be wound up either by an order of the court or by a special resolution of its members.

## 2. TAKEOVER REGULATION

The takeover provisions in Chapter 6 of the Australia Corporations Act apply to dealings in the Shares. These provisions apply to listed companies and unlisted companies with more than 50 members. This is a summary of a complex area of law and the Company recommends that all Shareholders take their own advice on their compliance with this law.

The Australia Corporations Act forbids the acquisition of a “relevant interest” (described below) in the voting shares in a company incorporated in Australia if, as a result, the “voting power” of the acquirer (or any other person) would increase from 20% or below to more than 20%. Similarly, such an acquisition is forbidden if any person who already has more than 20%, but less than 90%, of the voting power increases their voting power in the target company. However, it is not mandatory for a person who already exceeds these thresholds to make a takeover bid for all Shares. This restriction is referred to as the “**Takeovers Threshold**”.

In this context, a person’s “voting power” means the aggregate percentage of the Company’s shares that the person and their “associates” hold a “relevant interest” in.

### What is a “relevant interest”?

The concept of a “relevant interest” under the Australia Corporations Act is concerned with a person’s capacity to exercise a degree of influence over securities and the concept extends more broadly than direct ownership. A person will have a “relevant interest” in voting shares of a company where they are the registered holder of shares, have the power to exercise (or control the exercise of) the voting rights of shares, or have the power to dispose of (or control over disposal of) shares. Any person who acquires Shares in the Global Offering will get a relevant interest in those Shares.

Importantly, a person can also be deemed to have a “relevant interest” in voting shares through control of other entities. A person will be deemed to have a relevant interest in any securities held by a body corporate in which the person’s voting power is above 20%. In the Company’s case, this means that Yanzhou is deemed to hold a relevant interest in any securities in which Yancoal holds a relevant interest.

### What is an “associate”?

A person (“**Person A**”) will be an associate of a second person (“**Person B**”) in one of three situations:

- (**Control Test**) Person A is a body corporate and Person B is:
  - a body corporate that is “controlled” by Person A; or
  - a body corporate that “controls” Person A; or
  - a body corporate that is “controlled” by an entity that “controls” Person A;

The concept of “control” means one entity’s capacity to determine the outcome of decisions about a second entity’s financial and operating policies.

- (**Relevant Agreement Test**) Person A and Person B have a “relevant agreement” for the purpose of controlling or influencing the composition of the Company’s Board or the conduct of the Company business affairs; or

- **(Acting in Concert Test)** Person A and Person B are acting in concert in relation to the Company's business affairs.

It is important to bear in mind that in calculating a person's voting power, the relevant interest that they hold must be aggregated with the relevant interest held by their associates. Accordingly, if, as a result of an acquisition of Shares by Person B, Person A would experience an increase in their voting power that breached the Takeovers Threshold, that acquisition cannot happen, other than under an exception to the Takeovers Threshold.

### **Are there any exceptions to the Takeovers Threshold?**

There are several exceptions which allow acquisitions which would otherwise be prohibited from taking place. These exceptions include acquisitions:

- under a formal takeover offer in which all Shareholders can participate;
- that result from an issue of securities under a "rights issue";
- with the approval of the Shareholders given at a general meeting of the Company; and
- in 3% increments every six months (provided that the acquirer has had voting power of at least 19% in the target company for at least six months).

A person who has made a takeover bid where at the end of the offer period that person (and its associates) have a relevant interest in 90% of the issued shares and acquired 75% (by number) of shares held by other shareholders, may compulsorily acquire any remaining shares it does not hold at the same price offered under the bid, within one month after the end of the offer period. Even if a takeover bid has not been made, a person who otherwise lawfully acquires a relevant interest in 90% of the issued shares is able to acquire the remaining shares for fair value (confirmed by an independent expert), within six months after the person first acquires an interest in 90% of the issued shares.

There have not been any public takeover bids in respect of the Shares during the current or previous financial year.

### **3. OTHER APPLICABLE OWNERSHIP RESTRICTIONS IN THE SHARES**

Under the Australian *Foreign Acquisition and Takeovers Act 1975* (Cth), subject to certain exemptions, a non-Australian foreign person or entity cannot acquire a substantial interest in 20% or more, or two or more foreign entities or persons cannot acquire an aggregate substantial interest in 40% or more, of the Company's issued shares, without first obtaining approval from the Foreign Investment Review Board.

### **4. SHAREHOLDER PROTECTIONS**

The Company was incorporated in Australia and is subject to the Australia Corporations Act and other applicable laws and regulations in Australia. Set out below is a discussion on the key shareholder protection standards offered under the Constitution and the Australian laws and regulations that we consider material to the Company's Shareholders and potential investors and as required under the Joint Policy Statement.

## **Matters requiring a super-majority vote**

Paragraph 36 of Joint Policy Statement requires the following matters to be approved by a super-majority vote of the shareholders:

- changes to the rights attached to any class of shares of an overseas company (vote by members of that class);
- material changes to an overseas company's constitutive documents, however framed; and
- voluntary winding up of an overseas company.

Under the Australia Corporations Act and the Constitution, a "special resolution" of members is required to approve:

- variation to the rights attached to any class of shares;
- any amendment to, or replacement of, the Constitution; and
- where the Company is being wound up by the court or voluntarily.

Paragraphs 37 and 38 of the Joint Policy Statement requires a super-majority vote to mean at least a two-third majority where an overseas company has a low quorum requirement. When an overseas company's threshold for deciding the matters in the paragraph headed "Matter requiring a super-majority vote" above is a simple majority only, these matters must be decided by a significantly higher quorum.

Under section 9 of the Australia Corporations Act, a "special resolution" means a resolution of which notice has been given in accordance with certain prescribed rules and that has been passed by at least 75% of the votes cast by members entitled to vote on that resolution.

### ***Variation of rights***

Article 2.5(a) of the Constitution provides that a special resolution or the written consent of 75% of those in a class is required to approve a variation of rights of that class of shares. Article 2.5(b) of the Constitution provides that the provisions of the Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings. Article 7.4(b) of the Constitution provides that a quorum is 5 or more members present at the meeting and entitled to vote on a resolution at the meeting.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirement of paragraph 6(2) of Appendix 3 of the Listing Rules which provides that the quorum for a separate class meeting (other than an adjourned meeting) to consider a variation of the rights of any class of shares shall be the holders of at least one-third of the issued shares of that class, on the basis that there is no requirement under the Australia Corporations Act or the ASX Listing Rules for a quorum for separate class meetings and the effect of Article 2.5(b) already provides adequate protection to holders of any separate class of shares.



## ***Changes to the Constitution***

Section 136(2) of the Australia Corporations Act and Article 7.10 of the Constitution provides that a special resolution of Shareholders is required for any variation to, or replacement of, the Constitution.

## ***Winding-up***

A special resolution of Shareholders is required to approve (i) winding-up by the court under section 461(1)(a) of the Australia Corporations Act or (ii) voluntary winding-up under section 491(1) of the Australia Corporations Act.

In addition, if the Company is wound up, Article 12.2 of the Constitution provides that the liquidator may (with the sanction of a special resolution of Shareholders):

- divide among the members the whole or any part of the Company's property; and
- decide how the division is to be carried out as between the members or different class of members.

## **Individual members to approve increase in members' liability**

Paragraph 39 of the Joint Policy Statement requires that there should not be any alteration in an overseas company's constitutional document to increase an existing member's liability to the company unless such increase is agreed by such member in writing.

Under section 140(2)(b) of the Australia Corporations Act, unless a member of the Company agrees in writing to be bound, that member will not be bound by any alteration of the Constitution made after the date on which they became a member, if and to the extent that alteration increases the member's liability to contribute to the share capital of, or otherwise to pay money to, the Company.

## **Appointment of auditors**

Paragraph 40 of the Joint Policy Statement requires that the appointment, removal and remuneration of auditors must be approved by a majority of an overseas company's members or other body that is independent of the board of directors, for example the supervisory board in systems that have a two tier board structure.

## ***Appointment***

In Australia, the directors of a public company must appoint an auditor within 1 month after the company's registration, and section 327B(1) of the Australia Corporations Act provides that a public company must approve the appointment of an auditor at its first annual general meeting and must appoint an auditor to fill any vacancy in the office of auditor at each subsequent annual general meeting. Appointments are made by way of a resolution passed by a simple majority of members.

Article 7.10(b)(11) of the Constitution requires that members holding a majority of the issued shares of the Company approve the appointment or removal of the auditor.

## ***Removal***

Section 329(1) of the Australia Corporations Act provides that an auditor of the company may be removed by simple majority resolution of the members of a company at a general meeting, provided notice of intention to move the resolution is given to the company at least two months before the meeting.

Article 7.10(b)(11) of the Constitution requires that members holding a majority of the issued shares of the Company approve the appointment or removal of the auditor.

## ***Remuneration***

Section 250R(1) of the Australia Corporations Act provides that the business of an annual general meeting may include the consideration of the annual financial report, directors' report and auditor's report, the election of directors, the appointment of the auditor, and the fixing of the auditor's remuneration.

Article 7.10(b)(11) of the Constitution requires that members holding a majority of the issued shares of the Company approve the annual remuneration paid to the auditor for services provided in relation to the annual audit of the company (not including any amounts paid to the auditor for special or additional services provided by the auditor to the company as determined by the directors of the company). Under Article 8.7(p) of the Constitution, the directors have the power to determine the remuneration of the Company's auditor for temporary work outside the scope of the annual audit.

## **Proceedings at general meetings**

### ***Annual general meetings***

Paragraph 41 of the Joint Policy Statement requires that an overseas company is required to hold a general meeting each year as its annual general meeting. Generally, not more than 15 months should elapse between the date of one annual general meeting of the overseas company and the next.

Section 250N of the Australia Corporations Act provides that the Company must hold an annual general meeting at least once in each calendar year and within five months after the end of its financial year.

### **Notice of general meetings**

Paragraph 42 of the Joint Policy Statement requires that an overseas company must give its members reasonable written notice of its general meetings.

Section 249H(1) of the Australia Corporations Act provides that the Company must give at least 28 days' notice of a meeting of members.

### **Rights to speak and vote at the general meetings**

Paragraph 43 of the Joint Policy Statement requires that all members must have the right to speak and vote at a general meeting, except in cases where a member is required by the Listing Rules to abstain from voting to approve the transaction or arrangement (e.g. the member has a material interest in the transaction or arrangement).

Article 7.8 of the Constitution sets out the rights of Shareholders to vote at a general meeting of the Company.

Section 250S of the Australia Corporations Act also provides that the chair at an annual general meeting must allow reasonable opportunity for the Shareholders as a whole at the meeting to ask questions about or make comments on the management of the Company.

### **Rights to convene extraordinary general meeting and add resolutions**

Paragraph 44 of the Joint Policy Statement requires that members holding a minority stake in an overseas company must be allowed to convene an extraordinary general meeting and add resolutions to a meeting agenda. The minimum level of members' support required to convene a meeting must be no higher than 10%.

Under section 249D of the Australia Corporations Act, Shareholders with at least 5% of the votes that may be cast at a general meeting have the right to require the Directors to call a general meeting or may convene a general meeting themselves at their own expense under section 249F of the Australia Corporations Act. Under section 249N of the Australia Corporations Act, Shareholders representing at least 5% of the total votes that may be cast on the resolution or at least 100 Shareholders who are entitled to vote at a general meeting may require resolutions to be put before a general meeting.

### **Proxies or corporate representatives**

Paragraph 45 of the Joint Policy Statement requires that a recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditors meetings. These proxies/corporate representatives should enjoy statutory rights comparable to those of other shareholders, including the right to speak and vote.

Paragraph 46 further provides that where the laws of an overseas jurisdiction prohibit a recognised clearing house from appointing proxies/corporate representatives, the overseas company must make the necessary arrangements with HKSCC Nominees to ensure that Hong Kong investors holding shares through HKSCC Nominees enjoy the rights to vote, attend (personally or by proxy) and speak at general meetings.

The Australia Corporations Act does not contain any provision to the effect that a recognised clearing house would be prohibited from appointing proxies or corporate representatives. Article 7.9(g) of the Constitution provides that a proxy, attorney or representative appointed by a Shareholder has the same rights to speak, demand a poll, join in demanding a poll or acting generally as the Shareholder would have had if the Shareholder was present.

Article 2.6(d) of the Constitution provides that, except where persons are jointly entitled to a share because of a transmission event (as defined in the Constitution), such as death or dissolution of the shareholder, or where required by the ASX Listing Rules or the ASX Settlement Operating Rules, the Company may, but is not required to, register more than 3 persons as joint holders of the share. Paragraph 1(3) of Appendix 3 of the Listing Rules requires that if there is any limit to the number of shareholders in a joint account, such limit must not prevent the registration of a maximum of four persons.

The Company has applied for, and the Stock Exchange has granted, a waiver from strict compliance with the requirement of paragraph 11(2) of Appendix 3 of the Listing Rules, which provides that a corporation may execute a form of proxy under the hand of a duly authorised officer, for Australian-incorporated companies on the basis that the relevant requirements regarding the execution of proxy forms by Australian-incorporated companies are governed by the Australia Corporations Act.

## **5. LAWS AND REGULATIONS IN RELATION TO TAXATION**

*The following description is not intended to constitute a complete analysis of all tax consequences relating to the purchase, ownership or disposition of the Shares. You should consult your own tax advisor concerning the tax consequences of your particular situation, as well as any tax consequences that may arise under the laws of any state, local, foreign, including Australia, or other taxing jurisdiction.*

Set out below is a general summary of the Australian income tax implications for Australian tax resident individuals, companies (other than life insurance companies), complying superannuation entities and foreign resident investors that will hold the Shares on capital account.

These comments do not apply to investors that are not residents for Australian income tax purposes, hold the Shares on revenue account or as trading stock (which will generally be the case if you are a bank, insurance company or carry on a business of share trading), investors who are exempt from Australian income tax, or investors subject to the taxation of financial arrangements regime (the "Regime") in Division 230 of the Income Tax Assessment Act 1997 (Cth) and does not cover foreign tax implications of owning the Shares.

The below summary assumes that the Company continues to be an Australian tax resident.

### **Dividends paid on the Shares**

#### ***Australian individuals and complying superannuation entities***

Dividends paid by the Company on a Share should constitute assessable income of an Australian tax resident investor. Australia has an imputation system where the concept of franking broadly represents the net Australian corporate tax paid by the company. When a corporate tax entity makes a distribution to its members, it can impute tax credits to the distribution to alleviate double taxation at the corporate entity level and again when the member receives the distribution. This is called "franking" a distribution. Dividends can, be "franked" to a maximum percentage reflecting the Australian corporate tax rate of 30% for Australian tax purposes. The franking credits attached to a distribution represent the amount of tax already paid by the corporate entity and can be used by the recipients as tax offsets. Where the franking credits attached to the distributions received by individuals or complying superannuation funds exceed their tax liability, they are entitled to a refund of the franking credits.

Australian tax resident investors who are individuals or complying superannuation entities should include the dividend in their assessable income in the year the dividend is paid, together with any franking credit attached to that dividend. Subject to the 45 day rule as discussed further below, such investors should be entitled to a tax offset equal to the franking credit attached to the dividend. The tax offset can be applied to reduce the tax payable on the investor's taxable income. Where the tax offset exceeds the tax payable on the investor's taxable income, investors who are individuals or complying superannuation entities should be entitled to a tax refund equal to the excess.

To the extent that the dividend is unfranked, investors who are individuals will generally be taxed at the prevailing (marginal) rate on the dividend received (with no tax offset) and the complying superannuation entities will be taxed at a concessional rate of 15%.

### ***Australian trusts and partnerships***

Australian tax resident investors who are trustees (other than trustees of complying superannuation entities) or partnerships should include the dividend as well as the associated franking credits in the net income of the trust or partnership. The relevant beneficiary or partner may be entitled to a tax offset equal to the beneficiary's or partner's share of the net income of the trust or partnership.

### ***Australian companies***

Companies are also required to include both the dividend and the associated franking credits in their assessable income.

Companies are then entitled to a tax offset up to the amount of the franking credit attached to the dividend.

An Australian tax resident company should be entitled to a credit in its own franking account to the extent of the franking credits attached to the dividend received. This will allow the company to pass on the franking credits to its shareholders on the subsequent payment of franked dividends.

Excess franking credits received by Australian tax resident companies will not give rise to a refund entitlement but can be converted into carry forward tax losses instead.

### ***Foreign resident investors***

Fully franked dividends received by a foreign resident investor should not be subject to any Australian dividend withholding tax. However, refunds of imputation credits are not available for foreign investors.

Unfranked or partially franked dividends paid to a foreign resident investor should generally be subject to Australian dividend withholding tax to the extent of the unfranked component of the dividend. The rate of the dividend withholding tax (up to 30%) will depend on the country in which the relevant investor is resident. Such investors may be able to claim foreign tax credits for the Australian withholding tax in the jurisdiction in which they are a tax resident, depending on the tax law in the relevant jurisdiction. Investors should seek their own professional tax advice to confirm this.

## **Shares held at risk – availability of franking credits**

The benefit of franking credits can be denied where, an investor is not a “qualified person” in which case the amount of the franking credits will not be included in their assessable income and they will not be entitled to a tax offset.

Broadly, to be a “qualified person” two tests must be satisfied, namely the holding period rule and the related payment rule.

Under the holding period rule, an investor is required to hold the Shares at risk for a continuous period of not less than 45 days during the primary qualification period in order to qualify for franking benefits, including franking credits. The primary qualification period is the period commencing the day after the Shares were acquired and ending on the 45th day after the Shares became ex-dividend. This holding period rule is subject to certain exceptions, including where the total franking offsets of an individual in a year of income do not exceed AUD\$5,000.

Under the related payment rule, a different testing period applies where the investor has made, or is under an obligation to make, a related payment in relation to the dividend. The related payment rule is applied within the period commencing on the 45th day before, and ending on the 45th day after the day the Shares become ex-dividend.

Investors should seek professional advice to determine if these requirements, as they apply to them, have been satisfied.

There are specific integrity rules that prevent taxpayers from obtaining a tax benefit from additional franking credits where dividends are received as a result of “dividend washing” arrangements. Shareholders should consider the impact of these rules to their own personal circumstances.

## **Disposal of the Shares**

### ***Australian tax resident investors***

Australian tax resident investors, who hold their Shares on capital amount will be subject to Australian CGT on the disposal of Shares.

An investor, who holds their Shares on capital account, will derive a capital gain on the disposal of the Shares where the capital proceeds received on disposal exceed the CGT cost base of the Shares. The CGT cost base of the Shares in an arm’s length transaction is generally the value of the consideration paid to acquire the Shares plus any transaction or incidental costs (e.g. brokerage costs and legal costs).

A CGT discount may be available on the capital gain for Australian tax resident individual investors, trustee investors and investors that are complying superannuation entities, provided the particular Shares are held for at least 12 months prior to sale. Any current year or carried forward capital losses must be used to offset the capital gain first before the CGT discount can be applied. The CGT discount is not available for Australian tax resident companies.

The CGT discount for Australian tax resident individuals and trusts is 50% of the capital gain and for complying superannuation entities is 33<sup>1</sup>/<sub>3</sub>% of the capital gain. In relation to trusts, the CGT discount rules are complex, but the discount may flow through to Australian tax resident individuals and complying superannuation fund beneficiaries of the trust.

An Australian tax resident investor will incur a capital loss on the disposal of their Shares to the extent that the capital proceeds on disposal are less than the reduced cost base of the Shares for CGT purposes.

If an Australian tax resident investor derives a net capital gain in a year, this amount is, subject to the comments below, included in the investor's assessable income. If an Australian tax resident investor incurs a net capital loss in a year, this amount is carried forward and is available to offset against capital gains derived in subsequent years, subject, in some cases, to the investor satisfying certain rules relating to the recoupment of carried forward losses.

### ***Foreign resident investors***

A tax liability should only arise in Australia for non-resident Shareholders on capital gains arising on disposal of their Shares if the Shares constitute taxable Australian real property. Broadly, this could be the case if a company is entitled, directly or indirectly (through a non-portfolio shareholding of 10% or more) to any real property situated in Australia (freehold, leasehold, fixtures or other items fixed to land) or mining, quarrying, or prospecting rights, and such landholdings or mining, quarrying or prospecting rights represent 50% or more of the market value of the assets of the company.

The tax rate will depend on the characteristics of the taxpayer.

### **Tax File Number (TFN) and Australian Business Number (ABN)**

Australian tax resident investors may, if they choose, notify the Company of their TFN, ABN or a relevant exemption from withholding tax with respect to dividends.

The Company is required to deduct withholding tax from payments of dividends to the extent they are unfranked at the highest marginal rate (currently 47% for the 2017-2018 income year) including the Medicare levy (the progressive income tax levy which partly finances Medicare, Australia's national healthcare scheme), unless a TFN or an ABN has been quoted by the Shareholder, or a relevant exemption applies and has been notified to the Company. Australian tax resident investors may be able to claim a tax credit/rebate (as applicable) in respect of any tax withheld on dividends in their tax returns.

An investor who holds the Shares as part of an enterprise (i.e. carrying on a business of buying and selling shares) may quote its ABN instead of its TFN.

### **Goods and services tax (GST)**

The acquisition, buy-back or disposal of the Shares by an Australian tax resident investor (registered for GST) will be an input taxed financial supply, and therefore is not subject to GST. No GST should be payable in respect of dividends paid to investors.

An Australian tax resident investor (registered for GST) may not be entitled to claim full input tax credits in respect of GST on expenses (e.g. lawyers' and accountants' fees) incurred relating to the acquisition, buy-back or disposal of the Shares which are otherwise input taxed supplies.

### **Stamp duty**

Where the Company is listed on the ASX or the Stock Exchange and is a landholder in any State or Territory in Australia, no landholder duty should be payable by a Shareholder on the acquisition of the Shares under the Global Offering (i.e. the issuance of Shares by the Company under the Global Offering) if the investors:

- Acquire the Shares after all of the Shares are quoted on ASX or the Stock Exchange; and
- Each investor and any associated persons (or persons acquiring under one arrangement or in concert) do not acquire 90% or more of the interests in the Company or, as a result of the acquisition, hold 90% or more of the interests in the Company.

Further, under current stamp duty legislation, stamp duty should not ordinarily be payable on any subsequent acquisition of Shares by a Shareholder provided the above requirements are met.

Investors should seek their own tax advice as to the impact of stamp duty in their own particular circumstances.

