

**BYE-LAWS OF SYLVANIA PLATINUM LIMITED**

**(Incorporating new Bye-laws 82-93)**

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## INTERPRETATION

### 1. Definitions

1.1 In these Bye-laws, the following words and expressions shall, where not inconsistent with the context, have the following meanings, respectively:

Act	the Companies Act 1981 as amended from time to time;
AIM	the AIM market operated by the London Stock Exchange Plc;
Alternate Director	an alternate director appointed in accordance with these Bye-laws;
Applicable Law	the Act, the Listing Rules, the Operating Rules and all other laws, acts and regulations applicable to the Company;
Auditor	includes an individual or partnership;
Bermuda	the Islands of Bermuda;
Board	the board of directors appointed or elected pursuant to these Bye-laws and acting by resolution in accordance with the Act and these Bye-laws or the directors present at a meeting of directors at which there is a quorum;
Business Day	a day on which banks are open for business in Bermuda;

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Bye-laws	means these Bye-laws in their present form or as may be amended from time to time;
Certificated Share	a share in respect of which a certificate evidencing ownership has been issued by the Company in accordance with Bye-law 7.1;
Company	Sylvania Platinum Limited, a company incorporated in Bermuda on 24 August 2010 and in respect of which these Bye-laws are approved and confirmed;
Director	a director of the Company and shall include an Alternate Director;
DTR5	Chapter 5 of the Disclosure and Transparency Rules of the FSA Handbook;
FSA Handbook	the UK Financial Services Authority Handbook (as amended from time to time);
Group	the Company and every company and other entity which is for the time being controlled by or under common control with the Company (for these purposes "control" means the power to direct the management or policies of the person in question, whether by means of an ownership interest or otherwise);
Listing Rules	the listing rules of the Stock Exchange, except to the extent of any express waiver by the Stock Exchange in their application to the Company;

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Member	the person registered in the Register of Members as the holder of shares in the Company and, when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register of Members as one of such joint holders or all of such persons, as the context so requires;
notice	written notice as further defined in these Bye-laws unless otherwise specifically stated;
Officer	any person appointed by the Board to hold an office in the Company;
Operating Rules	the operating rules of the Settlement Facility Provider, except to the extent of any relief given by the Settlement Facility Provider in their application to the Company;
Register of Directors and Officers	the register of directors and officers referred to in these Bye-laws;
Register of Members	the register of members referred to in these Bye-laws and includes any branch registers thereof;
Resident Representative	any person (including, in the circumstances permitted by the Act, any company) appointed to act as resident representative and includes any deputy or assistant resident representative;

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Secretary	the person appointed to perform any or all of the duties of secretary of the Company and includes any deputy or assistant secretary;
Settlement Facility Provider	the entity which provides the facility for the electronic settlement of shares and other services in connection with the settlement of transfers of shares;
Stock Exchange	means AIM;
Treasury Share	a share of the Company that was or is treated as having been acquired and held by the Company and has been held continuously by the Company since it was so acquired and has not been cancelled; and
Uncertificated Share	means a share in respect of which a holding statement has been issued in accordance with Bye-law 7.2.

**1.2** In these Bye-laws, where not inconsistent with the context:

- (a) words denoting the plural number include the singular number and vice versa;
- (b) words denoting the masculine gender include the feminine gender;
- (c) words importing persons include companies, associations or bodies of persons whether corporate or not;
- (d) the word:
  - (i) "may" shall be construed as permissive; and



- (ii) "shall" shall be construed as imperative; and
  - (e) unless otherwise provided herein, words or expressions defined in the Act shall bear the same meaning in these Bye-laws.
- 1.3** In these Bye-laws expressions referring to writing or its cognates shall, unless the contrary intention appears, include facsimile, printing, lithography, photography, electronic mail and other modes of representing words in visible form.
- 1.4** Headings used in these Bye-laws are for convenience only and are not to be used or relied upon in the construction hereof.
- 1.5** In these Bye-laws, a reference to the Listing Rules, the Operating Rules or the Stock Exchange has effect only if, at the relevant time the Company is included in the official list of the Stock Exchange.