## **6. REGULATIONS IN RELATION TO FOREIGN INVESTMENT IN AUSTRALIA**

### **Restrictions on the acquisition of Shares under the FATA**

The main laws and regulations that regulate foreign investment in Australia are the Foreign Acquisitions and Takeovers Act 1975 (Cth) (**FATA**), the Foreign Acquisitions and Takeovers Fees Imposition Act 2015 and the Foreign Acquisitions and Takeovers Regulation 2015 (**FATR**). Together these rules give the Australian Treasurer (**Treasurer**) the power to review foreign investment proposals that meet certain criteria and to block such proposals that are contrary to the national interest, or apply conditions to the way such proposals are implemented to ensure they are not contrary to the national interest (these proposals are called 'significant actions'). Some significant actions must be notified – failure to do so is an offence under the law (these are called 'notifiable actions'). Other significant actions do not have to be notified, but doing so and obtaining a statement of no objection cuts off the Treasurer's power.

The Foreign Investment Review Board (**FIRB**) is a non-statutory body which provides advice to the Treasurer in connection with foreign investment proposals. The process of notifying a transaction and obtaining a statement of no objection in relation to it is known as obtaining 'FIRB approval'.

Whether an investment is a significant action (including a notifiable action) requiring FIRB approval depends on the background of the investor (particularly whether the investor is a "foreign government investor" (as defined in the FATR) (**Foreign Government Investor**)), the type and value of the asset(s) to be acquired, and the sector in which the investment is to be made.



Whether FIRB approval is required for a foreign investor to acquire an interest in the Company is determined on a case by case basis. It is the responsibility of the investor to determine if it requires FIRB approval before acquiring Offer Shares under the Global Offering, and it is the responsibility of the investor to otherwise ensure that it complies with the FATA in relation to investments in Australian companies or businesses, including the obtaining of any governmental or other consents which may be required, and that it complies with other necessary approval and registration requirements and other formalities.

A “foreign person” (as defined in the FATA) (**Foreign Person**) is required to obtain FIRB approval from the Treasurer to acquire Offer Shares as part of the Global Offering if they are a Foreign Government Investor from the PRC. Due to the operation of association rules under the FATA and the current level of ownership of the Company by Foreign Government Investors from the PRC, any acquisition of Offer Shares by Foreign Government Investors from the PRC will require prior approval by the Treasurer. In addition, a Foreign Person is required to obtain prior approval from the Treasurer to acquire Offer Shares as part of the Global Offering if they are a Foreign Government Investor from a country other than the PRC and they are acquiring 10% or more of the Shares of the Company as part of the Global Offering. These approvals are ‘notifiable actions’ – that is, failure to notify is an offence under the law.

This is not necessarily an exhaustive description of the circumstances in which an acquisition of Offer Shares as part of the Global Offering will require FIRB approval. Investors should seek independent legal advice prior to making an acquisition of Offer Shares as part of the Global Offering.

If FIRB approval for an acquisition of Offer Shares under the Global Offering was required, but was not obtained, the Treasurer may, among other things, direct the disposal of the acquired Shares, restrain the exercise of rights attached to the acquired Shares, or prohibit or defer the payment of any sums due in respect of the acquired Shares.

### **FIRB Approval for certain Foreign Government Investors from PRC**

In order to facilitate the participation by certain Foreign Government Investors from the PRC in the Global Offering, the Company has made an application for FIRB Approval on their behalf. This application only covers Foreign Government Investors from the PRC who have been advised of that by the Company and who have also provided a written consent to the Company to have the application for FIRB Approval made on their behalf.

Any allocation of Shares under the Global Offering to the Foreign Government Investors from the PRC referred to above will be conditional upon receipt of FIRB Approval.

## Summary of the major differences between the Hong Kong Listing Rules, the ASX Listing Rules and certain applicable Hong Kong and Australian laws

### Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>

### ASX Listing Rules and Australian laws<sup>2</sup>

#### *Changes in capital and new issues*

#### **HK LR 13.36 – Pre-emptive rights**

HK LR 13.36(1)

- (a) Except in the circumstances mentioned in rule 13.36(2), the directors of the issuer (other than a PRC issuer, to which the provisions of rule 19A.38 apply) shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting:
- (i) shares;
  - (ii) securities convertible into shares; or
  - (iii) options, warrants or similar rights to subscribe for any shares or such convertible securities.

#### **ASX LR 7.1 – Issues exceeding 15% of capital**

Subject to ASX LR 7.1A and ASX LR 7.1B, without the approval of holders of ordinary securities, an entity must not issue or agree to issue more equity securities than the number calculated according to the following formula.  $(A \times B) - C$

**A** = The number of fully paid ordinary securities on issue 12 months before the issue date or date of agreement to issue,

plus the number of fully paid ordinary securities issued in the 12 months under an exception in ASX LR 7.2,

plus the number of partly paid ordinary securities that became fully paid in the 12 months,

<sup>1</sup> Terms used in this column have the meanings given to them in the Listing Rules.

<sup>2</sup> Terms used in this column have the meaning given to them in the ASX Listing Rules.

## **Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>**

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*Note:* Importance is attached to the principle that a shareholder should be able to protect his proportion of the total equity by having the opportunity to subscribe for any new issue of equity securities. Accordingly, unless shareholders otherwise permit, all issues of equity securities by the issuer must be offered to the existing shareholders (and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them) pro rata to their existing holdings, and only to the extent that the securities offered are not taken up by such persons may they be allotted or issued to other persons or otherwise than pro rata to their existing holdings. This principle may be waived by the shareholders themselves on a general basis, but only within the limits of rules 13.36(2) and (3).

- (b) Notwithstanding rule 13.36(2)(b), the directors of the issuer (other than a PRC issuer, to which the provisions of rule 19A.38 apply) shall obtain the consent of the shareholders in general meeting prior to allotting any voting shares if such allotment would effectively alter the control of the issuer.

### **HK LR 13.36(5)**

In the case of a placing of securities for cash consideration, the issuer may not issue any securities pursuant to a general mandate given under rule 13.36 (2)(b) if the relevant price represents a discount of 20% or more to the benchmarked price of the securities, such benchmarked price being the higher of:

- (a) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and

## **ASX Listing Rules and Australian laws<sup>2</sup>**

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plus the number of fully paid ordinary securities issued in the 12 months with approval of holders of ordinary securities under ASX LR 7.1 or ASX LR 7.4,

less the number of fully paid ordinary securities cancelled in the 12 months.

**B** = 15%

**C** = The number of equity securities issued or agreed to be issued in the 12 months before the issue date or date of agreement to issue that are not issued:

under an exception in ASX LR 7.2;

under ASX LR 7.1A.2; or

with the approval of the holders of ordinary securities under ASX LR 7.1 or ASX LR 7.4.

**Hong Kong Listing Rules and  
Hong Kong laws<sup>1</sup>**

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**ASX Listing Rules and Australian laws<sup>2</sup>**

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- (b) the average closing price in the 5 trading days immediately prior to the earlier of:
- (i) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;
  - (ii) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
  - (iii) the date on which the placing or subscription price is fixed,

unless the issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances. The issuer shall provide the Exchange with detailed information on the allottees to be issued with securities under the general mandate.

## Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>

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### Exceptions to HK LR 13.36(1)

HK LR 13.36(2)

No such consent as is referred to in rule 13.36(1)(a) shall be required:

- (a) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer which excludes for that purpose any shareholder that is resident in a place outside Hong Kong provided the directors of the issuer consider such exclusion to be necessary or expedient on account either of the legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them, pro rata (apart from fractional entitlements) to their existing holdings; or
- (b) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, either unconditionally or subject to such terms and conditions as may be specified in the resolution, to allot or issue such securities or to grant any offers, agreements or options which would or might require securities to be issued, allotted or disposed of, whether during the continuance of such mandate or thereafter, subject to a restriction that the aggregate number of securities allotted or agreed to be allotted must not exceed the aggregate of:
  - (i) 20% of the number of issued shares of the issuer as at the date of the resolution granting the general mandate (or in the case of a scheme of arrangement involving an introduction in the circumstances set out in rule 7.14(3), 20% of the number of issued shares of an overseas issuer following the implementation of such scheme); and

## ASX Listing Rules and Australian laws<sup>2</sup>

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### Exceptions to ASX LR 7.1

ASX LR 7.1 does not apply in any of the following cases:

**Exception 1** An issue to holders of ordinary securities made under a pro rata issue and to holders of other equity securities to the extent that the terms of issue of the equity securities permit participation in the pro rata issue.

**Exception 2** An issue under an underwriting agreement to an underwriter of a pro rata issue to holders of ordinary securities if the underwriter receives the securities not later than 15 business days after the close of the offer.

**Exception 3** An issue to make up the shortfall on a pro rata issue to holders of ordinary securities. The entity must make the issue not later than 3 months after the close of the offer, and the directors of the entity (in the case of a trust, the responsible entity) must have stated as part of the offer that they reserve the right to issue the shortfall at their discretion. The issue price must not be less than the price at which the securities were offered under the pro rata issue.

**Exception 4** An issue on the conversion of convertible securities. The entity must have issued the convertible securities before it was listed or complied with the ASX LR when it issued the convertible securities.

**Exception 5** An issue under a takeover bid or under a merger by way of scheme of arrangement under Part 5.1 of the Australia Corporations Act. Exception 5 is not available if the issue is being made under a reverse takeover.

**Exception 6** An issue to fund the cash consideration payable under a takeover bid or under a merger by way of scheme of arrangement under Part 5.1 of the Australia Corporations Act where the terms of the issue are disclosed in the takeover or scheme documents. **Exception 6** is not available if the issue is being made to fund a reverse takeover.

## Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>

- (ii) the number of such securities repurchased by the issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the number of issued shares of the issuer as at the date of the resolution granting the repurchase mandate), provided that the existing shareholders of the issuer have by a separate ordinary resolution in general meeting given a general mandate to the directors of the issuer to add such repurchased securities to the 20% general mandate.

### HK LR 13.36(3)

A general mandate given under rule 13.36(2) shall only continue in force until:

- (a) the conclusion of the first annual general meeting of the issuer following the passing of the resolution at which time it shall lapse unless, by ordinary resolution passed at that meeting, the mandate is renewed, either unconditionally or subject to conditions; or
- (b) revoked or varied by ordinary resolution of the shareholders in general meeting, whichever occurs first.

### HK LR 13.36(4)

Where the issuer has obtained a general mandate from its shareholders pursuant to rule 13.36(2)(b), any refreshments of the general mandate before the next annual general meeting shall be subject to the following provisions:

- (a) any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour;

## ASX Listing Rules and Australian laws<sup>2</sup>

**Exception 7** An issue under a dividend or distribution plan excluding an issue to the plan's underwriters. Exception 7 is only available where the dividend or distribution plan does not impose a limit on participation.

[No exception 8]

**Exception 9** An issue under an employee incentive scheme if within 3 years before the issue date one of the following occurred.

- (a) In the case of a scheme established before the entity was listed – a summary of the terms of the scheme were set out in the prospectus, PDS or information memorandum.
- (b) Holders of ordinary securities have approved the issue of securities under the scheme as an exception to this rule. The notice of meeting must have included each of the following.
  - (i) A summary of the terms of the scheme.
  - (ii) The number of securities issued under the scheme since the date of the last approval.
  - (iii) A voting exclusion statement.

**Exception 10** An issue of preference shares which do not have any rights of conversion into another class of equity security. The preference shares must comply with chapter 6 of the Australia Corporations Act.

**Exception 11** The reissue or sale of forfeited shares within 6 weeks after the day on which the call was due and payable.

**Exception 12** is only available if each of the following applies:

- (a) The entity complied with the ASX LR when it issued the options.
- (b) The underwriter receives the underlying securities within 10 business days after expiry of the options.

## Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>

- (b) the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:
- (i) any parties who were controlling shareholders of the issuer at the time the decision to seek a refreshment of the mandate was made or approved by the board, and their associates;
  - (ii) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision to seek a refreshment of the mandate was made or approved by the board, and their respective associates; or
- (c) the issuer must comply with the requirements set out in rules 13.39(6) and (7), 13.40, 13.41 and 13.42;
- (d) the relevant circular to shareholders must contain information relating to the issuer's history of refreshments of mandate since the last annual general meeting, the amount of proceeds raised from the utilisation of such mandate, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount. The circular must also contain information required under rule 2.17; and

where the issuer offers or issues securities to its shareholders pro rata to their existing holdings (including where overseas shareholders are excluded for legal or regulatory reasons), it will not be necessary for the issuer to comply with rules 13.36(4)(a), (b) or (c) in order for it to refresh its general mandate immediately thereafter such that the amount in percentage terms of the unused part of the general mandate upon refreshment is the same as the unused part of the general mandate immediately before the issue of securities. In such cases, it need only obtain approval from its shareholders and comply with rule 13.36(4)(d).

## ASX Listing Rules and Australian laws<sup>2</sup>

- (c) The underwriting agreement was disclosed under ASX LR 3.11.3.

**Exception 13** An issue under an agreement to issue securities. The entity must have complied with the ASX LR when it entered into the agreement to issue the securities.

**Exception 14** An issue made with the approval of holders of ordinary securities under ASX LR 10.11 or ASX LR 10.14. The notice of meeting must state that if approval is given under listing ASX LR 10.11 or ASX LR 10.14 (as the case may be), approval is not required under ASX LR 7.1.

**Exception 15** An issue of securities under a security purchase plan, excluding an issue to the plan's underwriters. Exception 15 is only available once in any 12 month period and if both of the following apply:

- The number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue.
- The issue price of the securities is at least 80% of the volume weighted average market price for securities in that class,

calculated over the last 5 days on which sales in the securities were recorded, either before the day on which the issue was announced or before the day on which the issue was made.

**Exception 16** An issue of securities approved for the purposes of Item 7 of section 611 of the Australia Corporations Act.

**ADDITIONAL INFORMATION:** *Item 7 of section 611 of the Australia Corporations Act:*

*“Approval by resolution of target: An acquisition approved previously by a resolution passed at a general meeting of the company in which the acquisition is made, if:*

- (a) *no votes are cast in favour of the resolution by:*
  - (i) *the person proposing to make the acquisition and their associates; or*

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- (ii) *the persons (if any) from whom the acquisition is to be made and their associates; and*
- (b) *the members of the company were given all information known to the person proposing to make the acquisition or their associates, or known to the company, that was material to the decision on how to vote on the resolution, including:*
  - (i) *the identity of the person proposing to make the acquisition and their associates; and*
  - (ii) *the maximum extent of the increase in that person's voting power in the company that would result from the acquisition; and*
  - (iii) *the voting power that person would have as a result of the acquisition; and*
  - (iv) *the maximum extent of the increase in the voting power of each of that person's associates that would result from the acquisition; and*
  - (v) *the voting power that each of that person's associates would have as a result of the acquisition."*



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### HK LR 14.78 – Takeovers Code

HK LR 14.78 Listed issuers and their directors must comply with the Takeovers Code. Any breach of the Takeovers Code will be deemed to be a breach of the Exchange Listing Rules. The Exchange may penalise the listed issuer and/or its directors for breaches in accordance with the disciplinary powers contained in Chapter 2A of the Exchange Listing Rules.

### Takeovers Code Rule 4 – No Frustrating Action

Takeovers Code Rule 4

Once a bona fide offer has been communicated to the board of an offeree company or the board of an offeree company has reason to believe that a bona fide offer may be imminent, no action which could effectively result in an offer being frustrated, or in the shareholders of the offeree company being denied an opportunity to decide on the merits of an offer, shall be taken by the board of the offeree company in relation to the affairs of the company without the approval of the shareholders of the offeree company in general meeting. In particular the offeree company's board must not, without such approval, do or agree to do the following:

- (a) issue any shares;
- (b) create, issue or grant, or permit the creation, issue or grant of, any convertible securities, options or warrants in respect of shares of the offeree company;
- (c) sell, dispose of or acquire assets of a material amount;
- (d) enter into contracts, including service contracts, otherwise than in the ordinary course of business; or

## ASX Listing Rules and Australian laws<sup>2</sup>

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### ASX LR 7.9 – Issues during a takeover offer or takeover announcement

An entity must not issue or agree to issue equity securities, without the approval of holders of ordinary securities, for 3 months after it is told in writing that a person is making, or proposes to make, a takeover for securities in it. This rule does not apply to an issue or agreement to issue in any of the following cases:

**Exception 1** An issue notified to ASX before the entity was told, or made under an agreement to issue notified to ASX before the entity was told.

**Exception 2** A pro rata issue to holders of ordinary securities.

**Exception 3** An issue made on the exercise of rights of conversion.

**Exception 4** An issue made under an off-market bid that is required to comply with the Corporations Act or under a merger by way of scheme of arrangement under Part 5.1 of the Australia Corporations Act.

**Exception 5** An issue made under a dividend or distribution plan that is in operation at the time the notice is received.

**Exception 6** An agreement to issue equity securities that is conditional on holders of ordinary securities approving the issue before the issue is made. If an entity relies on this exception it must not issue the equity securities without approval.

- (e) cause the offeree company or any subsidiary or associated company to buy back, purchase or redeem any shares in the offeree company or provide financial assistance for any such buy-back, purchase or redemption.

Where the offeree company is under a prior contractual obligation to take any such action, or where there are other special circumstances, the Executive must be consulted at the earliest opportunity. In appropriate circumstances the Executive may grant a waiver from the general requirement to obtain shareholders' approval.

*Notes to Rule 4:*

1. *Consent by the offeror*

*The requirement of a shareholders' meeting may be waived by the Executive if the offeror (or, in the case of more than one offeror, all offerors) agrees.*

2. *Service contracts – The Executive will regard amending or entering into a service contract with, or creating or varying the terms of employment of, a director as entering into a contract “otherwise than in the ordinary course of business” for the purpose of this Rule 4 if the new or amended contract or terms constitute an abnormal increase in his emoluments or a significant improvement in his terms of service. This will not prevent any such increase or improvement which results from a genuine promotion or new appointment but the Executive must be consulted in advance in such cases.*

3. *Votes of controlling shareholders and directors – The Executive should be consulted on whether shareholdings of controlling shareholders, directors and their respective associates should be voted at the shareholders' meeting, where an actual or potential conflict of interest exists.*

4. *Executive waiver – The Executive, when deciding whether to grant a waiver of the requirement to obtain shareholders’ approval, will take particular account of what details, if any, the offeree company’s board of directors has disclosed to its shareholders of any contractual obligation, duty or right, the fulfilment or enforcement of which may result in the offer being frustrated or the shareholders of the offeree company being denied the opportunity to decide on the merits of the offer.*
5. *Notice of general meeting – The notice convening a meeting of shareholders pursuant to this Rule 4 must include information about the offer or possible offer.*
6. *“Material amount” – For the purpose of determining whether a disposal or acquisition is of a “material amount” the Executive will, in general, apply the same tests as those set out in the Listing Rules to determine whether a transaction is a “disclosable transaction”. If several transactions relevant to this Rule 4, but not individually material, occur or are intended, the Executive will aggregate such transactions to determine whether the requirements of this Rule 4 are applicable to any of them. The Executive should be consulted in advance where there may be any doubt as to the application of the above.*
7. *When there is no need to proceed with an offer – The Executive may allow an offeror not to proceed with its offer if, prior to the posting of the offer document, the offeree company: – (a) passes a resolution in general meeting as envisaged by this Rule 4; or (b) announces a transaction which would require such a resolution but for the fact that it is pursuant to a contract entered into earlier or that the Executive has ruled that an obligation or other special circumstance exists.*

## **Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>**

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8. *Established share option schemes – Where the offeree company proposes to grant options over shares, the timing and level of which are in accordance with its normal practice under an established share option scheme, the Executive will normally give its consent.*
9. *Interim dividends – The declaration and payment of an interim dividend by the offeree company, outside the normal course, during an offer period may be contrary to General Principle 9 and this Rule 4 in that it could effectively frustrate an offer. The offeree companies and its advisers must, therefore, consult the Executive in advance.*

### **HK LR 7.19(6)**

If the proposed rights issue would increase either the number of issued shares or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other rights issues or open offers announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed rights issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):

- (a) the rights issue must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders;

## **ASX Listing Rules and Australian laws<sup>2</sup>**

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### **ASX LR 7.11.3 – Rules that apply to all pro rata issues**

The ratio of securities offered must not be greater than one security for each security held. This rule does not apply to a bonus issue. This rule also does not apply if the following conditions are met.

The offer is renounceable.

The issue price is not more than the volume weighted average market price for securities in that class, calculated over the last 5 days on which sales in the securities were recorded before the day on which the issue was announced.

- (b) the issuer shall set out in the circular to shareholders the purpose of the proposed rights issue, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed rights issue, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount; and
- (c) the Exchange reserves the right to require the rights issue to be fully underwritten.

**HK LR 7.19(7)**

Subject to rule 10.08, in the period of 12 months from the date on which dealings in the securities of a new applicant commence on the Exchange, the issuer shall not effect any rights issue, unless it is made conditional on the approval of shareholders in general meeting by a resolution on which any controlling shareholder and its associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.17 in the circular to shareholders.

**HK LR 7.19(8)**

Where shareholders' approval is required under rules 7.19(6) or 7.19(7), the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

- (a) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board and their associates; or

## **Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>**

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- (b) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the rights issue was made or approved by the board, and their respective associates.

***No comparable rule in Hong Kong.***

***No comparable rule in Hong Kong.***

## **ASX Listing Rules and Australian laws<sup>2</sup>**

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### **ASX LR 7.4 – Subsequent approval of an issue of securities**

An issue of securities made without approval under ASX LR 7.1 is treated as having been made with approval for the purpose of ASX LR 7.1 if each of the following apply.

7.4.1 The issue did not breach ASX LR 7.1.

7.4.2 Holders of ordinary securities subsequently approve it.

### **ASX LR 7.6 – No issue without approval before a meeting to appoint directors**

An entity must not issue or agree to issue any equity securities without the approval of the holders of its ordinary securities to the issue or the agreement to issue if the holder or beneficial owner of more than 50% of the ordinary securities tells the entity in writing that the person intends to call a general meeting to appoint or remove directors. An agreement to issue equity securities that is conditional on holders of ordinary securities approving the issue before the issue is made is not treated as an agreement but the entity must not issue the equity securities without approval.

7.6.1 The restriction applies for 2 months after the date of the advice, but does not prevent an issue under a written contract entered into before the entity received the advice.

7.6.2 If the person giving the advice is not a member, the advice must be accompanied by a statutory declaration verifying the person's beneficial ownership.

## **Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>**

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### **HK LR 10.06 – Restrictions and Notification Requirements on Issuers Purchasing their own Shares on a Stock Exchange**

#### HK LR 10.06(1)(a)

An issuer whose primary listing is on the Exchange may only purchase shares on the Exchange, either directly or indirectly, if:–

- (a) the shares proposed to be purchased by the issuer are fully-paid up;
- (b) the issuer has previously sent to its shareholders an Explanatory Statement complying with the provisions of rule 10.06(1)(b); and
- (c) its shareholders have given a specific approval or a general mandate to its directors to make the purchase(s), by way of an ordinary resolution which complies with rule 10.06(1)(c) and which has been passed at a General Meeting of the issuer duly convened and held;

#### HK LR 10.06(2)

- (a) An issuer shall not purchase its shares on the Exchange if the purchase price is higher by 5% or more than the average closing market price for the 5 preceding trading days on which its shares were traded on the Exchange;
- (b) an issuer shall not purchase its shares on the Exchange for a consideration other than cash or for settlement otherwise than in accordance with the trading rules of the Exchange from time to time;
- (c) an issuer shall not knowingly purchase its shares from a core connected person and a core connected person shall not knowingly sell shares to the issuer, on the Exchange;
- (d) an issuer shall procure that any broker appointed by the issuer to effect the purchase of its shares shall disclose to the Exchange such information with respect to purchases made on behalf of the issuer as the Exchange may request;

## **ASX Listing Rules and Australian laws<sup>2</sup>**

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### **ASX LR 7.29 – pre-condition for an on-market buy-back**

A company may only buy shares under an on-market buy-back if transactions in the company's shares were recorded on ASX on at least 5 days in the 3 months before it buys back the shares.

### **ASX LR 7.33 – Purchase price under on-market buy-back**

A company may only buy back shares at a price which is not more than 5% above the volume weighted average market price for securities in that class, calculated over the last 5 days on which sales in the shares were recorded before the day on which the purchase under the buy-back was made.

- (e) an issuer shall not purchase its shares on the Exchange at any time after inside information has come to its knowledge until the information is made publicly available. In particular, during the period of one month immediately preceding the earlier of:
- (i) the date of the board meeting (as such date is first notified to the Exchange in accordance with the Listing Rules) for the approval of the issuer's results for any year, half-year, quarterly or any other interim period (whether or not required under the Listing Rules); and
  - (ii) the deadline for the issuer to announce its results for any year or half year under the Listing Rules, or quarterly or any other interim period (whether or not required under the Listing Rules),
- and ending on the date of the results announcement, the issuer may not purchase its shares on the Exchange, unless the circumstances are exceptional;
- (f) an issuer whose primary listing is on the Exchange may not purchase its shares on the Exchange if that purchase would result in the number of listed securities which are in the hands of the public falling below the relevant prescribed minimum percentage for that issuer (as determined by the Exchange at the time of listing under rule 8.08); and
- (g) the Exchange may waive all or part of the above restrictions if, in the opinion of the Exchange, there are exceptional circumstances (such as, but without limitation, political or economic events having a material adverse effect on the price of shares of the issuer or issuers listed on the Exchange generally) justifying the waiver of such restrictions. A waiver may be granted either with respect to a fixed amount of securities of an issuer or generally or on such conditions as the Exchange shall specify and may be expressed to continue for a stated period of time or until further notice.



## Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>

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## ASX Listing Rules and Australian laws<sup>2</sup>

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### HK LR 10.06(3) – Subsequent Issues

An issuer whose primary listing is on the Exchange may not make a new issue of shares or announce a proposed new issue of shares for a period of 30 days after any purchase by it of shares, whether on the Exchange or otherwise (other than an issue of securities pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities, which were outstanding prior to that purchase of its own securities), without the prior approval of the Exchange.

### HK LR 13.66 – Closure of books and record date

#### HK LR 13.66(1)

- (a) An issuer must announce any closure of its transfer books or register of members in respect of securities listed in Hong Kong at least six business days before the closure for a rights issue, or 10 business days before the closure in other cases. In cases where there is an alteration of book closing dates, the issuer must, at least five business days before the announced closure or the new closure, whichever is earlier, notify the Exchange in writing and make a further announcement. If, however, there are exceptional circumstances (e.g. a typhoon) that render the giving of the notification to the Exchange and publication of the announcement impossible, the issuer must comply with the requirements as soon as practicable. Where the issuer decides on a record date without book closure, these requirements apply to the record date.

### ASX LR 7.40 – Compliance with timetables

An entity must comply with ASX LR Appendix 7A.

**ADDITIONAL INFORMATION:** *Appendix 7A of the ASX LR contains timetables that must be followed for the conduct of share issuances on the ASX. For example, Appendix 7A contains rules around the timing for record dates and for applying for quotation of new shares.*

*Once listed on the Exchange, Yancoal will not be able to conduct an “accelerated” entitlement offer, as permitted by Appendix 7A because the book closure requirements under Rule 13.66 of the Hong Kong Listing Rules must be complied with and no exception for “accelerated” offer to institutional investors exists under the Hong Kong Listing Rules.*

- (b) An issuer must ensure that the last day for trading in the securities with entitlements falls at least one business day after the general meeting, if the entitlements require the approval of shareholders in the general meeting or are contingent on a transaction that is subject to the approval of shareholders in the general meeting. This rule shall not apply where the issuer announces the timetable of an entitlement on or before 19 June 2011.

*Notes:*

- (a) See Practice Note 8 for emergency share registration arrangements during a typhoon and/or a black rainstorm warning.
- (b) In addition, for a rights issue, the issuer must provide at least two trading days for trading in the securities with entitlements (i.e. before the ex-date) after publication of the book closure. If trading on the Exchange is interrupted due to a typhoon and/or a black rainstorm warning, the book-close date will be automatically postponed, where necessary, to provide at least two trading days (during neither of which trading is interrupted) for trading of the securities with entitlements during the notice period. In these circumstances the issuer must publish an announcement on the revised timetable.
- (c) For the purposes of rule 13.66(2),
- the record date (when there is no book closure) or the last registration date (when there is a book closure) must be at least three business days after the general meeting; and
  - if the issuer fails to publish the result of the poll conducted in the general meeting in the manner prescribed under rule 13.39(5), it must ensure there is at least one trading day for trading in the securities with entitlements after publication of the results of the poll. The issuer must publish an announcement on any revised timetable.

*Transactions with persons of influence*

**HK LR 14A.32 – Requirements for connected transactions**

14A.33 Exemptions or waivers from all or some of the requirements are available for specified categories of connected transactions. See rules 14A.73 to 14A.105 (below).

14A.34 – Written agreement – The listed issuer's group must enter into a written agreement for a connected transaction.

14A.35 – Announcement – The listed issuer must announce the connected transaction as soon as practicable after its terms have been agreed. See rule 14A.68 for the content requirements.

*Note:* If the connected transaction is subsequently terminated or there is any material variation of its terms or material delay in the completion, the listed issuer must announce this fact as soon as practicable. The listed issuer must also comply with all other applicable provisions under the Rules.

14A.36 – Shareholders' approval – The connected transaction must be conditional on shareholders' approval at a general meeting held by the listed issuer. Any shareholder who has a material interest in the transaction must abstain from voting on the resolution.

14A.37 The Exchange may waive the general meeting requirement and accept a written shareholders' approval, subject to the conditions that: (1) no shareholder of the listed issuer is required to abstain from voting if a general meeting is held to approve the transaction; and (2) the approval is given by a shareholder or a closely allied group of shareholders who (together) hold more than 50% of the voting rights in the general meeting.

14A.38 If the listed issuer discloses inside information to any shareholder in confidence to solicit the written approval, it must ensure that the shareholder is aware that he must not deal in the securities before the information has been made available to the public.

**ASX LR 10.1 – Approval required for certain acquisitions or disposals**

An entity (in the case of a trust, the responsible entity) must ensure that neither it, nor any of its child entities, acquires a substantial asset from, or disposes of a substantial asset to, any of the following persons without the approval of holders of the entity's ordinary securities.

10.1.1 A related party of the entity.

10.1.2 A child entity of the entity.

10.1.3 A substantial holder in the entity, if the person and the person's associates have a relevant interest, or had a relevant interest at any time in the 6 months before the transaction, in at least 10% of the total votes attached to the voting securities in the entity.

10.1.4 An associate of a person referred to in ASX LR 10.1.1 to ASX LR 10.1.3.

10.1.5 A person whose relationship to the entity or a person referred to in ASX LR 10.1.1 to ASX LR 10.1.4 is such that, in ASX's opinion, the transaction should be approved by security holders. If an entity breaks this rule, ASX may require it to take the corrective action set out in ASX LR 10.9.

**ADDITIONAL INFORMATION:**

A '**related party**' means:

- (a) *in relation to a body corporate, the meaning in section 228 of the Australia Corporations Act.*
- (b) *in relation to a person: his or her spouse, de facto spouse, parent, child, or a spouse or de facto spouse of that person; an entity controlled by one or more of those persons; an entity that he or she controls; a person who acts in concert with anyone referred to above; a person who was a related party in the previous 6 months, or would be a related party in the future.*

## Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>

14A.39 If the connected transaction requires shareholders' approval, the listed issuer must (1) set up an independent board committee; and (2) appoint an independent financial adviser.

14A.40 – Independent board committee – The independent board committee must, taking into account the recommendation of an independent financial adviser, advise the listed issuer's shareholders: (1) whether the terms of the connected transaction are fair and reasonable; (2) whether the connected transaction is on normal commercial terms or better and in the ordinary and usual course of business of the listed issuer's group; (3) whether the connected transaction is in the interests of the listed issuer and its shareholders as a whole; and (4) how to vote on the connected transaction.

14A.41 The independent board committee must consist only of independent non-executive directors who do not have a material interest in the transaction.

14A.42 If all the independent non-executive directors have a material interest in the transaction, an independent board committee will not be formed.

14A.43 If an independent board committee is formed, the circular must include a letter from the independent board committee containing its opinion on the matters in rule 14A.40 and its recommendation.

### HK LR 14A.07 – Definition of a connected person

A 'connected person' is:

a director, chief executive or substantial shareholder of the listed issuer or any of its subsidiaries;

a person who was a director of the listed issuer or any of its subsidiaries in the last 12 months;

a supervisor of a PRC issuer or any of its subsidiaries;

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### Section 228 Australia Corporations Act

#### "Controlling entities"

(1) *An entity that controls a public company is a related party of the public company.*

#### Directors and their spouses

(2) *The following persons are related parties of a public company:*

(a) *directors of the public company;*

(b) *directors (if any) of an entity that controls the public company;*

(c) *if the public company is controlled by an entity that is not a body corporate – each of the persons making up the controlling entity;*

(d) *spouses of the persons referred to in paragraphs (a), (b) and (c).*

#### Relatives of directors and spouses

(3) *The following relatives of persons referred to in subsection (2) are related parties of the public company:*

(a) *parents;*

(b) *children.*

#### Entities controlled by other related parties

(4) *An entity controlled by a related party referred to in subsection (1), (2) or (3) is a related party of the public company unless the entity is also controlled by the public company.*

#### Related party in previous 6 months

(5) *An entity is a related party of a public company at a particular time if the entity was a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time within the previous 6 months.*

## Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>

an associate of any of the above persons;

a connected subsidiary;

or a person deemed to be connected by the Exchange.

### **ADDITIONAL INFORMATION:**

A '**substantial shareholder**' is a person who is entitled to exercise, or control the exercise of, 10% or more of the voting power at any general meeting.

A '**connected subsidiary**' is:

- (a) a non-wholly-owned subsidiary of the listed issuer where any connected person(s) at the issuer level, individually or together, can exercise or control the exercise of 10% or more of the voting power at the subsidiary's general meeting. This 10% excludes any indirect interest in the subsidiary which is held by the connected person(s) through the listed issuer; or
- (b) any subsidiary of a non-wholly-owned subsidiary referred to in (a) above

An '**associate**' of a connected person described in rule 14A.07(1), (2) or (3) who is an individual includes:

- (1) (a) his spouse; his (or his spouse's) child or step-child, natural or adopted, under the age of 18 years (each an "immediate family member");
- (b) the trustees, acting in their capacity as trustees of any trust of which the individual or his immediate family member is a beneficiary or, in the case of a discretionary trust, is (to his knowledge) a discretionary object (other than a trust which is an employees' share scheme or occupational pension scheme established for a wide scope of participants and the connected persons' aggregate interests in the scheme are less than 30%) (the "trustees"); or

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Entity has reasonable grounds to believe it will become related party in future

- (6) An entity is a related party of a public company at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time in the future.

Acting in concert with related party

- (7) An entity is a related party of a public company if the entity acts in concert with a related party of the public company on the understanding that the related party will receive a financial benefit if the public company gives the entity a financial benefit."

A '**child entity**' means in relation to a body corporate, each of the following:

- (a) an entity which is controlled by the body corporate within the meaning of section 50AA of the Australia Corporations Act; or
- (b) an entity which is a subsidiary of the body corporate.

### **Section 50AA Australia Corporations Act**

"(1) For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

(2) In determining whether the first entity has this capacity:

- (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and
- (b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

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- (c) a 30%-controlled company held, directly or indirectly, by the individual, his immediate family members and/or the trustees (individually or together), or any of its subsidiaries; or
- (2) (a) a person cohabiting with him as a spouse, or his child, step-child, parent, stepparent, brother, step-brother, sister or step-sister (each a “family member”); or
- (b) a majority-controlled company held, directly or indirectly, by the family members (individually or together), or held by the family members together with the individual, his immediate family members and/or the trustees, or any of its subsidiaries.

14A.13 An “**associate**” of a connected person described in rule 14A.07(1), (2) or (3) which is a company includes:

- (1) its subsidiary or holding company, or a fellow subsidiary of the holding company;
- (2) the trustees, acting in their capacity as trustees of any trust of which the company is a beneficiary or, in the case of a discretionary trust, is (to its knowledge) a discretionary object (the “trustees”); or
- (3) a 30%-controlled company held, directly or indirectly, by the company, the companies referred to in (1) above, and/or the trustees (individually or together), or any of its subsidiaries

14A.08 Where a listed issuer is an investment company listed under Chapter 21, its connected persons also include an investment manager, investment adviser or custodian (or any connected person of any of them).

[Note: Other important definition include “Deemed connected person” (HKEX 14A.19-19-22)]

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- (3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity’s financial and operating policies.
- (4) If the first entity:
  - (a) has the capacity to influence decisions about the second entity’s financial and operating policies; and
  - (b) is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity’s members;

the first entity is taken not to control the second entity.”

## **Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>**

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### **HK LR Chapter 14 and Chapter 14A**

The Exchange looks at various thresholds to determine when a transaction is required to be announced and is subject to shareholders' approval. For transactions which are not with a connected person, the Exchange looks at the size of the assets, revenue, profits and consideration of the subject asset relative to the assets, revenue, profits and market capitalisation of the listed company. Equity capital ratio will also be applicable if an acquisition of assets is to be conducted by the listed issuer and the consideration to be paid by the listed issuer includes securities for which listing will be sought. If any of the applicable ratios are 5% or more and less than 25%, only an announcement is required and if any of the applicable ratios are 25% or more, shareholders' approval will also be required. For transactions with connected persons, the Exchange looks at the size of the assets, revenue and consideration of the subject asset relative to the assets, revenue and market capitalisation of the listed company (note that the profits is not relevant for this analysis). Subject to an exemption rule that may apply, if any of the ratios exceed 0.1% and are less than 5%, only an announcement is required and if any of the ratios are 5% or more, independent shareholders' approval will also be required. However, if the connected transaction only involves connected person(s) at the subsidiary level, no announcement is required to be made if any of the ratios is less than 1% and only an announcement is required if any of the ratios exceeds 1%.

## **ASX Listing Rules and Australian laws<sup>2</sup>**

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### **ASX LR 10.2 – What is a substantial asset?**

An asset is substantial if its value, or the value of the consideration for it is, or in ASX's opinion is, 5% or more of the equity interests of the entity as set out in the latest accounts given to ASX under the ASX LR.

10.2.1 In calculating the value, each of the following rules applies.

Intangibles will be included.

Provisions for depreciation and amortisation will be deducted.

Liabilities acquired as part of an acquisition will not be deducted. Separate transactions will be aggregated if, in ASX's opinion, they form part of the same commercial transaction.

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### HK LR 14A.73 – Exemptions

Exemptions from the connected transaction requirements are available for the following types of transactions:

- *de minimis* transactions (rule 14A.76);
- financial assistance (rules 14A.87 to 14A.91);
- issues of new securities by the listed issuer or its subsidiary (rule 14A.92);
- dealings in securities on stock exchanges (rule 14A.93);
- repurchases of securities by the listed issuer or its subsidiary (rule 14A.94);
- directors' service contracts and insurance (rules 14A.95 and 14A.96);
- buying or selling of consumer goods or services (rule 14A.97);
- sharing of administrative services (rule 14A.98);
- transactions with associates of passive investors (rules 14A.99 and 14A.100); and
- transactions with connected persons at the subsidiary level (rule 14A.101).

### HK LR 14A.17

If a listed issuer's subsidiaries are connected persons only because they are the subsidiaries of a connected subsidiary, transactions between these subsidiaries will not be treated as connected transactions.

### HK LR 14A.18

A subsidiary of the listed issuer is not a connected person if:

it is directly or indirectly wholly-owned by the listed issuer; or

it falls under the definition of a connected person because it is:

- a substantial shareholder of another subsidiary of the listed issuer; or
- an associate of a director (or a person who was in the past 12 months a director), a chief executive, a substantial shareholder or a supervisor of any subsidiary of the listed issuer.

## ASX Listing Rules and Australian laws<sup>2</sup>

### ASX LR 10.3 – Exceptions to ASX LR 10.1

ASX LR 10.1 does not apply to any of the following:

A transaction between the entity and a wholly owned subsidiary.

A transaction between wholly owned subsidiaries of the entity.

An issue of securities by the entity for cash.

In the case of a trust, a transaction involving a substantial asset that was not beneficially held for the trust before the transaction and is not beneficially held for the trust after the transaction.

A transaction between the entity and a person who is a related party by reason only of the transaction and the application to it of section 228(6) of the Australia Corporations Act.

#### **ADDITIONAL INFORMATION:**

*Section 228(6) of the Australia Corporations Act:*

*“An entity is a related party of a public company at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time in the future.”*

*Section 208 of the Australia Corporations Act:*

*“(1) For a public company, or an entity that the public company controls, to give a financial benefit to a related party of the public company:*

*(a) the public company or entity must:*

*(i) obtain the approval of the public company's members in the way set out in sections 217 to 227; and*

*(ii) give the benefit within 15 months after the approval; or*

*(b) the giving of the benefit must fall within an exception set out in sections 210 to 216.”*



## **Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>**

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### **HK LR 14A.74**

The exemptions are broadly divided into two categories:

- (1) fully exempt from shareholders' approval, annual review and all disclosure requirements; and
- (2) exempt from shareholders' approval requirement.

### **HK LR 14A.75**

The Exchange has the power to specify that an exemption will not apply to a particular transaction.

### **HK LR 14A.102 – Waivers**

The Exchange may waive any requirements under this Chapter in individual cases, subject to any conditions that it may impose.

### **HK LR 14A.36 – Shareholder approval**

The connected transaction must be conditional on shareholders' approval at a general meeting held by the listed issuer. Any shareholder who has a material interest in the transaction must abstain from voting on the resolution.

## **ASX Listing Rules and Australian laws<sup>2</sup>**

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*Section 210 of the Australia Corporations Act:*

*“Member approval is not needed to give a financial benefit on terms that:*

- (a) would be reasonable in the circumstances if the public company or entity and the related party were dealing at arm's length; or*
- (b) are less favourable to the related party than the terms referred to in paragraph (a).”*

*Other exemptions are potentially applicable.*

### **ASX LR 10.11 – Approval required for an issue of securities**

Unless one of the exceptions in ASX LR 10.12 applies, an entity must not issue or agree to issue equity securities to any of the following persons without the approval of holders of ordinary securities.

10.11.1 A related party.

10.11.2 A person whose relationship with the entity or a related party is, in ASX's opinion, such that approval should be obtained.

## Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>

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### HK LR 14A.92 – Issue of new securities by the listed issuer or its subsidiary

An issue of new securities by a listed issuer or its subsidiary to a connected person is fully exempt if:

1. the connected person receives a pro rata entitlement to the issue as a shareholder;
2. the connected person subscribes for the securities in a rights issue or open offer through excess application or in his or its capacity as an underwriter or sub-underwriter of the rights issue or open offer;
3. the securities are issued to the connected person under a share option scheme that complies with Chapter 17 or a share option scheme adopted by the listed issuer before its securities first start dealing on the Exchange, and where the Exchange has approved the listing of the securities to be issued under the scheme;
4. the securities are issued to the connected person under a “top up placing and subscription” that meets the following conditions:
  - (a) the new securities are issued to the connected person:
    - (i) after it has reduced its holding in the same class of securities by placing them to third parties who are not its associates under a placing agreement; and
    - (ii) within 14 days from the date of the placing agreement;
  - (b) the number of new securities issued to the connected person does not exceed the number of securities placed by it; and
  - (c) the new securities are issued at a price not less than the placing price. The placing price may be adjusted for the expenses of the placing.

*Note:* an issue of new securities by a subsidiary of the listed issuer may be exempt as a de minimis transaction.

## ASX Listing Rules and Australian laws<sup>2</sup>

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### ASX LR 10.12 – Exceptions to ASX LR 10.11

**Exception 1** the person receives the securities under a pro rata issue.

**Exception 2** the person receives the securities under an underwriting agreement in relation to a pro rata issue, provided the person receives the securities not later than 15 business days after close of the offer and the terms of the underwriting were included in offer documents sent to holders of ordinary securities.

**Exception 3** the person receives the securities under a dividend or distribution plan (only where the plan does not impose a limit on participation).

**Exception 4** an issue of securities under the employee incentive scheme made with the approval of holders of ordinary securities under ASX LR 10.14.

**Exception 4A** a grant of options or other rights to acquire securities under an employee incentive scheme, where the securities to be acquired on the exercise of the options or in satisfaction of the rights are required by the terms of the scheme to be purchased on-market.

**Exception 5** the person receives the securities under an off-market bid that was required to comply with the Australia Corporations Act, or as part of a merger by way of scheme of arrangement under Part 5.1 of the Australia Corporations Act.