## **SHARES**

### **2. Power to Issue Shares**

- 2.1** Subject to these Bye-laws and to any resolution of the Members to the contrary, and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares, the Board shall have the power to issue any unissued shares on such terms and conditions as it may determine.
- 2.2** Without limitation to the provisions of Bye-law 4, subject to the Act, any preference shares may be issued or converted into shares that (at a determinable date or at the option of the Company or the holder) are liable to be redeemed on such terms and in such manner as may be determined by the Board (before the issue or conversion).

### **3. Power of the Company to Purchase its Shares**

- 3.1** The Company may purchase its own shares for cancellation or acquire them as Treasury Shares in accordance with the Act on such terms as the Board shall think fit.

- 3.2 The Board may exercise all the powers of the Company to purchase or acquire all or any part of its own shares in accordance with the Act.

#### 4. Rights Attaching to Shares

- 4.1 As of 30 October 2015, the share capital of the Company is divided into a single class of common shares of par value US\$0.01 each (the "**Common Shares**").

By a resolution of the Members, the share capital of the Company may be divided into several classes of shares which, subject to Bye-law 4.3, shall have such preferred, deferred, qualified or special rights, privileges or conditions and par value as the Members may by resolution approve.

- 4.2 The holders of Common Shares shall, subject to these Bye-laws (including, without limitation, the rights attaching to Preference Shares):

- (a) be entitled to one vote per share;
- (b) be entitled to such dividends as the Board may from time to time declare;
- (c) in the event of a winding-up or dissolution of the Company, whether voluntary or involuntary or for the purpose of a reorganisation or otherwise or upon any distribution of capital, be entitled to the surplus assets of the Company; and
- (d) generally be entitled to enjoy all of the rights attaching to shares.

- 4.3 Where pursuant to Bye-law 4.1, the Members divide the share capital to include preference shares (the "**Preference Shares**"), the Board is authorised to provide for the issuance of the Preference Shares in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the terms, including designation, powers, preferences, rights, qualifications, limitations and restrictions of the shares of each such series (and, for the avoidance of doubt, such matters and the issuance of such Preference Shares shall not be deemed to vary the

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rights attached to the Common Shares or, subject to the terms of any other series of Preference Shares, to vary the rights attached to any other series of Preference Shares). The authority of the Board with respect to each series shall include, but not be limited to, determination of the following:

- (a) the number of shares constituting that series and the distinctive designation of that series;
- (b) the dividend rate on the shares of that series, whether dividends shall be cumulative and, if so, from which date or dates, and the relative rights of priority, if any, of the payment of dividends on shares of that series;
- (c) whether that series shall have voting rights, in addition to the voting rights provided by law, and if so, the terms of such voting rights;
- (d) whether that series shall have conversion or exchange privileges (including, without limitation, conversion into Common Shares), and, if so, the terms and conditions of such conversion or exchange, including provision for adjustment of the conversion or exchange rate in such events as the Board shall determine;
- (e) whether or not the shares of that series shall be redeemable or repurchaseable, and, if so, the terms and conditions of such redemption or repurchase, including the manner of selecting shares for redemption or repurchase if less than all shares are to be redeemed or repurchased, the date or dates upon or after which they shall be redeemable or repurchaseable, and the amount per share payable in case of redemption or repurchase, which amount may vary under different conditions and at different redemption or repurchase dates;
- (f) whether that series shall have a sinking fund for the redemption or repurchase of shares of that series, and, if so, the terms and amount of such sinking fund;

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- (g) the right of the shares of that series to the benefit of conditions and restrictions upon the creation of indebtedness of the Company or any subsidiary, upon the issue of any additional shares (including additional shares of such series or any other series) and upon the payment of dividends or the making of other distributions on, and the purchase, redemption or other acquisition by the Company or any subsidiary of any issued shares of the Company;
  - (h) the rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Company, and the relative rights of priority, if any, of payment in respect of shares of that series; and
  - (i) any other relative participating, optional or other special rights, qualifications, limitations or restrictions of that series.