**Exception 6** the person is a related party by reason only of the transaction which is the reason for the issue of the securities and the application to it of section 228(6) of the Australia Corporations Act.

**Exception 7** the person receives the securities on the conversion of convertible securities. The entity must have issued the convertible securities before it was listed or complied with the ASX LR when it issued the convertible securities.

**Exception 8** an issue of securities under a share purchase plan, excluding an issue the plan's underwriters. Exception (8) is only available once in any 12 month period and both of the following must apply:

## Hong Kong Listing Rules and Hong Kong laws<sup>1</sup>

## ASX Listing Rules and Australian laws<sup>2</sup>

the number of securities to be issued is not greater than 30% of the number of fully paid ordinary securities already on issue; and

the issue price of the securities is at least 80% of the 5 day volume weighted average price for securities in that class.

**Exception 9** an issue under an agreement to issue securities. The entity must have complied with the ASX LR when it entered into the agreement to issue the securities.

**Exception 10** an agreement to issue equity securities that is conditional on holders of ordinary securities approving the issue before the issue is made. If an entity relies on this exception it must not issue the equity securities without approval.

### Significant transactions

#### HK LR 14.08 – Classification and explanation of terms

The table below summarises the classification and percentage ratios resulting from the calculations set out in rule 14.07. However, listed issuers should refer to the relevant rules or the specific requirements.

Type	Assets ratio	Consideration ratio	Profits ratio	Revenue ratio	Equity capital ratio
Share transaction	<5%	<5%	<5%	<5%	<5%
Disclosable transaction	≥5% but <25%	≥5% but <25%	≥5% but <25%	≥5% but <25%	≥5% but <25%
Major transaction – disposal	≥25% but <75%	≥25% but <75%	≥25% but <75%	≥25% but <75%	N/A
Major transaction-acquisition	≥25% but <100%	≥25% but <100%	≥25% but <100%	≥25% but <100%	≥25% but <100%
Very substantial disposal	≥75%	≥75%	≥75%	≥75%	≥75%
Very substantial acquisition	≥100%	≥100%	≥100%	≥100%	≥100%

#### HK LR 14.33 – Notification publication and shareholders’ approval requirements

The table below summarises the notification, publication and shareholders’ approval requirements which will generally apply to each category of notifiable transaction. However, listed issuers should refer to the relevant rules for the specific requirements.

#### ASX LR 11.1 – Proposed change to nature or scale of activities

If an entity proposes to make a significant change, either directly or indirectly, to the nature or scale of its activities, it must provide full details to ASX as soon as practicable. It must do so in any event before making the change. The following rules apply in relation to the proposed change.

11.1.1 The entity must give ASX information regarding the change and its effect on future potential earnings, and any information that ASX asks for.

11.1.2 If ASX requires, the entity must get the approval of holders of its ordinary securities and must comply with any requirements of ASX in relation to the notice of meeting. The notice of meeting must include a voting exclusion statement.

11.1.3 If ASX requires, the entity must meet the requirements in chapters 1 and 2 of the ASX LR as if the entity were applying for admission to the ASX official list.

	Notification to Exchange	Publicly announce	Circular	Shareholder approval	Accountant Report
Share transaction	Yes	Yes	No	No <sup>3</sup>	No
Disclosable transaction	Yes	Yes	No	No	No
Major transaction	Yes	Yes	Yes	Yes	Yes
Very substantial disposal	Yes	Yes	Yes	Yes	No
Very substantial acquisition	Yes	Yes	Yes	Yes	Yes
Reverse takeover	Yes	Yes	Yes	Yes	Yes

For explanations of the different types of transactions and ratios, see 14.06 and 14.07.

**ADDITIONAL INFORMATION:** The ASX has provided guidance on ASX LR 11 in Guidance Note 12 “Significant Changes to Activities”. For clarity and ease of application, ASX has adopted 25% as an appropriate benchmark for determining whether or not a transaction involves a significant change to the scale of an entity’s activities that requires notification to ASX under LR 11.1. ASX considers that the following transactions involve a significant change to the nature or scale of an entity’s activities and therefore ought to be notified to ASX under LR 11.1:

*an entity is proposing to embark on a transaction or a series of transactions, that will result in a change to the nature of its main undertaking;*

*an entity is proposing to dispose of, or to embark on a series of disposals that together will result in a disposal of, its main undertaking;*

*an entity is proposing:*

*to acquire a business and the acquisition is likely to result in an increase of 25% or more in; or*

*to dispose of or abandon an existing business, if the business in question accounts for 25% or more of,*

*any of the following measures:*

*consolidated total assets;*

*consolidated total equity interests;*

*consolidated annual revenue, or in the case of a mining exploration entity, oil and gas exploration entity or other entity that is not earning – material revenue from operations, consolidated annual expenditure;*

*consolidated EBITDA; or*

*consolidated annual profits before tax.*

<sup>3</sup> No shareholder approval is necessary if the consideration shares are issued under a general mandate. However, if the shares are not issued under a general mandate, the listed issuer is required, pursuant to Rule 13.36(2) or Rule 19A.38, to obtain shareholders’ approval in general meeting prior to the issue of the consideration shares.

## Hong Kong Listing Rules and Hong Kong laws

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### HK LR 14.08

Major acquisitions or disposals (relating to 25% or more but less than 75% of an entity's assets) require shareholder approval.

### HK LR 14.89

Material changes With the exception of a listed issuer that has successfully transferred its listing from GEM to the Main Board pursuant to Chapter 9A, in the period of 12 months from the date on which dealings in the securities of a listed issuer commence on the Exchange, the listed issuer shall not effect any acquisition, disposal or other transaction or arrangement, or a series of acquisitions, disposals or other transactions or arrangements, which would result in a fundamental change in the principal business activities of the listed issuer as described in the listing document issued at the time of its application for listing.

### HK LR 14.90

The Exchange may grant a listed issuer a waiver of the requirements of rule 14.89:

- (1) if it is satisfied that the circumstances surrounding the proposed fundamental change are exceptional; and
- (2) subject to the acquisition, disposal or other transaction or arrangement, or series of acquisitions, disposals or other transactions or arrangements, being approved by shareholders in general meeting by a resolution on which any controlling shareholder (or, where there are no controlling shareholders, any chief executive or directors (excluding independent non-executive directors) of the listed issuer) and their respective associates shall abstain from voting in favour. Any shareholders with a material interest in the transaction and their associates shall abstain from voting on resolution(s) approving such transaction at a general meeting called for the purpose of this rule.

## ASX Listing Rules and Australian laws<sup>1</sup>

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### ASX LR 11.2 – Change involving main undertaking

If the significant change involves the entity disposing of its main undertaking, the entity must get the approval of holders of its ordinary securities and must comply with any requirements of ASX in relation to the notice of meeting. The notice of meeting must include a voting exclusion statement. The entity must not enter into an agreement to dispose of its main undertaking unless the agreement is conditional on the entity getting that approval. Rules 11.1.1 and 11.1.3 apply.

**ADDITIONAL INFORMATION:** *If an entity is proposing to dispose of all, or substantially all, of its assets and businesses, ASX will regard that as a disposal of its main undertaking, regardless of the make-up of those assets and businesses. If an entity is proposing to dispose of something less than all, or substantially all, of its assets and businesses, Listing Rule 11.2 will only apply if what is being disposed of constitutes its main undertaking. The term 'dispose' is defined expansively to include not only direct disposals but also indirect disposals through another person. It also captures disposals effected by any means, include granting or exercising an option, using an asset, decreasing an economic interests and disposing of part of an asset. It is not necessary to dispose of all of the assets used in its main undertaking for it to dispose of its main undertaking. If it disposes of the key assets needed to conduct its main undertaking and the commercial outcome is that it will no longer continue to conduct its main undertaking, ASX will regard that as a disposal of its main undertaking. For example, a mining exploration entity that disposes of all of its mining tenements will be regarded as having disposed of its main undertaking, even though it may retain some or all of its mining equipment (ASX Guidance Note 12).*

**HK LR 14.92 – Restriction on Disposal**

A listed issuer may not dispose of its existing business for a period of 24 months after a change in control (as defined in the Takeovers Code) unless the assets acquired from the person or group of persons gaining such control or his/their associates and any other assets acquired by the listed issuer after such change in control can meet the trading record requirement of HK LR 8.05.

**ADDITIONAL INFORMATION:** *LR 8.05 relates to the profit test or target capitalisation/revenue/cash flow test.*

**HK LR 14.93**

A disposal by a listed issuer which does not meet the requirement under rule 14.92 will result in the listed issuer being treated as a new listing applicant.

***No comparable rule in Hong Kong.***

**ASX LR 11.4 – No disposal of major asset without offer, or approval for no offer**

An entity must not dispose of a major asset if, at the time of the disposal, it is aware that the person acquiring the asset intends to issue or offer securities with a view to becoming listed. The entity must do each of the following if one of its child entities holds the major asset.

It must not sell securities in the child entity with a view to the child entity becoming listed.

It must make sure that the child entity does not issue securities with a view to becoming listed.

11.4.1 This rule does not apply in either of the following cases.

- (a) The securities, except those to be retained by the entity or child entity, are offered pro rata to holders of ordinary securities in the listed entity, or in another way that, in ASX's opinion, is fair in all the circumstances.
- (b) Holders of ordinary securities in the listed entity approve of the disposal without the offer referred to in ASX LR 11.4.1(a) being made. The notice of meeting must include a voting exclusion statement.

***Applying for quotation***

**HK LR 13.25A(1) – Changes in issued shares**

In addition and without prejudice to specific requirements contained elsewhere in the Exchange Listing Rules, an issuer must, whenever there is a change in its issued shares as a result of or in connection with any of the events referred to in rule 13.25A(2), submit through HKEx-EPS, or such other means as the Exchange may from time to time prescribe, for publication on the Exchange's website a return in such form and containing such information as the Exchange may from time to time prescribe by not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day next following the relevant event.

HK LR 13.25A(2) – The events referred to in rule 13.25A(1) are as follows:

- (a) any of the following: (i) placing; (ii) consideration issue; (iii) open offer; (iv) rights issue; (v) bonus issue; (vi) scrip dividend; (vii) repurchase of shares or other securities; (viii) exercise of an option under the issuer's share option scheme by any of its directors; (ix) exercise of an option other than under the issuer's share option scheme by any of its directors; (x) capital reorganisation; or (xi) change in issued shares not falling within any of the categories referred to in rule 13.25A(2)(a)(i) to (x) or rule 13.25A(2)(b); and
- (b) subject to rule 13.25A(3), any of the following: (i) exercise of an option under a share option scheme other than by a director of the issuer; (ii) exercise of an option other than under a share option scheme not by a director of the issuer; (iii) exercise of a warrant; (iv) conversion of convertible securities; or (v) redemption of shares or other securities.

**ASX LR 2.8 – Time limits for applying for quotation**

*An entity must apply for quotation of securities on the ASX as follows:*

*2.8.1. In accordance with Appendix 6A or Appendix 7A (see below).*

*2.8.2. If the securities are restricted securities – within 10 business days after the end of the escrow period.*

*2.8.2A. If unquoted partly paid securities become fully paid securities in the same class as quoted fully paid securities – within 10 business days after the date of final payment.*

*2.8.2B. If the securities are subject to restrictions on transfer under an employee incentive scheme – within 10 business days after the end of the restrictions.*

*2.8.3. In other cases – on or before the issue date.*

**ADDITIONAL INFORMATION:**

*Appendix 7A of the ASX LR contains timetables that must be followed for the conduct of share issuances on the ASX. Appendix 7A contains rules around the timing for applying for quotation of new shares.*

*Importantly, for entitlement offers conducted in Australia, an application for quotation of the shares to be issued is made to the ASX on the day the offer is announced.*

*Once an application for quotation is received from the ASX, the relevant shares can be quoted on the ASX the next day.*

## **Hong Kong Listing Rules and Hong Kong laws**

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## **ASX Listing Rules and Australian laws<sup>1</sup>**

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13.25A (3) – The disclosure obligation for an event in rule 13.25A(2)(b) only arises where:

- (a) the event, either individually or when aggregated with any other events described in that rule which have occurred since the listed issuer published its last monthly return under rule 13.25B or last return under this rule 13.25A (whichever is the later), results in a change of 5% or more of the listed issuer's issued shares; or
- (b) an event in rule 13.25A(2)(a) has occurred and the event in rule 13.25A(2)(b) has not yet been disclosed in either a monthly return published under rule 13.25B or a return published under this rule 13.25A.

Appendix 5, Form C1 – Must be lodged 4 clear Business Days before the issue date (or 10 Business Days before the issuer proposes to bulk print the listing document (if there is a listing document)).



**C. ARTICLES OF ASSOCIATION OF THE COMPANY**

**Constitution**

**Constitution for  
Yancoal Australia Limited**

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Approved on 26 September 2018<sup>1</sup>

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<sup>1</sup> Approved by the company's shareholders at the company's general meeting held on 26 September 2018 and will be effective from the date that fully paid ordinary shares in the capital of the company are listed on the Main Board of the Hong Kong Stock Exchange.

# Constitution

**Yancoal Australia Limited ABN 82 111 859 119**

**A public company limited by shares**

## **1 PRELIMINARY**

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### **1.1 DEFINITIONS AND INTERPRETATION**

(a) The meanings of the terms used in this constitution are set out below.

<b>Term</b>	<b>Meaning</b>
<b>Abnormal Item</b>	includes, but is not limited to, unrealised foreign exchange gains or losses on foreign currency denominated borrowings.
<b>Act</b>	<i>Corporations Act 2001</i> (Cth).
<b>AGM</b>	an annual general meeting of the company that the Act requires to be held.
<b>ASX Settlement Operating Rules</b>	the operating rules of ASX Settlement Pty Limited and, to the extent that they are applicable, the operating rules of the Exchange and the operating rules of ASX Clear Pty Limited.
<b>Board</b>	the board of directors of the company from time to time.
<b>Business Day</b>	has the meaning given to that term in the Listing Rules.
<b>CEC</b>	Chair of the Executive Committee of the company.
<b>CEO</b>	Chief Executive Officer of the company.
<b>CFO</b>	Chief Financial Officer of the company.
<b>Company Secretary</b>	company secretary of the company.

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<b>Term</b>	<b>Meaning</b>
<b>Exchange</b>	ASX Limited and such other body corporate that is declared by the directors to be the company's primary stock exchange for the purposes of this definition.
<b>Executive Committee</b>	the executive committee of the company established under rule 9.2.
<b>Listing Rules</b>	the listing rules of the Exchange as they apply to the company.
<b>Majority Shareholders</b>	a shareholder or shareholders holding a majority of the issued voting shares of Yancoal Australia Limited.
<b>Proper ASTC Transfer</b>	has the meaning given to that term in the <i>Corporations Regulations 2001</i> (Cth).
<b>Record Time</b>	<ol style="list-style-type: none"> <li>1 in the case of a meeting for which the caller of the meeting has decided, under the Act, that shares are to be taken to be held by the persons who held them at a specified time before the meeting, that time; and</li> <li>2 in any other case, the time of the relevant meeting.</li> </ol>
<b>Representative</b>	in relation to a member which is a body corporate and in relation to a meeting means a person authorised in accordance with the Act (or a corresponding previous law) by the body corporate to act as its representative at the meeting.
<b>Seal</b>	any common seal, duplicate seal or certificate seal of the company.
<b>Separation Agreement</b>	the Separation Agreement between the company and Yanzhou (as amended from time to time).
<b>Transmission Event</b>	<ol style="list-style-type: none"> <li>1 for a member who is an individual – the member's death, the member's bankruptcy, or a member becoming of unsound mind, or a person who, or whose estate, is liable to be dealt with in any way under the laws relating to mental health; and</li> <li>2 for a member who is a body corporate – the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member.</li> </ol>
<b>URL</b>	Uniform Resource Locator, the address that specifies the location of a file on the internet.
<b>Yanzhou</b>	Yanzhou Coal Mining Company Limited.

- (b) A reference in this constitution to a partly paid share is a reference to a share on which there is an amount unpaid.
- (c) A reference in this constitution to an amount unpaid on a share includes a reference to any amount of the issue price which is unpaid.
- (d) A reference in this constitution to a call or an amount called on a share includes a reference to a sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date.
- (e) A reference in this constitution to a member for the purposes of a meeting of members for which the caller of the meeting has determined a Record Time is a reference to a registered holder of shares as at the relevant Record Time.
- (f) A reference in this constitution to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or Representative.
- (g) A chairperson appointed under this constitution may be referred to as chairman or chairwoman, or as chair. A deputy chairperson appointed under this constitution may be referred to as deputy chairman, deputy chairwoman, deputy chair, vice chairman, vice chairwoman, or vice chair.
- (h) A reference in this constitution to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position.
- (i) Unless the contrary intention appears, in this constitution:
  - (1) the singular includes the plural and the plural includes the singular;
  - (2) words that refer to any gender include all genders;
  - (3) words used to refer to persons generally or to refer to a natural person include a body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  - (4) a reference to a person includes that person's successors and legal personal representatives;
  - (5) a reference to a statute or regulation, or a provision of any of them includes all statutes, regulations or provisions amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (6) a reference to the Listing Rules or the ASX Settlement Operating Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any applicable waiver or exemption; and
  - (7) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (j) Specifying anything in this constitution after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

- (k) In this constitution, headings and bold type are only for convenience and do not affect the meaning of this constitution.

## **1.2 APPLICATION OF THE ACT, LISTING RULES AND ASX SETTLEMENT OPERATING RULES**

- (a) The rules that apply as replaceable rules to companies under the Act do not apply to the company except so far as they are repeated in this constitution.
- (b) Unless the contrary intention appears:
- (1) an expression in a rule that deals with a matter dealt with by a provision of the Act, the Listing Rules or the ASX Settlement Operating Rules has the same meaning as in that provision; and
  - (2) subject to rule 1.2(b)(1), an expression in a rule that is used in the Act has the same meaning in this constitution as in the Act.

## **1.3 EXERCISING POWERS**

- (a) The company may, in any way the Act permits:
- (1) exercise any power;
  - (2) take any action; or
  - (3) engage in any conduct or procedure,
- which, under the Act a company limited by shares may exercise, take or engage in.
- (b) Where this constitution provides that a person 'may' do a particular act or thing, the act or thing may be done at the person's discretion.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the same way and subject to the same conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular act or thing, the power may be exercised from time to time and may be exercised subject to conditions.
- (e) Where this constitution confers a power to do a particular act or thing concerning particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing as to only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (f) Where this constitution confers a power to make appointments to an office or position (except the power to appoint a director under rule 8.1(b)), the power is, unless the contrary intention appears, to be taken to include a power:
- (1) to appoint a person to act in the office or position until a person is appointed to the office or position;
  - (2) to remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the company); and

- (3) to appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.
- (g) Where this constitution gives power to a person to delegate a function or power:
- (1) the delegation may be concurrent with, or (except in the case of a delegation by the directors) to the exclusion of, the performance or exercise of that function or power by the person;
  - (2) the delegation may be either general or limited in any way provided in the terms of delegation;
  - (3) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
  - (4) the delegation may include the power to delegate; and
  - (5) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.

#### **1.4 CURRENCY**

Any amount payable to the holder of a share, whether in relation to dividends, repayment of capital, participation in surplus property of the company or otherwise, may, with the agreement of the holder or under the terms of issue of the share, be paid in the currency of a country other than Australia. The directors may fix a time on or before the payment date as the time at which the applicable exchange rate will be determined for that purpose.

#### **1.5 TRANSITIONAL PROVISIONS**

This constitution must be interpreted in such a way that:

- (a) every director, CEO, managing director and secretary in office in that capacity immediately before this constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this constitution;
- (b) the directors are taken, immediately after this constitution is adopted, to have decided under rule 8.1(a) a number which is equal to the number of the persons in office as directors immediately after this constitution is adopted;
- (c) any register maintained by the company immediately before this constitution is adopted is taken to be a register maintained under this constitution;
- (d) any Seal adopted by the company as a Seal immediately before this constitution is adopted is taken to be a Seal which the company has under a relevant authority given by this constitution;
- (e) for the purposes of rule 4.1(o), a cheque issued under the predecessor of rule 4.1(j) is taken to have been issued under rule 4.1(j), any money held at the date of adoption of this constitution for a member under the predecessor of rule 4.1(l) is taken to have been held in an account under rule 4.1(l) and any money held at the date of adoption of this constitution for a member the company regards as uncontactable is taken to have been held in an account under rule 4.1(m); and

- (f) unless a contrary intention appears in this constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the company in force before this constitution is adopted continue to have the same status, operation and effect after this constitution is adopted.

## **2 SHARE CAPITAL**

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### **2.1 SHARES**

Subject to this constitution (including but not limited to rule 7.10), the directors may:

- (a) issue, allot or grant options for, or otherwise dispose of, shares in the company; and
- (b) decide:
  - (1) the persons to whom shares are issued or options are granted;
  - (2) the terms on which shares are issued or options are granted; and
  - (3) the rights and restrictions attached to those shares or options.

### **2.2 PREFERENCE SHARES**

- (a) Subject to rule 7.10, the company may issue preference shares including preference shares which are, or at the option of the company or holder are, liable to be redeemed or convertible into ordinary shares.
- (b) Each preference share confers on the holder a right to receive a preferential dividend, in priority to the payment of any dividend on the ordinary shares, at the rate and on the basis decided by the directors under the terms of issue.
- (c) In addition to the preferential dividend and rights on winding up, each preference share may participate with the ordinary shares in profits and assets of the company, including on a winding up, if and to the extent the directors decide under the terms of issue.
- (d) The preferential dividend may be cumulative only if and to the extent the directors decide under the terms of issue, and will otherwise be non-cumulative.
- (e) Each preference share confers on its holder the right in a winding up and on redemption to payment in priority to the ordinary shares of:
  - (1) the amount of any dividend accrued but unpaid on the share at the date of winding up or the date of redemption; and
  - (2) any additional amount specified in the terms of issue.
- (f) To the extent the directors may decide under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only.
- (g) A preference share does not confer on its holder any right to participate in the profits or assets of the company except as set out above.
- (h) A preference share does not entitle its holder to vote at any general meeting of the company except in the following circumstances:

- (1) on any of the proposals specified in rule 2.2(i);
  - (2) on a resolution to approve the terms of a buy back agreement;
  - (3) during a period in which a dividend or part of a dividend on the share is in arrears;
  - (4) during the winding up of the company; or
  - (5) in any other circumstances in which the Listing Rules require holders of preference shares to be entitled to vote.
- (i) The proposals referred to in rule 2.2(h) are proposals:
- (1) to reduce the share capital of the company;
  - (2) that affect rights attached to the share;
  - (3) to wind up the company; or
  - (4) for the disposal of the whole of the property, business and undertaking of the company.
- (j) The holder of a preference share who is entitled to vote in respect of that share under rule 2.2(h) is, on a poll, entitled to the greater of one vote per share or such other number of votes specified in, or determined in accordance with, the terms of issue for the share.
- (k) In the case of a redeemable preference share, the company must, at the time and place for redemption specified in, or determined in accordance with, the terms of issue for the share, redeem the share and, on receiving a redemption request under the terms of issue, pay to or at the direction of the holder the amount payable on redemption of the share.
- (l) A holder of a preference share must not transfer or purport to transfer, and the directors, to the extent permitted by the Listing Rules, must not register a transfer of, the share if the transfer would contravene any restrictions on the right to transfer the share set out in the terms of issue for the share.