**4.4** Any Preference Shares of any series which have been redeemed (whether through the operation of a sinking fund or otherwise) or which, if convertible or exchangeable, have been converted into or exchanged for shares of any other class or classes shall have the status of authorised and unissued Preference Shares of the same series and may be reissued as a part of the series of which they were originally a part or may be reclassified and reissued as part of a new series of Preference Shares to be created by resolution or resolutions of the Board or as part of any other series of Preference Shares, all subject to the conditions and the restrictions on issuance set forth in the resolution or resolutions adopted by the Board providing for the issue of any series of Preference Shares.

**4.5** At the discretion of the Board, whether or not in connection with the issuance and sale of any shares or other securities of the Company, the Company may issue securities, contracts, warrants or other instruments evidencing any shares, option rights, securities having conversion or option rights, or obligations on such terms, conditions and other provisions as are fixed by the Board, including, without limiting the generality of this authority, conditions that preclude or limit any person or persons owning or offering to acquire a specified number or percentage of the issued Common Shares, other shares,

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option rights, securities having conversion or option rights, or obligations of the Company or transferee of the person or persons from exercising, converting, transferring or receiving the shares, option rights, securities having conversion or option rights, or obligations.

- 4.6** All the rights attaching to a Treasury Share shall be suspended and shall not be exercised by the Company while it holds such Treasury Share and, except where required by the Act, all Treasury Shares shall be excluded from the calculation of any percentage or fraction of the share capital, or shares, of the Company.

## **5. Calls on Shares**

- 5.1** The Board may from time to time make such calls as it thinks fit upon the Members in respect of any moneys (whether in respect of nominal value or premium) unpaid on the shares allotted to or held by such Members (and not made payable at fixed times by the terms and conditions of issue) and, if a call is not paid on or before the day appointed for payment thereof, the Member may at the discretion of the Board be liable to pay the Company interest on the amount of such call at such rate as the Board may determine, from the date when such call was payable up to the actual date of payment. The Board may differentiate between the holders as to the amount of calls to be paid and the times of payment of such calls.
- 5.2** Any amount which by the terms of allotment of a share becomes payable upon issue or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall for all the purposes of these Bye-laws be deemed to be an amount on which a call has been duly made and payable on the date on which, by the terms of issue, the same becomes payable, and in case of non-payment all the relevant provisions of these Bye-laws as to payment of interest, costs and expenses, forfeiture or otherwise shall apply as if such amount had become payable by virtue of a duly made and notified call.

5.3 The joint holders of a share shall be jointly and severally liable to pay all calls and any interest, costs and expenses in respect thereof.

5.4 The Company may accept from any Member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up or become payable.

**6. Forfeiture of Shares**

6.1 If any Member fails to pay, on the day appointed for payment thereof, any call in respect of any share allotted to or held by such Member, the Board may, at any time thereafter during such time as the call remains unpaid, direct the Secretary to forward such Member a notice in writing in the form, or as near thereto as circumstances admit, of the following:

Notice of Liability to Forfeiture for Non-Payment of Call

[ ] (the "Company")

You have failed to pay the call of [amount of call] made on the [ ] day of [ ], 20[ ], in respect of the [number] share(s) [number in figures] standing in your name in the Register of Members of the Company, on the [ ] day of [ ], 20[ ], the day appointed for payment of such call. You are hereby notified that unless you pay such call together with interest thereon at the rate of [ ] per annum computed from the said [ ] day of [ ], 20[ ] at the registered office of the Company the share(s) will be liable to be forfeited.