### **2.3 ALTERATION OF SHARE CAPITAL**

Subject to the Act, the directors may do anything required to give effect to any resolution altering the company's share capital, including, where a member becomes entitled to a fraction of a share on a consolidation:

- (a) making cash payments;
- (b) determining that fractions may be disregarded to adjust the rights of all parties;
- (c) appointing a trustee to deal with any fractions on behalf of members; and
- (d) rounding up each fractional entitlement to the nearest whole share by capitalising any amount available for capitalisation under rule 4.2 even though only some of the members participate in the capitalisation.

### **2.4 CONVERSION OR RECLASSIFICATION OF SHARES**

Subject to rule 2.5, the company may by resolution convert or reclassify shares from one class to another.



## **2.5 VARIATION OF CLASS RIGHTS**

- (a) The rights attached to any class of shares may, unless their terms of issue state otherwise, be varied:
  - (1) with the written consent of the holders of 75% of the shares of the class; or
  - (2) by a special resolution passed at a separate meeting of the holders of shares of the class.
- (b) The provisions of this constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings.
- (c) The rights conferred on the holders of any class of shares are to be taken as not having been varied by the creation or issue of further shares ranking equally with them.

## **2.6 JOINT HOLDERS OF SHARES**

Where 2 or more persons are registered as the holders of a share, they hold it as joint tenants with rights of survivorship, on the following conditions:

- (a) they are liable individually as well as jointly for all payments, including calls, in respect of the share;
- (b) subject to rule 2.6(a), on the death of any one of them the survivor is the only person the company will recognise as having any title to the share;
- (c) any one of them may give effective receipts for any dividend, bonus, interest or other distribution or payment in respect of the share; and
- (d) except where persons are jointly entitled to a share because of a Transmission Event, or where required by the Listing Rules or the ASX Settlement Operating Rules, the company may, but is not required to, register more than 3 persons as joint holders of the share.

## **2.7 EQUITABLE AND OTHER CLAIMS**

The company may treat the registered holder of a share as the absolute owner of that share and need not:

- (a) recognise a person as holding a share on trust, even if the company has notice of a trust; or
- (b) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a share by any other person, except an absolute right of ownership in the registered holder, even if the company has notice of that claim or interest.

## **2.8 RESTRICTED SECURITIES**

If, at any time, any of the share capital of the company is classified by the Exchange as 'restricted securities', then despite any other provision of this constitution:

- (a) the restricted securities must not be disposed of during the escrow period except as permitted by the Listing Rules or the Exchange;

- (b) the company must refuse to acknowledge a disposal (including registering a transfer) of the restricted securities during the escrow period except as permitted by the Listing Rules or the Exchange; and
- (c) during a breach of the Listing Rules relating to restricted securities, or a breach of a restriction agreement, the holder of the restricted securities is not entitled to any dividend or distribution, or voting rights, in respect of the restricted securities.

### **3 CALLS, FORFEITURE, INDEMNITIES, LIEN AND SURRENDER**

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#### **3.1 CALLS**

- (a) Subject to the terms on which any shares are issued, the directors may:
  - (1) make calls on the members for any amount unpaid on their shares which is not by the terms of issue of those shares made payable at fixed times; and
  - (2) on the issue of shares, differentiate between members as to the amount of calls to be paid and the time for payment.
- (b) The directors may require a call to be paid by instalments.
- (c) The directors must send members notice of a call at least 14 days (or such longer period required by the Listing Rules) before the amount called is due, specifying the time and place of payment.
- (d) Each member must pay to the company by the time and at the place specified the amount called on the member's shares.
- (e) A call is taken to have been made when the resolution of the directors authorising the call is passed.
- (f) The directors may revoke a call or extend the time for payment.
- (g) A call is valid even if a member for any reason does not receive notice of the call.
- (h) If an amount called on a share is not paid in full by the time specified for payment, the person who owes the amount must pay:
  - (1) interest on the unpaid part of the amount from the date payment is due to the date payment is made, at a rate determined under rule 3.9; and
  - (2) if the share was issued after the date this constitution is adopted, any costs, expenses or damages the company incurs due to the failure to pay or late payment.
- (i) Any amount unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date:
  - (1) is treated for the purposes of this constitution as if that amount were payable under a call duly made and notified; and
  - (2) must be paid on the date on which it is payable under the terms of issue of the share.

- (j) The directors may, to the extent the law permits, waive or compromise all or part of any payment due to the company under the terms of issue of a share or under this rule 3.1.

### **3.2 PROCEEDINGS TO RECOVER CALLS**

- (a) In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, proof that:
  - (1) the name of the defendant is entered in the register as the holder or one of the holders of the share on which the call is claimed;
  - (2) the resolution making the call is recorded in the minute book; and
  - (3) notice of the call was given to the defendant complying with this constitution,

is conclusive evidence of the obligation to pay the call and it is not necessary to prove the appointment of the directors who made the call or any other matter.

- (b) In rule 3.2(a), defendant includes a person against whom the company alleges a set-off or counterclaim, and a proceeding to recover a call or an amount is to be interpreted accordingly.

### **3.3 PAYMENTS IN ADVANCE OF CALLS**

- (a) The directors may accept from a member the whole or a part of the amount unpaid on a share even though no part of that amount has been called.
- (b) The directors may authorise payment by the company of interest on an amount accepted under rule 3.3(a), until the amount becomes payable, at a rate agreed between the directors and the member paying the amount.
- (c) The directors may repay to a member any amount accepted under rule 3.3(a).

### **3.4 FORFEITING PARTLY PAID SHARES**

- (a) If a member fails to pay the whole of a call or an instalment of a call by the time specified for payment, the directors may serve a notice on that member:
  - (1) requiring payment of the unpaid part of the call or instalment, together with any interest that has accrued and all costs, expenses or damages that the company has incurred due to the failure to pay;
  - (2) naming a further time (at least 14 days after the date of the notice) by which, and a place at which, the amount payable under rule 3.4(a)(1) must be paid; and
  - (3) stating that if the whole of the amount payable under rule 3.4(a)(1) is not paid by the time and at the place named, the shares on which the call was made will be liable to be forfeited.
- (b) If a member does not comply with a notice served under rule 3.4(a), the directors may by resolution forfeit any share concerning which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.
- (c) A forfeiture under rule 3.4(b) includes all dividends, interest and other amounts payable by the company on the forfeited share and not actually paid before the forfeiture.

- (d) Where a share has been forfeited:
  - (1) notice of the resolution must be given to the member in whose name the share stood immediately before the forfeiture; and
  - (2) an entry of the forfeiture, with the date, must be made in the register of members.
- (e) Failure to give the notice or to make the entry required under rule 3.4(d) does not invalidate the forfeiture.
- (f) A forfeited share becomes the property of the company and the directors may sell, reissue or otherwise dispose of the share as they think fit and, in the case of reissue or other disposal, with or without crediting as paid up any amount paid on the share by any former holder.
- (g) A person whose shares have been forfeited ceases to be a member as to the forfeited shares, but must, if the directors decide, pay to the company:
  - (1) all calls, instalments, interest, costs, expenses and damages owing on the shares at the time of the forfeiture; and
  - (2) interest on the unpaid part of the amount payable under rule 3.4(g)(1), from the date of the forfeiture to the date of payment, at a rate determined under rule 3.9.
- (h) The forfeiture of a share extinguishes all interest in, and all claims and demands against the company relating to, the forfeited share and, subject to rule 3.8(i), all other rights attached to the share.
- (i) The directors may:
  - (1) exempt a share from all or part of this rule 3.4;
  - (2) waive or compromise all or part of any payment due to the company under this rule 3.4; and
  - (3) before a forfeited share has been sold, reissued or otherwise disposed of, cancel the forfeiture on the conditions they decide.

### **3.5 MEMBERS' INDEMNITY**

- (a) If the company becomes liable for any reason under a law to make a payment:
  - (1) in respect of shares held solely or jointly by a member;
  - (2) in respect of a transfer or transmission of shares by a member;
  - (3) in respect of dividends, bonuses or other amounts due or payable or which may become due and payable to a member; or
  - (4) in any other way for, on account of or relating to a member,rules 3.5(b) and 3.5(c) apply, in addition to any right or remedy the company may otherwise have.
- (b) The member, or, if the member is dead, the member's legal personal representative must:
  - (1) fully indemnify the company against that liability;
  - (2) on demand reimburse the company for any payment made; and
  - (3) pay interest on the unpaid part of the amount payable to the company under rule 3.5(b)(2), from the date of demand until the date the

company is reimbursed in full for that payment, at a rate determined under rule 3.9.

- (c) The directors may:
  - (1) exempt a share from all or part of this rule 3.5; and
  - (2) waive or compromise all or part of any payment due to the company under this rule 3.5.

### **3.6 LIEN ON SHARES**

- (a) The company has a first lien on:
  - (1) each partly paid share for all unpaid calls and instalments due on that share; and
  - (2) each share for any amounts the company is required by law to pay and has paid in respect of that share.

In each case the lien extends to reasonable interest and expenses incurred because the amount is not paid.

- (b) The company's lien on a share extends to all dividends payable on the share and to the proceeds of sale of the share.
- (c) The directors may sell a share on which the company has a lien as they think fit where:
  - (1) an amount for which a lien exists under this rule 3.6 is presently payable; and
  - (2) the company has given the registered holder a written notice, at least 14 days before the date of the sale, stating and demanding payment of that amount.
- (d) The directors may do anything necessary or desirable under the ASX Settlement Operating Rules to protect any lien, charge or other right to which the company is entitled under this constitution or a law.
- (e) When the company registers a transfer of shares on which the company has a lien without giving the transferee notice of its claim, the company's lien is released so far as it relates to amounts owing by the transferor or any predecessor in title.
- (f) The directors may:
  - (1) exempt a share from all or part of this rule 3.6; and
  - (2) waive or compromise all or part of any payment due to the company under this rule 3.6.

### **3.7 SURRENDER OF SHARES**

- (a) The directors may accept a surrender of a share by way of compromise of a claim.
- (b) Any share so surrendered may be sold, reissued or otherwise disposed in the same manner as a forfeited share.

### **3.8 SALE, REISSUE OR OTHER DISPOSAL OF SHARES BY THE COMPANY**

- (a) A reference in this rule 3.8 to a sale of a share by the company is a reference to any sale, reissue or other disposal of a share under rule 3.4(f) or, rule 3.6(c) or rule 5.4.
- (b) When the company sells a share, the directors may:
  - (1) receive the purchase money or consideration given for the share;
  - (2) effect a transfer of the share or execute or appoint a person to execute, on behalf of the former holder, a transfer of the share; and
  - (3) register as the holder of the share the person to whom the share is sold.
- (c) A person to whom the company sells shares need not take any steps to investigate the regularity or validity of the sale, or to see how the purchase money or consideration on the sale is applied. That person's title to the shares is not affected by any irregularity by the company in relation to the sale. A sale of the share by the company is valid even if a Transmission Event occurs to the member before the sale.
- (d) The only remedy of a person who suffers a loss because of a sale of a share by the company is a claim for damages against the company.
- (e) The proceeds of a sale of shares by the company must be applied in paying:
  - (1) first, the expenses of the sale;
  - (2) secondly, all amounts payable (whether presently or not) by the former holder to the company,and any balance must be paid to the former holder on the former holder delivering to the company proof of title to the shares acceptable to the directors.
- (f) The proceeds of sale arising from a notice under rule 5.4(b) must not be applied in payment of the expenses of the sale and must be paid to the former holder on the former holder delivering to the company proof of title to the shares acceptable to the directors.
- (g) Until the proceeds of a sale of a share sold by the company are claimed or otherwise disposed of according to law, the directors may invest or use the proceeds in any other way for the benefit of the company.
- (h) The company is not required to pay interest on money payable to a former holder under this rule 3.8.
- (i) On completion of a sale, reissue or other disposal of a share under rule 3.4(f), the rights which attach to the share which were extinguished under rule 3.4(h) revive.
- (j) A written statement by a director or secretary of the company that a share in the company has been:
  - (1) duly forfeited under rule 3.4(b);
  - (2) duly sold, reissued or otherwise disposed of under rule 3.4(f); or
  - (3) duly sold under rule 3.6(c) or rule 5.4,

on a date stated in the statement is conclusive evidence of the facts stated as against all persons claiming to be entitled to the share, and of the right of the company to forfeit, sell, reissue or otherwise dispose of the share.

### **3.9 INTEREST PAYABLE BY MEMBER**

- (a) For the purposes of rules 3.1(h)(1), 3.4(g)(2) and 3.5(b)(3), the rate of interest payable to the company is:
  - (1) if the directors have fixed a rate, that rate; or
  - (2) in any other case, a rate per annum 2% higher than the rate prescribed in respect of unpaid judgments in the Supreme Court of the state or territory in which the company is registered.
- (b) Interest accrues daily and may be capitalised monthly or at such other intervals the directors decide.

## **4 DISTRIBUTIONS**

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### **4.1 DIVIDENDS**

- (a) Subject in each case to applicable laws, the ongoing cash needs of the business, the statutory and common law duties of the directors and the shareholders' rights under rule 7.10, the directors may pay interim and/or final dividends, and must:
  - (1) subject to rule 4.1(a)(2), pay as interim and/or final dividends not less than 40% of net profit after tax (pre-Abnormal Items) in each financial year; and
  - (2) if the directors determine that it is necessary in order to prudently manage the company's financial position, pay as interim and/or final dividends not less than 25% of net profit after tax (pre-Abnormal Items) in any given financial year.
- (b) Subject to rule 7.10, the directors may rescind a decision to pay a dividend if they decide, before the payment date, that the company's financial position no longer justifies the payment.
- (c) Subject to rule 7.10, the directors may pay any dividend required to be paid under the terms of issue of a share.
- (d) Subject to any rights or restrictions attached to any shares or class of shares:
  - (1) all dividends must be paid equally on all shares, except that a partly paid share confers an entitlement only to the proportion of the dividend which the amount paid (not credited) on the share is of the total amounts paid and payable (excluding amounts credited);
  - (2) for the purposes of rule 4.1(d)(1), unless the directors decide otherwise, an amount paid on a share in advance of a call is to be taken as not having been paid until it becomes payable; and
  - (3) interest is not payable by the company on any dividend.
- (e) Subject to the ASX Settlement Operating Rules, the directors may fix a record date for a dividend, with or without suspending the registration of transfers from that date under rule 5.3.

- (f) Subject to the ASX Settlement Operating Rules, a dividend in respect of a share must be paid to the person who is registered, or entitled under rule 5.1(c) to be registered, as the holder of the share:
- (1) where the directors have fixed a record date in respect of the dividend, on that date; or
  - (2) where the directors have not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend,
- and a transfer of a share that is not registered, or left with the company for registration under rule 5.1(b), on or before that date is not effective, as against the company, to pass any right to the dividend.
- (g) When resolving to pay a dividend, the directors may direct payment of the dividend from any available source permitted by law, including:
- (1) wholly or partly by the distribution of specific assets, including paid-up shares or other securities of the company or of another body corporate, either generally or to specific members; and
  - (2) unless prevented by the Listing Rules, to particular members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source, and to the other members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source.
- (h) Subject to the ASX Settlement Operating Rules, where a person is entitled to a share because of a Transmission Event, the directors may, but need not, retain any dividends payable on that share until that person becomes registered as the holder of that share or transfers it.
- (i) The directors may retain from any dividend payable to a member any amount presently payable by the member to the company and apply the amount retained to the amount owing.
- (j) The directors may decide the method of payment of any dividend or other amount in respect of a share. Different methods of payment may apply to different members or groups of members (such as overseas members). Without limiting any other method of payment which the company may adopt, payment in respect of a share may be made:
- (1) by such electronic or other means approved by the directors directly to an account (of a type approved by the directors) nominated in writing by the member or the joint holders; or
  - (2) by cheque sent to the address of the member shown in the register of members or, in the case of joint holders, to the address shown in the register of members of any of the joint holders, or to such other address as the member or any of the joint holders in writing direct.
- (k) A cheque sent under rule 4.1(j):
- (1) may be made payable to bearer or to the order of the member to whom it is sent or any other person the member directs; and
  - (2) is sent at the member's risk.



- (l) If the directors decide that payments will be made by electronic transfer into an account (of a type approved by the directors) nominated by a member, but no such account is nominated by the member or an electronic transfer into a nominated account is rejected or refunded, the company may credit the amount payable to an account of the company to be held until the member nominates a valid account.
- (m) Where a member does not have a registered address or the company believes that a member is not known at the member's registered address, the company may credit an amount payable in respect of the member's shares to an account of the company to be held until the member claims the amount payable or nominates an account into which a payment may be made.
- (n) An amount credited to an account under rules 4.1(l) or 4.1(m) is to be treated as having been paid to the member at the time it is credited to that account. The company will not be a trustee of the money and no interest will accrue on the money.
- (o) If a cheque for an amount payable under rule 4.1(j) is not presented for payment for at least 11 calendar months after issue or an amount is held in an account under rules 4.1(l) or 4.1(m) for at least 11 calendar months, the directors may reinvest the amount, after deducting reasonable expenses, into shares in the company on behalf of, and in the name of, the member concerned and may stop payment on the cheque. The shares may be acquired on market or by way of new issue at a price the directors accept is market price at the time. Any residual sum which arises from the reinvestment may be carried forward or donated to charity on behalf of the member, as the directors decide. The company's liability to provide the relevant amount is discharged by an application under this rule 4.1(o). The directors may do anything necessary or desirable (including executing any document) on behalf of the member to effect the application of an amount under this rule 4.1(o). The directors may determine other rules to regulate the operation of this rule 4.1(o) and may delegate their power under this rule to any person.

## **4.2 CAPITALISING PROFITS**

- (a) Subject to the Listing Rules, any rights or restrictions attached to any shares or class of shares and any special resolution of the company, the directors may capitalise and distribute among those members who would be entitled to receive dividends and in the same proportions, any amount:
  - (1) forming part of the undivided profits of the company;
  - (2) representing profits arising from an ascertained accretion to capital or a revaluation of the assets of the company;
  - (3) arising from the realisation of any assets of the company; or
  - (4) otherwise available for distribution as a dividend.
- (b) The directors may resolve that all or any part of the capitalised amount is to be applied:
  - (1) in paying up in full, at an issue price decided by the resolution, any unissued shares in or other securities of the company;
  - (2) in paying up any amounts unpaid on shares or other securities held by the members; or
  - (3) partly as specified in rule 4.2(b)(1) and partly as specified in rule 4.2(b)(2).

The members entitled to share in the distribution must accept that application in full satisfaction of their interest in the capitalised amount.

- (c) Rules 4.1(d), 4.1(e) and 4.1(f) apply, so far as they can and with any necessary changes, to capitalising an amount under this rule 4.2 as if references in those rules to:
  - (1) a dividend were references to capitalising an amount; and
  - (2) a record date were references to the date the directors resolve to capitalise the amount under this rule 4.2.
- (d) Where in accordance with the terms and conditions on which options to take up shares are granted (and being options existing at the date of the passing of the resolution referred to in rule 4.2(b)) a holder of those options will be entitled to an issue of bonus shares under this rule 4.2, the directors may in determining the number of unissued shares to be so issued, allow in an appropriate manner for the future issue of bonus shares to options holders.

#### **4.3 ANCILLARY POWERS**

- (a) To give effect to any resolution to reduce the capital of the company, to satisfy a dividend as set out in rule 4.1(g)(1) or to capitalise any amount under rule 4.2, the directors may:
  - (1) settle as they think expedient any difficulty that arises in making the distribution or capitalisation and, in particular, make cash payments in cases where members are entitled to fractions of shares or other securities and decide that amounts or fractions of less than a particular value decided by the directors may be disregarded to adjust the rights of all parties;
  - (2) fix the value for distribution of any specific assets;
  - (3) pay cash or issue shares or other securities to any member to adjust the rights of all parties;
  - (4) vest any of those specific assets, cash, shares or other securities in a trustee on trust for the persons entitled to the distribution or capitalised amount that seem expedient to the directors; and
  - (5) authorise any person to make, on behalf of all the members entitled to any specific assets, cash, shares or other securities as a result of the distribution or capitalisation, an agreement with the company or another person which provides, as appropriate, for the distribution or issue to them of shares or other securities credited as fully paid up or for payment by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by applying their respective proportions of the amount resolved to be distributed or capitalised.
- (b) Any agreement made under an authority referred to in rule 4.3(a)(5) is effective and binds all members concerned.

- (c) If a distribution, transfer or issue of specific assets, shares or securities to a particular member or members is, in the directors' discretion, considered impracticable or would give rise to parcels of securities which do not constitute a marketable parcel, the directors may make a cash payment to those members or allocate the assets, shares or securities to a trustee to be sold on behalf of, and for the benefit of, those members, instead of making the distribution, transfer or issue to those members.
- (d) If the company distributes to members (either generally or to specific members) securities in the company or in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those members appoints the company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate.

#### **4.4 RESERVES**

- (a) Subject to rule 7.10, the directors may set aside out of the company's profits any reserves or provisions they decide.
- (b) The directors may appropriate to the company's profits any amount previously set aside as a reserve or provision.
- (c) Setting aside an amount as a reserve or provision does not require the directors to keep the amount separate from the company's other assets or prevent the amount being used in the company's business or being invested as the directors decide.

#### **4.5 CARRYING FORWARD PROFITS**

The directors may carry forward any part of the profits remaining that they consider should not be distributed as dividends or capitalised, without transferring those profits to a reserve or provision.

#### **4.6 SHARE INVESTMENT PLAN**

Subject to rule 7.10, the directors may:

- (a) establish a share investment plan on terms they decide, under which:
  - (1) the whole or any part of any dividend or interest due to members or holders of any convertible securities of the company who participate in the plan on their shares or any class of shares or any convertible securities; or
  - (2) any other amount payable to members,may be applied in subscribing for or purchasing securities of the company or of a related body corporate; and
- (b) amend, suspend or terminate a share investment plan.

#### **4.7 DIVIDEND SELECTION PLANS**

Subject to rule 7.10, the directors may:

- (a) implement a dividend selection plan on terms they decide, under which participants may choose:

- (1) to receive a dividend from the company paid wholly or partly out of any available source, including any particular fund or reserve or out of profits derived from any particular source; or
  - (2) to forego a dividend from the company in place of some other form of distribution from the company or another body corporate or a trust; and
- (b) amend, suspend or terminate a dividend selection plan.

## **5 TRANSFER AND TRANSMISSION OF SHARES**

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### **5.1 TRANSFERRING SHARES**

- (a) Subject to this constitution and to any restrictions attached to a member's shares, a member may transfer any of the member's shares by:
- (1) a Proper ASTC Transfer; or
  - (2) a written transfer in any usual form or in any other form approved by the directors.
- (b) A transfer referred to in rule 5.1(a)(2) must be:
- (1) signed by or on behalf of both the transferor and the transferee unless the transfer relates only to fully paid shares and the directors have dispensed with a signature by the transferee or the transfer of the shares is effected by a document which is, or documents which together are, a sufficient transfer of those shares under the Act;
  - (2) if required by law to be stamped, duly stamped; and
  - (3) left for registration at the company's registered office, or at any other place the directors decide, with such evidence the directors require to prove the transferor's title or right to the shares and the transferee's right to be registered as the owner of the shares.
- (c) Subject to the powers vested in the directors under rules 5.2(a) and 5.3, where the company receives a transfer complying with rule 5.1, the company must register the transferee named in the transfer as the holder of the shares to which it relates.
- (d) A transferor of shares remains the holder of the shares until a Proper ASTC Transfer has been effected or the transferee's name is entered in the register of members as the holder of the shares.
- (e) The company must not charge a fee for registering a transfer of shares unless:
- (1) the company is not listed on the Exchange; or
  - (2) the fee is permitted by the Listing Rules.
- (f) The company may retain a registered transfer for any period the directors decide.
- (g) The directors may do anything that is necessary or desirable for the company to participate in any computerised, electronic or other system for facilitating the transfer of shares or operation of the company's registers that may be owned, operated or sponsored by the Exchange or a related body corporate of the Exchange.

- (h) The directors may, to the extent the law permits, waive any of the requirements of this rule 5.1 and prescribe alternative requirements instead, to give effect to rule 5.1(g) or for another purpose.

## **5.2 POWER TO DECLINE TO REGISTER TRANSFERS**

- (a) The directors may decline to register, or prevent registration of, a transfer of shares or apply a holding lock to prevent a transfer in accordance with the Act or the Listing Rules where:
  - (1) the transfer is not in registrable form;
  - (2) the company has a lien on any of the shares transferred;
  - (3) registration of the transfer may breach a law of Australia;
  - (4) the transfer is paper-based and registration of the transfer will result in a holding which, at the time the transfer is lodged, is less than a marketable parcel;
  - (5) the transfer is not permitted under the terms of an employee share plan;
  - (6) the transfer is of restricted securities referred to in rule 2.8; or
  - (7) the company is otherwise permitted or required to do so under the Listing Rules or, except for a Proper ASTC Transfer, under the terms of issue of the shares.
- (b) If the directors decline to register a transfer, the company must give notice of the refusal as required by the Act and the Listing Rules. Failure to give that notice will not invalidate the decision of the directors to decline to register the transfer.
- (c) The directors may delegate their authority under this rule 5.2 to any person.

## **5.3 POWER TO SUSPEND REGISTRATION OF TRANSFERS**

The directors may suspend the registration of transfers at any times, and for any periods, permitted by the ASX Settlement Operating Rules that they decide.

## **5.4 SELLING NON MARKETABLE PARCELS**

- (a) The directors may sell shares which constitute less than a marketable parcel by following the procedures in this rule 5.4.
- (b) The directors may send to a member who holds, on the date decided by the directors, less than a marketable parcel of shares in a class of shares of the company, a notice which:
  - (1) explains the effect of the notice under this rule 5.4; and
  - (2) advises the holder that he or she may choose to be exempt from the provisions of this rule. A form of election for that purpose must be sent with the notice.
- (c) If, before 5.00pm Sydney time on a date specified in the notice which is no earlier than 6 weeks after the notice is sent:
  - (1) the company has not received a notice from the member choosing to be exempt from the provisions of this rule 5.4; and

- (2) the member has not increased his or her shareholding to a marketable parcel,

the member is taken to have irrevocably appointed the company as his or her agent to do anything in rule 5.4(e).

- (d) In addition to initiating a sale by sending a notice under rule 5.4(b), the directors may also initiate a sale if a member holds less than a marketable parcel at the time that the transfer document was initiated or, in the case of a paper-based transfer document, was lodged with the company. In that case:
  - (1) the member is taken to have irrevocably appointed the company as his or her agent to do anything in rule 5.4(e); and
  - (2) if the holding was created after the adoption of this rule, the directors may remove or change the member's rights to vote or receive dividends in respect of those shares. Any dividends withheld must be sent to the former holder after the sale when the former holder delivers to the company such proof of title as the directors accept.
- (e) The company may:
  - (1) sell the shares constituting less than a marketable parcel as soon as practicable at a price which the directors consider is the best price reasonably available for the shares when they are sold;
  - (2) deal with the proceeds of sale under rule 3.8; and
  - (3) receive any disclosure document, including a financial services guide, as agent for the member.
- (f) The costs and expenses of any sale of shares arising from a notice under rule 5.4(b) (including brokerage and stamp duty) are payable by the purchaser or by the company.
- (g) A notice under rule 5.4(b) may be given to a member only once in a 12 month period and may not be given during the offer period of a takeover bid for the company.
- (h) If a takeover bid is announced after a notice is given but before an agreement is entered into for the sale of shares, this rule ceases to operate for those shares. However, despite rule 5.4(g), a new notice under rule 5.4(b) may be given after the offer period of the takeover bid closes.
- (i) The directors may, before a sale is effected under this rule 5.4, revoke a notice given or suspend or terminate the operation of this rule either generally or in specific cases.
- (j) If a member is registered in respect of more than one parcel of shares, the directors may treat the member as a separate member in respect of each of those parcels so that this rule 5.4 will operate as if each parcel was held by different persons.

## **5.5 TRANSMISSION OF SHARES**

- (a) Subject to rule 5.5(c), where a member dies, the only persons the company will recognise as having any title to the member's shares or any benefits accruing on those shares are:
  - (1) where the deceased was a sole holder, the legal personal representative of the deceased; and

- (2) where the deceased was a joint holder, the survivor or survivors.
- (b) Rule 5.5(a) does not release the estate of a deceased member from any liability on a share, whether that share was held by the deceased solely or jointly with other persons.
- (c) The directors may register a transfer of shares signed by a member before a Transmission Event even though the company has notice of the Transmission Event.
- (d) A person who becomes entitled to a share because of a Transmission Event may, on producing such evidence as the directors require to prove that person's entitlement to the share, choose:
- (1) to be registered as the holder of the share by signing and giving the company a written notice stating that choice; or
- (2) to nominate some other person to be registered as the transferee of the share by executing or effecting in some other way a transfer of the share to that other person.
- (e) The provisions of this constitution concerning the right to transfer shares and the registration of transfers of shares apply, so far as they can and with any necessary changes, to a notice or transfer under rule 5.5(d) as if the relevant Transmission Event had not occurred and the notice or transfer were executed or effected by the registered holder of the share.
- (f) Where 2 or more persons are jointly entitled to a share because of a Transmission Event they will, on being registered as the holders of the share, be taken to hold the share as joint tenants and rule 2.6 will apply to them.

## 6 PLEBISCITE TO APPROVE PROPORTIONAL TAKEOVER BIDS

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### 6.1 DEFINITIONS

The meanings of the terms used in this rule 6 are set out below.

Term	Meaning
<b>Approving Resolution</b>	in relation to a Proportional Takeover Bid: a resolution to approve the Proportional Takeover Bid passed in accordance with rule 6.3.
<b>Approving Resolution Deadline</b>	in relation to a Proportional Takeover Bid: the day that is 14 days before the last day of the bid period, during which the offers under the Proportional Takeover Bid remain open or a later day allowed by the Australian Securities and Investments Commission.
<b>Proportional Takeover Bid</b>	a takeover bid that is made or purports to be made under section 618(1)(b) of the Act in respect of securities included in a class of securities in the company.

Term	Meaning
<b>Relevant Class</b>	in relation to a Proportional Takeover Bid, means the class of securities in the company in respect of which offers are made under the Proportional Takeover Bid.

## **6.2 TRANSFERS NOT TO BE REGISTERED**

Despite rules 5.1(c) and 5.2, a transfer giving effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover Bid must not be registered unless an Approving Resolution to approve the Proportional Takeover Bid has been passed or is taken to have been passed in accordance with rule 6.3.

## **6.3 APPROVING RESOLUTION**

- (a) Where offers have been made under a Proportional Takeover Bid, the directors must:
- (1) convene a meeting of the persons entitled to vote on the Approving Resolution for the purpose of considering and, if thought fit, passing a resolution to approve the Proportional Takeover Bid; and
  - (2) ensure that the resolution is voted on in accordance with this rule 6.3, before the Approving Resolution Deadline.
- (b) The provisions of this constitution relating to general meetings apply, with such modification as the circumstances require, to a meeting that is convened under rule 6.3(a), as if that meeting were a general meeting of the company.
- (c) The bidder under a Proportional Takeover Bid and any associates of the bidder are not entitled to vote on the Approving Resolution and if they do vote, their votes must not be counted.
- (d) Subject to rule 6.3(c), a person who, as at the end of the day on which the first offer under the Proportional Takeover Bid was made, held securities of the relevant class, is entitled to vote on the Approving Resolution relating to the Proportional Takeover Bid.
- (e) An Approving Resolution that has been voted on is taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than 50%, and otherwise is taken to have been rejected.
- (f) If an Approving Resolution has not been voted on in accordance with this rule 6.3 as at the end of the day before the Approving Resolution Deadline, an Approving Resolution will be taken to have been passed in accordance with this rule 6.3 on the Approving Resolution Deadline.



## 6.4 SUNSET

Rules 6.1, 6.2 and 6.3, cease to have effect at the end of 3 years beginning:

- (a) where those rules have not been renewed in accordance with the Act, on the date that those rules were adopted by the company; or
- (b) where those rules have been renewed in accordance with the Act, on the date those rules were last renewed.

## 7 GENERAL MEETINGS

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### 7.1 CALLING GENERAL MEETINGS

- (a) A general meeting may only be called:
  - (1) by a directors' resolution; or
  - (2) as otherwise provided in the Act.
- (b) The directors may, by notice to the Exchange, change the venue for, postpone or cancel a general meeting, if they consider that the meeting has become unnecessary, or the venue would be unreasonable or impractical or a change is necessary in the interests of conducting the meeting efficiently, but:
  - (1) a meeting which is not called by a directors' resolution; and
  - (2) a meeting which is called in accordance with a members' requisition under the Act;

may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

### 7.2 NOTICE OF GENERAL MEETINGS

- (a) Notice of a general meeting must be given to each person who at the time of giving the notice:
  - (1) is a member, director or auditor of the company; or
  - (2) is entitled to a share because of a Transmission Event and has satisfied the directors of his or her right to be registered as the holder of, or to transfer, the shares.
- (b) The content of a notice of a general meeting called by the directors is to be decided by the directors, but it must state the general nature of the business to be transacted at the meeting and any other matters required by the Act.
- (c) Unless the Act provides otherwise:
  - (1) no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting; **and**
  - (2) except with the approval of the directors or the chairperson, no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to such a resolution and a copy of which has been made available to members to inspect or obtain.

- (d) A person may, by written notice to the company, waive any objection that person may have to a failure to give notice of any general meeting.
- (e) Failure to give a member or any other person notice of a general meeting or a proxy form, does not invalidate anything done or resolution passed at the general meeting if:
  - (1) the failure occurred by accident or inadvertent error; or
  - (2) before or after the meeting, the person notifies the company of the person's agreement to that thing or resolution.
- (f) A person's attendance at a general meeting waives any objection that person may have to:
  - (1) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
  - (2) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

### **7.3 ADMISSION TO GENERAL MEETINGS**

- (a) The chairperson of a general meeting may take any action he or she considers appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:
  - (1) in possession of a pictorial-recording or sound-recording device;
  - (2) in possession of a placard or banner;
  - (3) in possession of an article considered by the chairperson to be dangerous or offensive ;
  - (4) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
  - (5) who behaves or threatens to behave in a dangerous or offensive way;  
or
  - (6) who is not entitled to receive notice of the meeting.

The chairperson may delegate the powers conferred by this rule to any person he or she thinks fit.
- (b) A person, whether a member or not, requested by the directors or the chairperson to attend a general meeting is entitled to be present and, at the request of the chairperson, to speak at the meeting.
- (c) If the chairperson of a general meeting considers that there is not enough room for the members who wish to attend the meeting, he or she may arrange for any person whom he or she considers cannot be seated in the main meeting room to observe or attend the general meeting in a separate room. Even if the members present in the separate room are not able to participate in the conduct of the meeting, the meeting will nevertheless be treated as validly held in the main room.
- (d) If a separate meeting place is linked to the main place of a general meeting by an instantaneous audio-visual communication device which, by itself or in conjunction with other arrangements:

- (1) gives the general body of members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place;
- (2) enables the chairperson to be aware of proceedings in the other place; and
- (3) enables the members in the separate meeting place to vote on a show of hands or on a poll,

a member present at the separate meeting place is taken to be present at the general meeting and entitled to exercise all rights as if he or she was present at the main place.

- (e) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in rule 7.3(d) is not satisfied, the chairperson may:
  - (1) adjourn the meeting until the difficulty is remedied; or
  - (2) continue to hold the meeting in the main place (and any other place which is linked under rule 7.3(d)) and transact business, and no member may object to the meeting being held or continuing.
- (f) Nothing in this rule 7.3 or in rule 7.6 is to be taken to limit the powers conferred on the chairperson by law.

#### **7.4 QUORUM AT GENERAL MEETINGS**

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum is 5 or more members present at the meeting and entitled to vote on a resolution at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for the general meeting:
  - (1) where the meeting was called at the request of members, the meeting must be dissolved; or
  - (2) in any other case, the meeting stands adjourned to the day, and at the time and place, the directors present decide or, if they do not make a decision, to the same day in the next week at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### **7.5 CHAIRPERSON OF GENERAL MEETINGS**

- (a) The chairperson of directors or, in the absence of the chairperson of directors, the deputy chairperson of directors (or, if there is more than one deputy chairperson of directors, then the one nominated by the chairperson for this purpose, or if the chairperson has not made such a nomination, then any one of them) is entitled, if present within 15 minutes after the time appointed for a general meeting and willing to act, to preside as chairperson at the meeting.
- (b) The directors present may choose one of their number to preside as chairperson if, at a general meeting:
  - (1) there is no chairperson or deputy chairperson of directors;

- (2) neither the chairperson nor the deputy chairperson of directors is present within 15 minutes after the time appointed for the meeting; or
  - (3) neither the chairperson nor the deputy chairperson of directors is willing to act as chairperson of the meeting.
- (c) If the directors do not choose a chairperson under rule 7.5(b), the members present must elect as chairperson of the meeting:
  - (1) another director who is present and willing to act; or
  - (2) if no other director willing to act is present at the meeting, a member who is present and willing to act.
- (d) A chairperson of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person nominated by him or her (Acting Chairperson). Where an instrument of proxy appoints the chairperson as proxy for part of the proceedings for which an Acting Chairperson has been nominated, the instrument of proxy is taken to be in favour of the Acting Chairperson for the relevant part of the proceedings.

## **7.6 CONDUCT AT GENERAL MEETINGS**

- (a) Subject to the provisions of the Act, the chairperson of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting.
- (b) The chairperson may, at any time the chairperson considers it necessary or desirable for the efficient and orderly conduct of the meeting:
  - (1) impose a limit on the time that a person may speak on each motion or other item of business and terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present; and
  - (2) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or on a poll, including the appointment of scrutineers.
- (c) A decision by a chairperson under rules 7.6(a) or 7.6(b) is final.
- (d) The chairperson may postpone the meeting before it has started, whether or not a quorum is present, if, at the time and place appointed for the meeting, he or she considers that:
  - (1) there is not enough room for the number of members who wish to attend the meeting; or
  - (2) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out.
- (e) A postponement under rule 7.6(d) will be to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place will be taken to be the time and place for the meeting as if specified in the notice which called the meeting originally).
- (f) The chairperson may at any time during the course of the meeting:
  - (1) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting; and

- (2) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for such period/s as he or she decides without effecting an adjournment. No business may be transacted and no discussion may take place during any suspension of proceedings unless the chairperson otherwise allows.
- (g) The chairperson's rights under rules 7.6(d) and 7.6(f) are exclusive and, unless the chairperson requires otherwise, no vote may be taken or demanded by the members present concerning any postponement, adjournment or suspension of proceedings.
- (h) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (i) Where a meeting is postponed or adjourned under this rule 7.6, notice of the postponed or adjourned meeting must be given to the Exchange, but need not be given to any other person.
- (j) Where a meeting is postponed or adjourned, the directors may, by notice to the Exchange, postpone, cancel or change the place of the postponed or adjourned meeting.

## **7.7 DECISIONS AT GENERAL MEETINGS**

- (a) Except where a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. A decision made in this way is for all purposes, a decision of the members.
- (b) If the votes are equal on a proposed resolution, the chairperson of the meeting has a casting vote, in addition to any deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:
  - (1) before the show of hands is taken;
  - (2) before the result of the show of hands is declared; or
  - (3) immediately after the result of the show of hands is declared.
- (d) A poll may be demanded by:
  - (1) the chairperson of the meeting;
  - (2) at least 5 members entitled to vote on the resolution; or
  - (3) members with at least 5% of the votes that may be cast on the resolution on a poll.
- (e) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (f) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.

- (g) If a poll is duly demanded at a general meeting, it must be taken in the way and either at once or after an interval or adjournment as the chairperson of the meeting directs. The result of the poll as declared by the chairperson is the resolution of the meeting at which the poll was demanded.
- (h) A poll cannot be demanded at a general meeting on the election of a chairperson of the meeting.
- (i) The demand for a poll may be withdrawn with the chairperson's consent.

## **7.8 VOTING RIGHTS**

- (a) Subject to this constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
  - (1) on a show of hands, every member present has one vote; and
  - (2) on a poll, every member present has one vote for each share held as at the Record Time by the member entitling the member to vote, except for partly paid shares, each of which confers on a poll only the fraction of one vote which the amount paid (not credited) on the share bears to the total amounts paid and payable (excluding amounts credited) on the share. An amount paid in advance of a call is disregarded for this purpose.
- (b) If a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member, on a show of hands the person is entitled to one vote only even though he or she represents more than one member.
- (c) A joint holder may vote at a meeting either personally or by proxy, attorney or Representative as if that person was the sole holder. If more than one joint holder tenders a vote in respect of the relevant shares, the vote of the holder named first in the register who tenders a vote, whether in person or by proxy, attorney or Representative, must be accepted to the exclusion of the votes of the other joint holders.
- (d) The parent or guardian of an infant member may vote at any general meeting on such evidence being produced of the relationship or of the appointment of the guardian as the directors may require and any vote so tendered by a parent or guardian of an infant member must be accepted to the exclusion of the vote of the infant member.
- (e) A person entitled to a share because of a Transmission Event may vote at a general meeting in respect of that share in the same way as if that person were the registered holder of the share if, at least 48 hours before the meeting (or such shorter time as the directors determine), the directors:
  - (1) admitted that person's right to vote at that meeting in respect of the share; or
  - (2) were satisfied of that person's right to be registered as the holder of, or to transfer, the share.

Any vote duly tendered by that person must be accepted and the vote of the registered holder of those shares must not be counted.
- (f) Where a member holds a share on which a call or other amount payable to the company has not been duly paid:

- (1) that member is only entitled to be present at a general meeting and vote if that member holds, as at the Record Time, other shares on which no money is then due and payable; and
  - (2) on a poll, that member is not entitled to vote in respect of that share but may vote in respect of any shares that member holds, as at the Record Time, on which no money is then due and payable.
- (g) A member is not entitled to vote on a resolution if, under the Act or the Listing Rules, the notice which called the meeting specified that:
- (1) the member must not vote or must abstain from voting on the resolution; or
  - (2) a vote on the resolution by the member must be disregarded for any purposes.

If the member or a person acting as proxy, attorney or Representative of the member does tender a vote on that resolution, their vote must not be counted.

- (h) An objection to the validity of a vote tendered at a general meeting must be:
- (1) raised before or immediately after the result of the vote is declared; and
  - (2) referred to the chairperson of the meeting, whose decision is final.
- (i) A vote tendered, but not disallowed by the chairperson of a meeting under rule 7.8(h), is valid for all purposes, even if it would not otherwise have been valid.
- (j) The chairperson may decide any difficulty or dispute which arises as to the number of votes which may be cast by or on behalf of any member and the decision of the chairperson is final.

## **7.9 REPRESENTATION AT GENERAL MEETINGS**

- (a) Subject to this constitution, each member entitled to vote at a general meeting may vote:
- (1) in person or, where a member is a body corporate, by its Representative;
  - (2) by not more than 2 proxies; or
  - (3) by not more than 2 attorneys.
- (b) On or after 1 January 2013, if Yanzhou holds more than 70% of the voting shares in the company, it may appoint a proxy with the authority to cast the votes attaching to any voting shares in the company that Yanzhou holds over 70% consistently with the votes cast by the minority shareholders of the company in respect of any member resolution in respect of which Yanzhou is entitled to vote (and any such appointment of proxy may be expressed to be irrevocable). The appointment of a proxy pursuant to this provision applies, and shall have effect in accordance with its terms, despite anything to the contrary in rule 7.9(o) and section 249Y(3) of the Act.
- (c) A proxy, attorney or Representative may, but need not, be a member of the company.
- (d) An instrument appointing a proxy is valid if it is in accordance with the Act or in any form approved by the directors.