Dated this [ ] day of [ ], 20[ ]

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[Signature of Secretary] By Order of the Board

- 6.2** If the requirements of such notice are not complied with, any such share may at any time thereafter before the payment of such call and the interest due in respect thereof be forfeited by a resolution of the Board to that effect, and such share shall thereupon become the property of the Company and subject to any Applicable Law, the Company may sell, otherwise dispose of or cancel a share which has been forfeited.
- 6.3** When any share has been forfeited, the Company must give notice in writing of the forfeiture to the Member who was registered as its holder immediately before the forfeiture. A failure by the Company to comply with any requirement in this Bye-Law 6.3 does not invalidate the forfeiture.
- 6.4** A Member whose share or shares have been so forfeited shall, notwithstanding such forfeiture, be liable to pay to the Company all calls owing on such share or shares at the time of the forfeiture, together with all interest due thereon and any costs and expenses incurred by the Company in connection therewith.
- 6.5** The Board may accept the surrender of any shares which it is in a position to forfeit on such terms and conditions as may be agreed. Subject to those terms and conditions, a surrendered share shall be treated as if it had been forfeited.

## **7. Share Certificates**

- 7.1** Subject to the Listing Rules and the Directors resolving not to issue certificates for shares, every Member shall be entitled to a certificate under the common seal of the Company (or a facsimile thereof) or bearing the signature (or a facsimile thereof) of a Director or Secretary or a person expressly authorized to sign specifying the number and, where appropriate, the class of shares held by such Member and whether the same are fully paid up and, if not, specifying the amount paid on such shares. The Board may by resolution determine, either generally or in a particular case, that any or all signatures on certificates may be printed thereon or affixed by mechanical means.

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- 7.2 Where certificates for shares are not issued pursuant to Bye-law 7.1, the Company shall issue or cause to be issued, to each Member, in accordance with the Listing Rules and the Operating Rules, statements of the holdings of shares registered in the Member's name.
- 7.3 The Company shall be under no obligation to complete and deliver a share certificate unless specifically called upon to do so by the person to whom the shares have been allotted.
- 7.4 If any share certificate shall be proved to the satisfaction of the Board to have been worn out, lost, mislaid, or destroyed the Board may cause a new certificate to be issued and request an indemnity for the lost certificate if it sees fit.
- 7.5 Notwithstanding any provisions of these Bye-laws:
- (a) the Directors shall, subject always to the Act and any other Applicable Laws and regulations and the facilities and requirements of any Settlement Facility Provider, have power to implement any arrangements they may, in their absolute discretion, think fit in relation to the evidencing of title to and transfer of Uncertificated Shares and to the extent such arrangements are so implemented, no provision of these Bye-laws shall apply or have effect to the extent that it is in any respect inconsistent with the holding or transfer of shares in uncertificated form; and
  - (b) unless otherwise determined by the Directors and as permitted by the Act and any other Applicable Laws and regulations, no person shall be entitled to receive a certificate in respect of any share for so long as the title to that share is evidenced otherwise than by a certificate and for so long as transfers of that share may be made otherwise than by a written instrument.

## 8. Liens



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- 8.1** The Company has a first ranking lien on each share registered in the name of a Member, the proceeds of sale of those shares and all dividends determined to be payable in respect of those shares for:
- (a) each unpaid call or instalment which is due but unpaid on those shares;
  - (b) all amounts which the Company is required by law to pay, and has paid, in respect of those shares or the forfeiture or sale of those shares; and
  - (c) subject to the Listing Rules, all interest and expenses due and payable to the Company under these Bye-laws.
- 8.2** Subject to the Applicable Law and any other applicable laws, the Company may sell a share of a Member to enforce a lien on that share if:
- (a) an amount due under that lien is due and payable;
  - (b) the Company gives that Member notice in writing:
    - (i) requiring payment of that amount, any interest on it and all expenses incurred by the Company by reason of non-payment; and
    - (ii) stating that the share is liable to be sold if that person does not pay to the Company, at the place specified in the notice, the amount specified in the notice within 10 Business Days (or any longer period specified) after the date of the notice; and
  - (c) that Member does not pay that amount in accordance with that notice.
- 8.3** Registration of a transfer of a share by a Company shall release any lien of the Company on that share in respect of any amount owing on that share, unless the Company gives notice in writing, to the person whom that share is transferred, of the amount owing.