- (e) For the purposes of this rule 7.9 a proxy appointment received at an electronic address specified in the notice of general meeting for the receipt of proxy appointment or otherwise received by the company in accordance with the Act is taken to have been signed or executed if the appointment:
  - (1) includes or is accompanied by a personal identification code allocated by the company to the member making the appointment;
  - (2) has been authorised by the member in another manner approved by the directors and specified in or with the notice of meeting; or
  - (3) is otherwise authenticated in accordance with the Act.
- (f) A vote given in accordance with an instrument appointing a proxy or attorney is valid despite the transfer of the share in respect of which the instrument was given if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be received under rule 7.9(k).
- (g) Unless the instrument or resolution appointing a proxy, attorney or Representative provides differently, the proxy, attorney or Representative has the same rights to speak, demand a poll, join in demanding a poll or act generally at the meeting as the member would have had if the member was present.
- (h) Unless otherwise provided in the appointment of a proxy, attorney or Representative, an appointment will be taken to confer authority:
  - (1) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions, to do any of the acts specified in rule 7.9(i); and
  - (2) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the rescheduled or adjourned meeting or at the new venue.
- (i) The acts referred to in rule 7.9(h)(1) are:
  - (1) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
  - (2) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
  - (3) to act generally at the meeting.
- (j) A proxy form issued by the company must allow for the insertion of the name of the person to be primarily appointed as proxy and may provide that, in circumstances and on conditions specified in the form that are not inconsistent with this constitution, the chairperson of the relevant meeting (or another person specified in the form) is appointed as proxy.
- (k) A proxy or attorney may not vote at a general meeting or adjourned or postponed meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are received by the company:



- (1) at least 48 hours, or such lesser time as specified by the directors and notified in the notice of meeting, (or in the case of an adjournment or postponement of a meeting, including an adjourned meeting, any lesser time that the directors or the chairperson of the meeting decides) before the time for holding the meeting or adjourned or postponed meeting or taking the poll, as applicable; or
- (2) where rule 7.9(m) applies, such shorter period before the time for holding the meeting or adjourned or postponed meeting or taking the poll, as applicable, as the company determines in its discretion.

A document is received by the company under this rule 7.9(k) when it is received in accordance with the Act, and to the extent permitted by the Act, if the document is produced or the transmission of the document is otherwise verified to the company in the way specified in the notice of meeting.

- (l) The company is entitled to clarify with a member any instruction on an appointment of proxy or attorney which is received by the company within a period referred to in rule 7.9(k)(1) or 7.9(k)(2) as applicable by written or verbal communication. The company, at its discretion, is entitled to amend the contents of any appointment of proxy or attorney to reflect any clarification in instruction and the member at that time is taken to have appointed the company as its attorney for this purpose.
- (m) Where an instrument appointing a proxy or attorney has been received by the company within the period specified in rule 7.9(k)(1) and the company considers that the instrument has not been duly executed, the company, in its discretion, may:
  - (1) return the instrument appointing the proxy or attorney to the appointing member; and
  - (2) request that the member duly execute the appointment and return it to the company within the period determined by the company under rule 7.9(k)(2) and notified to the member.
- (n) An instrument appointing a proxy or attorney which is received by the company in accordance with rule 7.9(m) is taken to have been validly received by the company.
- (o) The appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the general meeting, but if the appointor votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointor's proxy or attorney on the resolution.
- (p) Where a member appoints 2 proxies or attorneys to vote at the same general meeting:
  - (1) if the appointment does not specify the proportion or number of the member's votes each proxy or attorney may exercise, each proxy or attorney may exercise half the member's votes;
  - (2) on a show of hands, neither proxy or attorney may vote if more than one proxy or attorney attends; and
  - (3) on a poll, each proxy or attorney may only exercise votes in respect of those shares or voting rights the proxy or attorney represents.

- (q) Unless written notice of the matter has been received at the company's registered office (or at another place specified for lodging an appointment of a proxy or attorney for the meeting) at least 48 hours (or, in the case of an adjournment or postponement of a meeting, any lesser time that the directors or the chairperson of the meeting decide) before the time for holding a meeting, adjourned meeting or poll, a vote cast by a proxy or attorney is valid even if, before the vote is cast:
- (1) a Transmission Event occurs to the member;
  - (2) the member revokes the appointment of the proxy or attorney or revokes the authority under which a third party appointed the proxy or attorney; or
  - (3) the member has issued a clarifying instruction under rule 7.9(l).
- (r) The chairperson of a meeting may:
- (1) permit a person claiming to be a Representative to exercise the powers of a Representative, even if the person is unable to establish to the chairperson's satisfaction that he or she has been validly appointed; or
  - (2) permit the person to exercise those powers on the condition that, if required by the company, he or she produce evidence of the appointment within the time set by the chairperson.
- (s) The chairperson of a meeting may require a person acting as a proxy, attorney or Representative to establish to the chairperson's satisfaction that the person is the person duly appointed to act. If the person fails to satisfy the requirement, the chairperson may exclude the person from attending or voting at the meeting.
- (t) The chairperson may delegate his or her powers under rules 7.9(q), 7.9(r) and 7.9(s) to any person.
- (u) For the purposes of this rule 7.9, a recognised clearing house (within the meaning of the Securities and Futures Ordinance (Chapter 571 of the laws of Hong Kong) or its nominee(s) may appoint or authorise any number of proxy(ies), attorney(s) or Representative(s) to cast votes attaching to voting shares that it holds in the company, provided that if 2 or more proxies, attorneys or Representatives are appointed or authorised to vote at the same general meeting, the proxy form or authorisation must specify the number and class of voting shares in respect of which each proxy, attorney or Representative is appointed or authorised to vote. Each person so authorised under the provisions of this constitution shall be deemed to have been duly authorised without further evidence of the facts and be entitled to exercise the same power on behalf of the recognised clearing house as that clearing house or its nominee(s) could exercise as if it were an individual shareholder of the company.

## **7.10 MEMBER APPROVAL**

- (a) Subject to applicable laws, regulations and the Listing Rules, the matters set out in rule 7.10(b) must be approved either by (except for those matters that must be approved by special approval):
- (1) a resolution of the company; or
  - (2) members holding a majority of the issued shares of the company conferring the right to vote by writing delivered to the company.

- (b) Rule 7.10(a) applies to the following:
- (1) approving the amending or replacing of this constitution by special resolution of the company in accordance with the Act;
  - (2) approving a change in the type of the company by special resolution of the company in accordance with the Act;
  - (3) the appointment or the dismissal of directors. If there exists a casual vacancy on the Board which causes non-compliance with the ASX Listing Rules, the Board has the power to appoint a director to fill that vacancy. However such appointment must obtain the approval of the next general meeting, and the members may veto such an appointment;
  - (4) approving any reduction of the issued capital of the company, or the issue of equity securities in the company above the limit specified in ASX Listing Rule 7.1, other than issues which are listed as an exception in ASX Listing Rule 7.2 (in each case as those rules may be modified or waived from time to time by ASX);
  - (5) approving the annual financial statements of the company;
  - (6) approving the payment of a dividend under rule 4.1 (including the amount of the dividend and the date of payment);
  - (7) approving a loss recovery plan;
  - (8) approving the terms upon which shares in the company (or options or rights in respect of shares in the company) are made available to employees of the company under an employee incentive scheme;
  - (9) approving the withdrawing of any forfeiture of shares taken by the company over unpaid or partly paid shares in the company;
  - (10) approving the remuneration provided to each director by the company;
  - (11) approving the appointment or removal of the auditor and the annual remuneration paid to the auditor for services provided in relation to the annual audit of the company (not including any amounts paid to the auditor for special or additional services provided by the auditor to the company as determined by the directors of the company);
  - (12) approving any single or accumulated investments by the company in the last 12 months with a value of \$100 million or more;
  - (13) approving any single or accumulated disposal of assets of the company in the last 12 months with a value of \$100 million or more;
  - (14) approving the issuing of any debentures, or any borrowing by the company or other means of financing which is:
    - above the value of 20% of the net assets of the consolidated group as set out in the most recent consolidated, audited financial statements of the company; or
    - causes the company to have a gearing (total debt/total assets) above 60%;

- (15) approving any single guarantee entered into by the company as guarantor for its subsidiaries for business purposes above \$100 million or accumulated guarantees above the value of \$200 million in the last 12 months, including but not limited to any mortgage, pledge or guarantee of any assets of the company provided always that the company must not offer, provide or purport to provide any guarantee in any form in respect of obligations of enterprises or individuals outside the company group; and
  - (16) any other powers that may be exercised by the members, pursuant to the Act and this constitution.
- (c) Any transaction which is considered to be a related party transaction under the applicable laws and regulations in Australia or the People's Republic of China must only be undertaken in accordance with those laws and regulations.
  - (d) The Majority Shareholders may instruct the Board to do any matter set out in rule 7.10(b) by a resolution of the company or by members holding a majority of the issued shares of the company conferring the right to vote by writing delivered to the company. Subject to applicable laws, regulations and the Listing Rules, the Board must give effect to any such instruction.
  - (e) Where this constitution (including but not limited to this rule 7.10) permits or requires the Majority Shareholders to approve a matter or otherwise gives a power or authority to the Majority Shareholders:
    - (1) that approval can be granted or withheld, and that power or authority can be exercised, by a resolution of the company or by members holding a majority of the issued shares of the company conferring the right to vote by writing delivered to the company; and
    - (2) subject to applicable laws, regulations and the Listing Rules, the Board must give effect to any such resolution or writing delivered to the company.

## **7.11 SUBSIDIARIES**

- (a) Any act or decision of a company subsidiary is subject to any applicable approval mechanism as set out, from time to time, in this constitution and in the company's corporate governance documents (including, but not limited to the company's Board charter, committee charters and policy documents), as if that act or decision of the subsidiary were an act or decision of the company (subject, in the case of a non-wholly owned subsidiary, to law and to and any rights of the other shareholders). The acts and/or decisions of all subsidiaries will be aggregated with the acts and/or decisions of the company for the purposes of any thresholds that apply to such approval mechanisms.
- (b) The company, as the controlling shareholder of its subsidiaries, will, so far as is reasonably practicable, ensure that the constitution of its subsidiaries is amended to give effect to rule 7.11(a).
- (c) In this clause 7.11:
  - (1) "subsidiary" means a body corporate that is controlled by the company; and
  - (2) "control" has the definition given to it in section 50AA of the Corporations Act 2001 (Cwlth).

## 8 DIRECTORS

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### 8.1 APPOINTMENT, RETIREMENT AND REMOVAL OF DIRECTORS

- (a) The minimum number of directors is 4. The maximum number of directors is to be fixed by the directors, but may not be more than 11 unless the company in general meeting resolves otherwise. The directors must not determine a maximum which is less than the number of directors in office at the time the determination takes effect.
- (b) Members may appoint a director, or approve or reject a director appointed by the directors. However, in the following circumstances, the directors may appoint an individual to be a director:
  - (1) to fill a casual vacancy where the number of directors is, or will be, below the minimum number of directors specified in rule 8.1(a); and
  - (2) in order to comply with any applicable laws, regulations or the Listing Rules, including (without limitation) any Listing Rule requirements in relation to the composition of the Board and any Board committees,
- (c) A director appointed by the directors under rule 8.1(b), holds office until the conclusion of the next general meeting following his or her appointment.
- (d) No director may hold office without re-election beyond the third AGM following the meeting at which the director was last elected or re-elected.
- (e) To the extent that the Listing Rules require an election of directors to be held and no director would otherwise be required (by rules 8.1(c) or 8.1(d)) to submit for election or re-election the director to retire is any director who wishes to retire and offer himself or herself for re-election, otherwise it is the director who has been longest in office since their last election or appointment. As between directors who were last elected or appointed on the same day, the director to retire must be decided by lot (unless they can agree among themselves).
- (f) The directors to retire under rule 8.1(d) or 8.1(e) is decided having regard to the composition of the Board of directors at the date of the notice calling the AGM. A director is not required to retire and is not relieved from retiring because of a change in the number or identity of the directors after the date of the notice but before the meeting closes.
- (g) The company may by resolution at an AGM fill an office vacated by a director under rules 8.1(c), 8.1(d), 8.1(e), 8.1(l) or 8.2 by electing or re-electing an eligible person to that office.
- (h) The retirement of a director from office under this constitution and the re-election of a director or the election of another person to that office (as the case may be) takes effect at the conclusion of the general meeting at which the retirement and re-election or election occur.
- (i) A person is eligible for election to the office of a director at a general meeting only if:
  - (1) the person is in office as a director immediately before that meeting;
  - (2) the person has been nominated by the directors for election at that meeting;

- (3) where the person is a member, he or she has at least 35 Business Days or, in the case of a general meeting the directors have been duly requested by members under the Act to call, at least 30 Business Days but, in each case, no more than 90 Business Days before the meeting, given the company a notice signed by him or her stating the member's desire to be a candidate for election at that meeting; or
  - (4) where the person is not a member, a member intending to nominate the person for election at that meeting has, at least 35 Business Days and, in the case of a general meeting the directors have been duly requested by members under the Act to call, at least 30 Business Days but, in each case, no more than 90 Business Days before the meeting, given the company a notice signed by the member stating the member's intention to nominate the person for election, and a notice signed by the person stating his or her consent to the nomination.
- (j) A partner, employer or employee of an auditor of the company may not be appointed or elected as a director.
  - (k) Whether or not a director's appointment was expressed to be for a specified period:
    - (1) the company by ordinary resolution; or
    - (2) members, holding a majority of the issued shares of the company conferring the right to vote, by writing delivered to the company, may remove a director from office.

## **8.2 VACATING OFFICE**

In addition to the circumstances prescribed by the Act and this constitution, and notwithstanding rule 7.10 the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (c) is convicted on indictment of an offence and the directors do not within one month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- (d) fails to attend more than 2 consecutive meetings of the directors without leave of absence from the directors and a majority of the other directors have not, within 14 days of having been given a notice by the secretary giving details of the absence, resolved that leave of absence be granted;
- (e) resigns by written notice to the company.

## **8.3 REMUNERATION**

- (a) Each director is entitled to such remuneration from the company for his or her services as approved by shareholders in accordance with rule 7.10, but the

total amount provided to all directors for their services as directors must not exceed in aggregate in any financial year the amount fixed by the company in general meeting.

- (b) When calculating a director's remuneration for the purposes of rule 8.3(a), any amount paid by the company or related body corporate:
  - (1) to a superannuation, retirement or pension fund for a director so that the company is not liable to pay the superannuation guarantee charge or similar statutory charge is to be included; and
  - (2) for any insurance premium paid or agreed to be paid for a director under rule 10.4 is to be excluded.
- (c) Remuneration under rule 8.3(a) may be provided in such manner that the directors decide, including by way of non cash benefit, such as a contribution to a superannuation fund.
- (d) The remuneration is taken to accrue from day to day.
- (e) The remuneration of a director (who is not an executive director) must not include a commission on, or a percentage of, profits or operating revenue.
- (f) The directors are entitled to be paid all travelling and other expenses they incur in attending to the company's affairs, including attending and returning from general meetings of the company or meetings of the directors or of committees of the directors.
- (g) If a director, with the concurrence of the directors, performs extra services or makes any special exertions for the benefit of the company, the directors may cause that director to be paid out of the funds of the company such special and additional remuneration as the directors decide is appropriate having regard to the value to the company of the extra services or special exertions. Any amount paid will not form part of the aggregate remuneration permitted under rule 8.3(a).
- (h) If a director is also an officer of the company or of a related body corporate in a capacity other than director, any remuneration that director may receive for acting as that officer may be either in addition to or instead of that director's remuneration under rule 8.3(a).
- (i) The directors may:
  - (1) at any time after a director dies or ceases to hold office as a director for any other reason, pay or provide to the director or a legal personal representative, spouse, relative or dependant of the director, in addition to the remuneration of that director under rule 8.3(a), a pension or benefit for past services rendered by that director; and
  - (2) direct and coordinate the company to enter into a contract with the director or a legal personal representative, spouse, relative or dependant of the director to give effect to such a payment or provide for such a benefit.
- (j) The directors may establish or support, or assist in the establishment or support of, funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the directors or former directors

and grant pensions and allowances to those persons or their dependants either by periodic payment or a lump sum.

#### **8.4 DIRECTOR NEED NOT BE A MEMBER**

- (a) A director is not required to hold any shares in the company to qualify for appointment.
- (b) A director is entitled to attend and speak at general meetings and at meetings of the holders of a class of shares, even if he or she is not a member or a holder of shares in the relevant class.

#### **8.5 DIRECTORS MAY CONTRACT WITH THE COMPANY AND HOLD OTHER OFFICES**

- (a) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.
- (b) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with any regulation made under rule 8.5(a).
- (c) A director is not disqualified from contracting or entering into an arrangement with the company as vendor, purchaser or in another capacity, merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (d) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (e) A director who is interested in any arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with the disclosure requirements applicable to the director under rule 8.5(a) and under the Act regarding that interest.
- (f) A director may hold any other office or position (except auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office or position on terms (including remuneration and tenure) the directors decide.
- (g) A director may be or become a director or other officer of, or interested in, any related body corporate or any other body corporate associated with the company, and need not account to the company for any remuneration or other benefits the director receives as a director or officer of, or from having an interest in, that body corporate.
- (h) A director who has an interest in a matter that is being considered at a meeting of directors may, despite that interest, vote, be present and be counted in a quorum at the meeting, unless that is prohibited by the Act. No



act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a director fails to comply with that prohibition.

- (i) The directors may exercise the voting rights given by shares in any corporation held or owned by the company in any way the directors decide. This includes voting for any resolution appointing a director as a director or other officer of that corporation or voting for the payment of remuneration to the directors or other officers of that corporation. A director may, if the law permits, vote for the exercise of those voting rights even though he or she is, or may be about to be appointed, a director or other officer of that other corporation and, in that capacity, may be interested in the exercise of those voting rights.
- (j) A director who is interested in any contract or arrangement may, despite that interest, witness the fixing of the Seal to any document evidencing or otherwise connected with that contract or arrangement.

## **8.6 POWERS AND DUTIES OF DIRECTORS**

- (a) The directors are responsible for managing the business of the company and may exercise all powers and do all things that are within the company's power and are not expressly required by the Act or this constitution to be exercised by the company in a general meeting or require shareholder approval in accordance with rule 7.10.
- (b) Subject to rules 7.10 and 8.7, the directors may exercise all the powers of the company:
  - (1) to borrow or raise money in any other way;
  - (2) to charge any of the company's property or business or any of its uncalled capital; and
  - (3) to issue debentures or give any security for a debt, liability or obligation of the company or of any other person.
- (c) Subject to rules 7.10 and 8.7, debentures or other securities may be issued on the terms and at prices decided by the directors, including bearing interest or not, with rights to subscribe for, or exchange into, shares or other securities in the company or a related body corporate or with special privileges as to redemption, participating in share issues, attending and voting at general meetings and appointing directors.
- (d) Subject to rules 7.10 and 8.7, the directors may:
  - (1) appoint or employ any person as an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for any period and on any other conditions they decide;
  - (2) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (3) remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.
- (e) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the directors decide.
- (f) Nothing in this rule 8.6 limits the general nature of rule 8.6(a).

## **8.7 POWERS AND DUTIES OF THE BOARD**

The Board has the following powers and duties:

- (a) approve the company's strategic objectives and five-year corporate plan;
- (b) approve the annual production plan, annual sales plan, annual operational expenditure plan, annual capital expenditure plan and annual financial budget of the company;
- (c) a director may be appointed by the directors to fill a vacancy under rule 8.1(b), but such appointment shall be reviewed at the next general meeting following his or her appointment and the members are entitled to veto such appointment;
- (d) approve plans for the establishment of, and changes to, the internal management structure of the company;
- (e) approve the appointment, the dismissal and the succession plan of the senior executive officers, and appoint and remove the CFO and the Company Secretary on the recommendation of the chairperson of the Board;
- (f) approve the role, duties, responsibilities, annual performance, performance indicators, the salary and other benefits of the senior executive officers;
- (g) approve and monitor the process used to evaluate the performance of senior executive officers;
- (h) approve systems of internal control and risk management, the company's human resources and remuneration policy, and other fundamental policies;
- (i) review and approve any significant external communications by the company if there is an emergency affecting production, operation or safety;
- (j) approve any program for increasing the issued capital of the company, subject to shareholder approval where required under this constitution and disclosure obligations;
- (k) approve any single or accumulated investments in the last 12 months that are less than A\$100 million, and ensure that the appropriate disclosures are made, the appropriate regulators in Australia and the Peoples Republic of China (PRC) are notified (if required) and that relevant approvals as may be required are obtained in relation to investments;
- (l) approve any single or accumulated disposals in the last 12 months of the assets of the company that are less than A\$100 million, and ensure that the appropriate disclosures are made, the appropriate regulators in Australia and the Peoples Republic of China (PRC) are notified (if required) and that relevant approvals as may be required are obtained in relation to disposals of assets;
- (m) approve the issuing of any debentures, or any borrowing by the company or other means of financing which is:
  - (1) no more than the value of 20% of the net assets of the consolidated group as set out in the most recent consolidated, audited financial statements of the company; and
  - (2) causes the company to have a gearing (total debt/total assets) no more than 60%;
- (n) approve any single guarantee entered into by the company as guarantor for its subsidiaries for business purposes of no more than \$100 million and

accumulated guarantees of no more than \$200 million in the last 12 months, including but not limited to any mortgage, pledge or guarantee of any assets of the company provided always that the company must not offer, provide or purport to provide any guarantee in any form in respect of obligations of enterprises or individuals outside of the company group;

- (o) decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the company;
- (p) determine the remuneration of the company's external auditor for temporary work outside the scope of the annual audit;
- (q) determine the level of insurance and approve the purchase of any insurance for director, senior executive officers or certain key staff of the company;
- (r) approve the creation of any reserve from the revaluation of any assets or the cancellation of any such reserve if required or permitted by the Australian accounting standards;
- (s) approve any significant operational and external communications by the company other than those that are to be approved by the shareholders;
- (t) propose the terms upon which shares in the company (or options or rights in respect of shares in the company) are made available to senior executive officers and employees of the company under an employee incentive scheme;
- (u) consider and, where appropriate, recommend any changes to this constitution;
- (v) monitor the compliance of the company's key corporate policies and protocols, relevant agreement and daily operations;
- (w) oversee the process that management has in place to identify and manage business opportunities and risks; and
- (x) fulfil such other responsibilities as are allocated to it by this constitution and the shareholders from time to time.

The Board may also exercise all powers of the company which are not required to be exercised by the shareholders under this constitution.

## **8.8 PROCEEDINGS OF DIRECTORS**

- (a) The directors may meet together to attend to business and adjourn and otherwise regulate their meetings as they decide.
- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, as far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A meeting by telephone or other electronic means is to be taken to be held at the place where the chairperson of the meeting is or at such other place the chairperson of the meeting decides on, as long as at least one of the directors involved was at that place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.

## **8.9 CALLING MEETINGS OF DIRECTORS**

- (a) The chairperson of the directors or any 3 directors may, whenever they think fit, call a meeting of the directors.
- (b) A secretary must, if requested by the chairperson of the directors or any 3 directors, call a meeting of the directors.

## **8.10 NOTICE OF MEETINGS OF DIRECTORS**

- (a) Notice of a meeting of directors must be given to each person who is, at the time the notice is given:
  - (1) a director, except a director on leave of absence approved by the directors; or
  - (2) an alternate director appointed under rule 8.15 by a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
  - (1) must specify the time and place of the meeting;
  - (2) must lay out the matters to be approved by the directors;
  - (3) may, if necessary, be given immediately before the meeting; and
  - (4) may be given in person or by post or by telephone, fax or other electronic means.
- (c) A director or alternate director may waive notice of a meeting of directors by giving notice to that effect in person or by post or by telephone, fax or other electronic means.
- (d) Failure to give a director or alternate director notice of a meeting of directors does not invalidate anything done or any resolution passed at the meeting if:
  - (1) the failure occurred by accident or inadvertent error; or
  - (2) the director or alternate director attended the meeting or waived notice of the meeting (whether before or after the meeting).
- (e) A person who attends a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

## **8.11 QUORUM AT MEETINGS OF DIRECTORS**

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) Unless the directors decide differently, at least half of the directors constitute a quorum.
- (c) If there is a vacancy in the office of a director, the remaining directors may act provided that if their number is not sufficient to constitute a quorum, they may only act in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

## **8.12 CHAIRPERSON AND DEPUTY CHAIRPERSON OF DIRECTORS**

- (a) Members holding a majority of the issued shares of the company conferring the right to vote may nominate a director to the office of chairperson of directors and may elect one or more directors to the office of deputy chairperson of directors by writing delivered to the company. One Vice Chair, who is nominated by the Majority Shareholders, will be appointed by the Board to be the CEC and assume the duties of the CEC as provided for in the Board charter and the Executive Committee charter. The directors may decide the period for which those offices will be held.
- (b) The chairperson of directors is entitled (if present within 10 minutes after the time appointed for the meeting and willing to act) to preside as chairperson at a meeting of directors.
- (c) If at a meeting of directors:
- (1) there is no chairperson of directors;
  - (2) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
  - (3) the chairperson of directors is present within that time but is not willing or declines to act as chairperson of the meeting,
- the deputy chairperson if any, if then present and willing to act, is entitled to be chairperson of the meeting or if the deputy chairperson is not present or is unwilling or declines to act as chairperson of the meeting, the directors present must elect one of themselves to chair the meeting.
- (d) The duties of the chairperson include to:
- (1) chair Board meetings;
  - (2) establish the agenda for Board meetings;
  - (3) chair meetings of shareholders, including the annual general meeting of the company and ad hoc meetings of the shareholders;
  - (4) be kept fully informed by senior management of all material matters which may be relevant to directors, in their capacity as directors of the company;
  - (5) provide guidance and mentoring to the CEC and the CEO;
  - (6) ensure the process of Board evaluation is conducted;
  - (7) oversee investor relationship management and overall investor communication strategy or delegate it to other directors and/or senior executive officers;
  - (8) exercise the casting vote if the votes are equal on a proposed resolution. If the chairperson is not present at a meeting of directors, the chairperson may, in his or her discretion, nominate another director to have a casting vote in the chairperson's absence by written notice to the Board; and
  - (9) fulfil such other responsibilities as are allocated by this constitution from time to time.
- (e) The duties of a vice chairperson include to:
- (1) chair Board meetings if the chairperson is not able to be present at the meeting;

- (2) chair meetings of shareholders, including the annual general meeting of the company and ad hoc meetings of the shareholders if the chairperson is not able to be present at the meeting; and
- (3) fulfil such other responsibilities as are allocated by the chairperson from time to time.

### **8.13 DECISIONS OF DIRECTORS**

- (a) The directors, at a meeting at which a quorum is present, may exercise any authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present entitled to vote on the matter.
- (c) If the votes are equal on a proposed resolution, the chairperson of the directors has a casting vote. If the chairperson of the directors is not present at a meeting of directors, the chairperson may, in his or her discretion, nominate another director to have a casting vote in the chairperson's absence by written notice to the Board.

### **8.14 WRITTEN RESOLUTIONS**

- (a) If:
  - (1) all of the directors (other than any director on leave of absence approved by the directors, any director who disqualifies himself or herself from considering the resolution in question for potential conflicts of interest and any director who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and
  - (2) the directors who sign or consent to the resolution would have constituted a quorum at a meeting of directors held to consider that resolution,then the resolution is taken to have been passed by a meeting of the directors.
- (b) A director may consent to a resolution by:
  - (1) signing the document containing the resolution (or a copy of that document);
  - (2) giving to the company at its registered office a written notice (including by fax or other electronic means) addressed to the secretary or to the chairperson of directors signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (3) telephoning the secretary or the chairperson of directors and signifying assent to the resolution and clearly identifying its terms.

### **8.15 ALTERNATE DIRECTORS**

- (a) A director may, with the approval of a majority of the other directors, appoint a person to be the director's alternate director for such period as the director decides.

- (b) An alternate director may, but need not, be a member or a director of the company.
- (c) One person may act as alternate director to more than one director.
- (d) In the absence of the appointor, an alternate director may exercise any powers (except the power to appoint an alternate director) that the appointor may exercise.
- (e) An alternate director is entitled, if the appointor does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointor.
- (f) An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (g) An alternate director, when acting as a director, is responsible to the company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.
- (h) The office of an alternate director is vacated if and when the appointor vacates office as a director.
- (i) The appointment of an alternate director may be terminated or suspended at any time by the appointor or by a majority of the other directors.
- (j) An appointment, or the termination or suspension of an appointment of an alternate director, must be in writing and signed and takes effect only when the company has received notice in writing of the appointment, termination or suspension.
- (k) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed or the rotation of directors under this constitution.
- (l) In determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
- (m) An alternate director is not entitled to receive any remuneration as a director from the company otherwise than out of the remuneration of the director appointing the alternate director but is entitled to travelling, hotel and other expenses reasonably incurred for the purpose of attending any meeting of directors at which the appointor is not present.

#### **8.16 DELEGATION TO A COMMITTEES OF DIRECTORS**

- (a) The directors may delegate any powers to a committee of directors.
- (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors, except to the extent they are contrary to any direction given under rule 8.16(b).

#### **8.17 DELEGATION TO A DIRECTOR**

- (a) The directors may delegate any of their powers to one director.

- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The acceptance of a delegation of powers by a director may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 8.3(g).

### **8.18 VALIDITY OF ACTS**

An act done by a meeting of directors, a committee of directors or a person acting as a director is not invalidated by:

- (a) a defect in the appointment of a person as a director or a member of a committee; or
- (b) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the directors, committee or person when the act was done.

## **9 SENIOR EXECUTIVE OFFICERS**

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Senior executive officers consist of the CEC, the CEO, the CFO and any other officers that the Board appoints as a member of the Executive Committee. The senior executive officers will keep timely communications.

### **9.1 EXECUTIVE DIRECTORS**

- (a) The directors may appoint one or more of the directors to any executive office with the company.
- (b) Unless the directors decide differently, an executive director's appointment as an employee automatically terminates if the executive director ceases to be a director.
- (c) An executive director may be referred to by any title the directors decide on.

### **9.2 EXECUTIVE COMMITTEE**

- (a) The Executive Committee will consist of the CEC, the CEO, the CFO, another director appointed by the Majority Shareholder, and such other members as the Board determines from time to time. The Board may approve the appointment of additional members to the Executive Committee or remove and replace members of the Executive Committee by resolution.
- (b) The functions of the Executive Committee are as follows:
  - (1) propose the company's strategic objectives and five-year corporate plan;
  - (2) propose the annual production plan, annual sales plan, annual operational expenditure plan, annual capital expenditure plan and annual financial budget of the company;
  - (3) propose plans for the establishment of, and changes to, the internal management structure of the company;



- (4) propose systems of internal control and risk management, the company's human resources and remuneration policy, and other fundamental policies;
- (5) propose the issuing of any debentures, or any borrowing by the company or other means of financing;
- (6) propose any guarantee or security entered into by the company as guarantor or grantor for its subsidiaries for business purposes, including but not limited to any mortgage, pledge or guarantee of any assets of the company;
- (7) propose the profit distribution plan and loss recovery plan of the company;
- (8) determine the monthly production and operation report and relevant senior managers' reports of daily operation, finance and management;
- (9) monitor the company's production and operational performance, financial position, including the company's cash flows, balance sheet and profit and loss statements; and
- (10) fulfil such other responsibilities as are allocated to it by this constitution and the Board from time to time.

### **9.3 CHAIR OF THE EXECUTIVE COMMITTEE**

- (a) The Majority Shareholders may nominate one director to the office of the CEC.
- (b) Subject to any Board direction or determination:
  - (1) the CEC will have the authority that is delegated to him or her by the Board; and
  - (2) the functions of the CEC will be set out in the Board charter and the Executive Committee charter.

### **9.4 CHIEF EXECUTIVE OFFICER**

Subject to any Board direction or determination:

- (a) the CEO will have the authority that is delegated to him or her by the Board; and
- (b) the functions of the CEO will be set out in the Board charter and the Executive Committee charter.

### **9.5 CHIEF FINANCIAL OFFICER**

Subject to any Board direction or determination:

- (a) the CFO will have the authority that is delegated to him or her by the Board; and
- (b) the functions of the CFO will be set out in the Board charter and the Executive Committee charter.

### **9.6 COMPANY SECRETARY**

- (a) The directors must appoint at least one secretary and may appoint additional secretaries.

- (b) The functions of the Company Secretary will be set out in the Board charter.

## **9.7 PROVISIONS APPLICABLE TO ALL SENIOR EXECUTIVE OFFICERS**

- (a) A reference in this rule 9.7 to a senior executive officer is to any senior executive officer of the company appointed under this rule 9.
- (b) Subject to rule 7.10, the appointment of a senior executive officer may be for the period, at the remuneration and on the conditions the directors decide.
- (c) To the extent the Listing Rules so require, the remuneration payable by the company to a senior executive officer must not include a commission on, or percentage of the operating revenue.
- (d) The directors may:
  - (1) delegate to or give a senior executive officer any powers, discretions and duties they decide;
  - (2) withdraw, suspend or vary any of the powers, discretions and duties given to a senior executive officer; and
  - (3) authorise the senior executive officer to delegate any of the powers, discretions and duties given to the senior executive officer.
- (e) Unless the directors decide differently, the office of a director who is employed in an executive capacity by the company or by a subsidiary of the company automatically becomes vacant if the director ceases to be so employed.
- (f) An act done by a person acting as a senior executive officer is not invalidated by:
  - (1) a defect in the appointment of that senior executive officer;
  - (2) the person being disqualified from being a senior executive officer; or
  - (3) the person having vacated office,if the person did not know that circumstance when the act was done.

## **10 INDEMNITY AND INSURANCE**

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### **10.1 PERSONS TO WHOM RULES 10.2 AND 10.4 APPLY**

Rules 10.2 and 10.4 apply:

- (a) to each person who is or has been a director, alternate director or senior executive officer (within the meaning of rule 9.7(a)) of the company; and
- (b) to such other officers or former officers of the company or of its related bodies corporate as the directors in each case determine;  
(each an **Officer** for the purposes of this rule).

### **10.2 INDEMNITY**

The company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as a director or an officer of the company.

### **10.3 EXTENT OF INDEMNITY**

The indemnity in rule 10.2:

- (a) is enforceable without the Officer having to first incur any expense or make any payment;
- (b) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the company; and
- (c) applies to Liabilities incurred both before and after the adoption of this constitution.

### **10.4 INSURANCE**

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for each Officer (director, senior executive officers or certain key staff) against any Liability incurred by the Officer as an officer of the company including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### **10.5 SAVINGS**

Nothing in rule 10.2 or 10.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules;
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply; or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into prior to the adoption of this constitution.

### **10.6 DEED**

The company may enter into a deed with any Officer to give effect to the rights conferred by this rule 10 or the exercise of a discretion under this rule 10 on such terms as the directors think fit which are not inconsistent with this rule 10.

## **11 OTHER MATTERS**

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### **11.1 FINANCIAL MATTERS**

- (a) Subject to the Majority Shareholders observing the confidentiality obligations set out in the Separation Agreement, the company will comply with its obligations under that agreement, including:
  - (1) adopt and implement a financial and management reporting information technology system and platform (ERP) that is identical to

the system and platform implemented by the Majority Shareholders, in order to provide the Majority Shareholders with access to financial and other information; and;

- (2) if determined by the directors, the company will establish onshore or offshore accounts at relationship banks nominated by the Majority Shareholders and that the Majority Shareholders will be able to view the related information under those accounts. However, any such bank accounts will be in the name of the company and the company will independently transact on those accounts.
- (b) Subject to the Act and the Listing Rules, and to facilitate compliance by the Majority Shareholders with its own filing obligations, the company will disclose the following reports on the below timeline:
- (1) quarterly report as required by the ASX within 20 calendar days after the end of each quarter;
  - (2) half yearly financial report within 50 calendar days after the end of each financial half year; and
  - (3) annual financial report within 60 calendar days after the end of each financial year.

## **11.2 RECORD DATES**

Subject to applicable laws, regulations and the Listing Rules and notwithstanding any other rules in this constitution, the company or the directors may fix any date as the record date for:

- (a) determining the members entitled to receive any dividend, distribution, allotment or issue;
- (b) determining the members entitled to receive notice of, and to vote at, any general meeting of the company; and
- (c) any other corporate action requiring a record date to be set.

## **12 WINDING UP**

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### **12.1 DISTRIBUTING SURPLUS**

Subject to this constitution and the rights or restrictions attached to any shares or class of shares:

- (a) if the company is wound up and the property of the company available for distribution among the members is more than sufficient to pay:
  - (1) all the debts and liabilities of the company; and
  - (2) the costs, charges and expenses of the winding up,the excess must be divided among the members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in rule 12.1(a), any amount unpaid on a share is to be treated as property of the company;

- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under rule 12.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under rule 12.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the company.

## **12.2 DIVIDING PROPERTY**

- (a) If the company is wound up, the liquidator may, with the sanction of a special resolution:
  - (1) divide among the members the whole or any part of the company's property; and
  - (2) decide how the division is to be carried out as between the members or different classes of members.
- (b) A division under rule 12.2(a) need not accord with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under rule 12.2(a) does not accord with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Act.
- (d) If any of the property to be divided under rule 12.2(a) includes securities with a liability to calls, any person entitled under the division to any of the securities may, within 10 days after the passing of the special resolution referred to in rule 12.2(a), by written notice direct the liquidator to sell the person's proportion of the securities and account for the net proceeds. The liquidator must, if practicable, act accordingly.
- (e) Nothing in this rule 12.2 takes away from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (f) Rule 4.3 applies, so far as it can and with any necessary changes, to a division by a liquidator under rule 12.2(a) as if references in rule 4.3 to:
  - (1) the directors were references to the liquidator; and
  - (2) a distribution or capitalisation were references to the division under rule 12.2(a).

## **13 INSPECTION OF AND ACCESS TO RECORDS**

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- (a) A person who is not a director or a Company Secretary does not have the right to inspect any of the Board papers, books, records or documents of the company, except as provided by law, or this constitution, or as authorised by the directors or the Majority Shareholders.
- (b) The company may enter into contracts with its directors or former directors agreeing to provide continuing access for a specified period after the director ceases to be a director to Board papers, books, records and documents of the company which relate to the period during which the director or former director was a director on such terms and conditions as the directors think fit and which are not inconsistent with this rule 13.

- (c) The company may procure that its subsidiaries provide similar access to Board papers, books, records or documents as that set out in rules 13(a) and 13(b).
- (d) This rule 13 does not limit any right the directors or former directors otherwise have.

## **14 SEALS**

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### **14.1 MANNER OF EXECUTION**

Without limiting the ways in which the company can execute documents under the Act and subject to this constitution, the company may execute a document if the document is signed by:

- (a) 2 directors;
- (b) a director and a secretary; or
- (c) any other person or persons authorised by the directors for that purpose.

### **14.2 COMMON SEAL**

The company may have a common seal. If the company has a common seal, rules 14.3 to 14.7 apply.

### **14.3 SAFE CUSTODY OF SEAL**

The directors must provide for the safe custody of the Seal.

### **14.4 USING THE SEAL**

Subject to rule 14.7 and unless a different procedure is decided by the directors, if the company has a common seal any document to which it is affixed must be signed by:

- (a) 2 directors;
- (b) by a director and a secretary; or
- (c) a director and another person appointed by the directors to countersign that document or a class of documents in which that document is included.

### **14.5 SEAL REGISTER**

- (a) The company may keep a Seal register and, on affixing the Seal to any document (other than a certificate for securities of the company) may enter in the register particulars of the document, including a short description of the document.
- (b) The register, or any details from it that the directors require, may be produced at meetings of directors for noting the use of the Seal since the previous meeting of directors.

## **14.6 DUPLICATE SEALS AND CERTIFICATE SEALS**

- (a) The company may have one or more duplicate seals for use in place of its common seal outside the state or territory where its common seal is kept. Each duplicate seal must be a facsimile of the common seal of the company with the addition on its face of the words 'duplicate seal' and the name of the place where it is to be used.
- (b) **A document sealed with a duplicate seal, or a certificate seal as provided in rule 14.7, is to be taken to have been sealed with the common seal of the company.**

## **14.7 SEALING AND SIGNING CERTIFICATES**

The directors may decide either generally or in a particular case that the Seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the company by some mechanical or other means.

## **15 NOTICES**

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### **15.1 NOTICES BY THE COMPANY TO MEMBERS**

- (a) Without limiting any other way in which notice may be given to a member under this constitution, the Act or the Listing Rules, the company may give a notice to a member by:
  - (1) delivering it personally to the member;
  - (2) sending it by prepaid post to the member's address in the register of members or any other address the member supplies to the company for giving notices; or
  - (3) sending it by fax or other electronic means (including providing a URL link to any document or attachment) to the fax number or electronic address the member has supplied to the company for giving notices.
- (b) The company may give a notice to the joint holders of a share by giving the notice in the way authorised by rule 15.1(a) to the joint holder who is named first in the register of members for the share.
- (c) The company may give a notice to a person entitled to a share as a result of a Transmission Event by delivering it or sending it in the manner authorised by rule 15.1(a) addressed to the name or title of the person, to:
  - (1) the address, fax number or electronic address that person has supplied to the company for giving notices to that person; or
  - (2) if that person has not supplied an address, fax number or electronic address, to the address, fax number or electronic address to which the notice might have been sent if that Transmission Event had not occurred.
- (d) A notice given to a member under rules 15.1(a) or 15.1(b) is, even if a Transmission Event has occurred and whether or not the company has notice of that occurrence:

- (1) duly given for any shares registered in that person's name, whether solely or jointly with another person; and
  - (2) sufficiently served on any person entitled to the shares because of the Transmission Event.
- (e) A notice given to a person who is entitled to a share because of a Transmission Event is sufficiently served on the member in whose name the share is registered.
- (f) A person who, because of a transfer of shares, becomes entitled to any shares registered in the name of a member, is taken to have received every notice which, before that person's name and address is entered in the register of members for those shares, is given to the member complying with this rule 15.1.
- (g) A signature to any notice given by the company to a member under this rule 15.1 may be printed or affixed by some mechanical or other electronic means.
- (h) Where a member does not have a registered address or where the company believes that member is not known at the member's registered address, all notices are taken to be:
  - (1) given to the member if the notice is exhibited in the company's registered office for a period of 48 hours; and
  - (2) served at the commencement of that period,unless and until the member informs the company of the member's address.

## **15.2 NOTICES BY THE COMPANY TO DIRECTORS**

The company may give a notice to a director or alternate director by:

- (a) delivering it personally to him or her;
- (b) sending it by prepaid post to his or her usual residential or business address, or any other address he or she has supplied to the company for giving notices; or
- (c) sending it by fax or other electronic means to the fax number or electronic address he or she has supplied to the company for giving notices.

## **15.3 NOTICES BY DIRECTORS TO THE COMPANY**

A director or alternate director may give a notice to the company by:

- (a) delivering it to the company's registered office;
- (b) sending it by prepaid post to the company's registered office; or
- (c) sending it by fax or other electronic means to the principal fax number or electronic address at the company's registered office.

## **15.4 TIME OF SERVICE**

- (a) A notice from the company properly addressed and posted is taken to be served:
  - (1) if it is a notice concerning a general meeting, at 10.00am on the day after the date it is posted; or



- (2) in any other case, at the time the letter would be delivered in the ordinary course of post.
- (b) A certificate signed by a secretary or officer of the company to the effect that a notice was duly posted under this constitution is conclusive evidence of that fact.
- (c) Where the company sends a notice by fax, the notice is taken as served at the time the fax is sent if the correct fax number appears on the facsimile transmission report produced by the sender's fax machine.
- (d) Where the company sends a notice by electronic transmission, the notice is taken as served at the time the electronic transmission is sent if a message indicating receipt has been received by the company.
- (e) Where the company gives a notice to a member by any other means permitted by the Act relating to the giving of notices and electronic means of access to them, the notice is taken as given at 10.00am on the day after the date on which the member is notified that the notice is available.
- (f) Where a given number of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

## **15.5 OTHER COMMUNICATIONS AND DOCUMENTS**

Rules 15.1 to 15.4 (inclusive) apply, so far as they can and with any necessary changes, to serving any communication or document.

## **15.6 WRITTEN NOTICES**

A reference in this constitution to a written notice includes a notice given by fax or other electronic means. A signature to a written notice need not be handwritten.

## **16 GENERAL**

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### **16.1 SUBMISSION TO JURISDICTION**

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the state or territory in which the company is taken to be registered for the purposes of the Act, the Federal Court of Australia and the courts which may hear appeals from those courts.

### **16.2 PROHIBITION AND ENFORCEABILITY**

- (a) Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.