## **9. Sales and Disposals**

- 9.1** The Company may:
- (a) receive the purchase money or consideration for shares sold or disposed of under Bye-laws 6 or 8;
  - (b) appoint a person to sign a transfer of shares to be sold or disposed of under Bye-laws 6 or 8;
  - (c) do all things necessary or desirable under any applicable laws to effect a transfer of shares to be sold or disposed of under Bye-laws 6 or 8; and
  - (d) enter into the Register of Members the name of the person to whom such shares are sold or disposed.
- 9.2** The person to whom a share is sold or disposed under Bye-laws 6 or 8 need not enquire whether the Company:
- (a) properly exercised its powers under Bye laws 6 or 8 (as appropriate) in respect of that share; or
  - (b) properly applied the proceeds of sale or disposal of those shares,
- and the title of that person shall not be affected by those matters.
- 9.3** The remedy (if any) of any person aggrieved by a sale or disposal of shares under Bye-law 6 or 8 is in damages only and against the Company exclusively.
- 9.4** A certificate in writing from the Company signed by a Director or Secretary that a share was sold or disposed of in accordance with Bye-law 6 or 8 (as appropriate) shall be sufficient evidence of those matters.
- 9.5** The Company must apply the proceeds of any sale or other disposal of any shares under Bye-law 6 or 8 in the following order:
- (a) the expense of the sale or other disposal;

- (b) the amounts due and unpaid in respect of those shares; and
- (c) the balance (if any) to the former registered holder of such shares, subject to the Company receiving any certificates in respect of those shares or an indemnity for any lost certificate as the Board sees fit.

**9.6** A person must pay interest under Bye-law 5, 6 or 8 to the Company:

- (a) at a rate the Directors resolve; or
- (b) if the Directors do not resolve, at 15% per annum,

and such interest shall accrue daily. The Company may capitalise such interest at any interval the Directors resolve.

## REGISTRATION AND TRANSFER OF SHARES

### **10. Register of Members**

**10.1** The Board shall cause to be kept in one or more books a Register of Members and shall enter therein the particulars required by the Act.

**10.2** The Register of Members shall be open to inspection without charge at the registered office of the Company on every business day, subject to such reasonable restrictions as the Board may impose, so that not less than two hours in each business day be allowed for inspection. The Register of Members may, after notice has been given in accordance with the Act, be closed for any time or times not exceeding in the whole thirty days in each year.

**10.3** Subject to the provisions of the Act, the Company may keep in any place outside Bermuda one or more branch registers.

### **11. Registered Holder Absolute Owner**

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The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not be bound to recognise any equitable claim or other claim to, or interest in, such share on the part of any other person

## 12. Transfer of Registered Shares

12.1 Subject to the Act and to such of the restrictions contained in these Bye-laws as may be applicable, shares may be transferred:

- (a) in the case of Certificated Shares and Uncertificated Shares not traded on the Stock Exchange, by an instrument of transfer in accordance with Bye-law 13; or
- (b) in the case of Uncertificated Shares traded on the Stock Exchange, in accordance with Bye-law 14.

12.2 The Company shall not charge a fee to register a transfer of a share in compliance with these Bye-laws except as permitted by the Applicable Law.

12.3 Subject to any directions of the Board from time to time in force, the Secretary may exercise the powers and discretions of the Board under Bye-laws 13 and 14.

## 13. Transfers of Certificated Shares

13.1 An instrument of transfer of Certificated Shares shall be in writing in the form of the following, or as near thereto as circumstances admit, or in such other form as the Board may accept:

Transfer of a Share or Shares

I \_\_\_\_\_ ] (the "Company")

FOR VALUE RECEIVED..... [amount], I, [name of transferor]  
hereby sell, assign and transfer unto [transferee] of [address], [number]  
shares of the Company.

DATED this [ ] day of [ ], 20[ ]

Signed by:

\_\_\_\_\_

Transferor

\_\_\_\_\_

Transferee

In the presence of:

\_\_\_\_\_

Witness

\_\_\_\_\_

Witness

**13.2** Such instrument of transfer shall be signed by or on behalf of the transferor and transferee, provided that, in the case of a fully paid up share, the Board may accept the instrument signed by or on behalf of the transferor alone. The transferor shall be deemed to remain the holder of such share until the same has been registered as having been transferred to the transferee in the Register of Members.

**13.3** The Board may refuse to recognise any instrument of transfer unless it is accompanied by the certificate in respect of the shares to which it relates and by such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.

#### **14. Transfers of Uncertificated Shares**

Transfers of Uncertificated Shares which are listed on the Stock Exchange may be effected by any method of transferring or dealing with securities introduced by or operated in accordance with the Operating Rules or Listing Rules and, in any such case, as are permitted under the Applicable Law. In respect of Uncertificated Shares listed on a Stock Exchange:

- (a) the Directors may do anything they consider necessary or desirable and which is permitted under the Applicable Law to facilitate participation by the Company in any system established in respect of transfers or dealings in such shares;
- (b) the Company shall comply with all obligations imposed on the Company under the Applicable Law in respect of the transfer of such shares;

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- (c) subject to these Bye-laws, the Company must not prevent, delay or interfere with the registration of a transfer of such shares of the Company in accordance with the Act;
  - (d) subject to these Bye-laws and the Applicable Law, the Board shall register and give effect to a transfer of such shares;
  - (e) the Board may refuse to register any transfer of such shares where the Listing Rules so permit and shall refuse to register any transfer of shares where the Listing Rules so require or where the transfer is in breach of the Listing Rules or the Act; and
  - (f) the transferor of such shares in a Company shall remain the registered holder of those shares transferred until a transfer has taken effect in accordance with the Operating Rules.

## **15. Transfers by Joint Holders**

**15.1** The joint holders of any share may transfer such share to one or more of such joint holders, and the surviving holder or holders of any share previously held by them jointly with a deceased Member may transfer any such share to the executors or administrators of such deceased Member.

## **16. Restriction of Transfer**

**16.1** The Board may in its absolute discretion and without assigning any reason therefore refuse to register the transfer of a share which is not fully paid up. The Board shall refuse to register a transfer unless all applicable consents, authorisations and permissions of any governmental body or agency in Bermuda have been obtained.

**16.2** If the Board refuses to register a transfer of any share the Secretary shall, within three months after the date on which the transfer was lodged with the Company, send to the transferor and transferee notice of the refusal.

- 16.3** The Company may apply, or may ask the Settlement Facility Provider to apply, a holding lock (including to prevent a transfer, or to refuse to register a paper based transfer document) where the Applicable Law permits the Company to do so.
- 16.4** The Company must give notice in writing of any holding lock, and the reasons for the holding lock, to the Member of those shares within 10 Business Days after the date on which the Company asked for the holding lock.
- 16.5** Failure by the Company to give notice of any refusal to register a transfer of shares under Bye-law 16.2 does not invalidate the refusal to register the transfer.

**17. Transmission of Registered Shares**

- 17.1** In the case of the death of a Member, the survivor or survivors where the deceased Member was a joint holder, and the legal personal representatives of the deceased Member where the deceased Member was a sole holder, shall be the only persons recognised by the Company as having any title to the deceased Member's interest in the shares. Nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by such deceased Member with other persons. Subject to the Act, for the purpose of this Bye-law, legal personal representative means the executor or administrator of a deceased Member or such other person as the Board may, in its absolute discretion, decide as being properly authorised to deal with the shares of a deceased Member.
- 17.2** Any person becoming entitled to a share in consequence of the death or bankruptcy of any Member may be registered as a Member upon such evidence as the Board may deem sufficient or may elect to nominate some person to be registered as a transferee of such share, and in such case the person becoming entitled shall execute in favour of such nominee an instrument of transfer in writing in the form, or as near thereto as circumstances admit, of the following:

Transfer by a Person Becoming Entitled on Death/Bankruptcy of a Member

[ ] (the "Company")

I/We, having become entitled in consequence of the [death/bankruptcy] of [name and address of deceased/bankrupt Member] to [number] share(s) standing in the Register of Members of the Company in the name of the said [name of deceased/bankrupt Member] instead of being registered myself/ourselves, elect to have [name of transferee] (the "Transferee") registered as a transferee of such share(s) and I/we do hereby accordingly transfer the said share(s) to the Transferee to hold the same unto the Transferee, his or her executors, administrators and assigns, subject to the conditions on which the same were held at the time of the execution hereof; and the Transferee does hereby agree to take the said share(s) subject to the same conditions.

DATED this [ ] day of [ ], 20[ ]

Signed by:

\_\_\_\_\_

Transferor

\_\_\_\_\_

Transferee

In the presence of:

\_\_\_\_\_

Witness

\_\_\_\_\_

Witness

- 17.3** On the presentation of the foregoing materials to the Board, accompanied by such evidence as the Board may require to prove the title of the transferor, the transferee shall be registered as a Member. Notwithstanding the foregoing, the Board shall, in any case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the share by that Member before such Member's death or bankruptcy, as the case may be.



17.4 Where two or more persons are registered as joint holders of a share or shares, then in the event of the death of any joint holder or holders the remaining joint holder or holders shall be absolutely entitled to such share or shares and the Company shall recognise no claim in respect of the estate of any joint holder except in the case of the last survivor of such joint holders.

## 18. Disclosure of Interests in Shares and Company Investigations

18.1 Bye-laws 18, 19 and 20 shall only apply for so long as the Company has a class of securities admitted to trading on AIM.

18.2 For the purposes of Bye-Laws 19 and 20:

- (a) **Relevant Share Capital** means the Company's issued share capital of any class carrying rights to vote in all circumstances at general meetings of the Company including shares which, following the exercise of an option for their conversion, event of default or otherwise, having become fully enfranchised for voting purposes.
- (b) **Interest** means, in relation to the Relevant Share Capital, any Interest, either direct or indirect, of any kind whatsoever in any shares comprised therein (disregarding any restraints or restrictions to which the exercise of any right attached to the Interest in the share is, or may be, subject) and without limiting the meaning of Interest a person shall be taken to have an Interest in a share if:
  - (i) he enters into any contract, including but not limited to financial instruments such as options, futures and swaps, entitling him to purchase the share (whether for cash or other consideration); or
  - (ii) not being the registered Member, he is entitled to exercise any right conferred on the registered holder of the share or is entitled to control the exercise or non-exercise of any such right; or

- (iii) he is a beneficiary of a trust where the property held on trust includes an Interest in the share; or
- (iv) he has a right to call for transfer of the share to himself or to his order; or
- (v) he has a right or obligation to acquire an Interest in the share;

whether in any case the contract, right or obligation is absolute or conditional, legally enforceable or not and evidenced in writing or not, and it shall be immaterial that a share in which a person has an Interest is unidentifiable;

**18.3** The provisions of Bye-Laws 19 and 20 are in addition to any, and separate from other rights or obligations arising at law or otherwise.

## **19. Notification of Interests in Shares**

**19.1** Where a Member:

- (a) has acquired an Interest in shares comprised in Relevant Share Capital or that any other person has acquired an Interest of which he is the registered Member, or ceases to have an Interest or becomes aware that any other person has ceased to have an Interest of which he is the registered Member (whether or not retaining an Interest in other shares so comprised); or
- (b) becomes aware that he has acquired an Interest or becomes aware that any other person has acquired an Interest of which he is the registered Member, or becomes aware that he has ceased to have an Interest or that any other person has ceased to have an Interest of which he is the registered Member; or
- (c) other than in circumstances set out in Bye-Law 19.1(a) or 19.1(b), either:
  - (i) is aware, at the time when it occurs, of any change of circumstances affecting facts relevant to the application of this Bye-Law to an existing

Interest of his or an existing Interest of any other person of which he is the registered Member; or

- (ii) otherwise becomes aware of any such facts (whether or not arising from any such change of circumstances),

then (x) in the circumstances as set out in Bye-Law 19.2, he shall become obliged to notify the Company of his Interests (if any) and (y) in the circumstances as set out in Bye-Law 19.3, he shall become obliged, to the extent he is lawfully able to do so, to notify the Company of the Interests of any other person in such shares of which he is the registered Member. In the case of (y) only, to the extent a Member is not lawfully able to notify the Company of the Interests of any other person in shares of which he is the registered Member, such Member shall use his reasonable endeavours to procure that such other person notifies the Company of his Interests in such shares.

- 19.2** A Member shall notify the Company of his Interests (if any) in Relevant Share Capital if:
- (a) he has a Notifiable Interest (as defined in Bye-Law 19.5(b)) immediately after the Relevant Time (as defined in Bye-Law 19.5(a)), but did not have such an Interest immediately before that time;
  - (b) he had a Notifiable Interest immediately before the Relevant Time, but does not have such an Interest immediately after it; or
  - (c) he had a Notifiable Interest immediately before the Relevant Time, and has such an Interest immediately after it, but the Percentage Levels (as defined in Bye-Law 19.4) of his Interest immediately before and immediately after that time are not the same.
- 19.3** A Member shall, to the extent he is lawfully able to do so, notify the Company of the Interests of any person in shares of which he is the registered Member (or, to the extent

he is not lawfully able to make such notification, shall use his reasonable endeavours to procure that such person makes notification of his Interests to the Company) if:

- (a) such person has a Notifiable Interest immediately after the Relevant Time, but did not have such an Interest immediately before that time; or
- (b) such person had a Notifiable Interest immediately before the Relevant Time, but does not have such an Interest immediately after it; or
- (c) such person had a Notifiable Interest immediately before the Relevant Time, and has such an Interest immediately after it, but the Percentage Levels of his Interest immediately before and immediately after that time are not the same.

**19.4 Percentage Level** as such term is used in Bye-Laws 19.2(c) and 19.3(c), means the percentage figure found by expressing the aggregate nominal value of all the shares comprised in the Relevant Share Capital in which the person has Interests immediately before or (as the case may be) immediately after the Relevant Time as a percentage of the nominal value of the total Relevant Share Capital and rounding that figure down, if it is not a whole number, to the next whole number. Where the nominal value of the total Relevant Share Capital is greater immediately after the Relevant Time than it was immediately before, the Percentage Level of the person's Interest immediately before (as well as immediately after) that time is determined by reference to the larger amount.

**19.5** For the purposes of Bye-Laws 19.2, 19.3 and 19.4:

- (a) **Relevant Time** means:
  - (i) for the purposes of Bye-Laws 19.1(a) or 19.1(c)(i), the time of the relevant event or change of circumstances; and
  - (ii) for the purposes of Bye-Laws 19.1(b) or 19.1(c)(ii), the time at which the person became aware of the facts in question; and

- (b) a person who is interested in shares comprised in Relevant Share Capital has a **Notifiable Interest** at any time when the aggregate nominal value of the shares in the Relevant Share Capital in which he has an Interest is equal to or more than three per cent of the nominal value of that Relevant Share Capital.

**19.6** Any notification required to be made by a Member under Bye-Law 19.2 and any notification which a Member is lawfully able to make under Bye-Law 19.3 must be made in writing to the Company within the period of two days following the day on which that obligation arises. To the extent a Member is not lawfully able to make a notification under Bye-Law 19.3, such Member shall use its reasonable endeavours to procure that the relevant person notifies his Interests to the Company within such two day period or within such longer period as the Board may allow.

**19.7** The notification shall specify the share capital of the Company to which it relates, and must also:

- (a) state the number of shares comprised in that share capital in which the person making the notification knows he (or any other relevant person) had Interests immediately after the time when the obligation arose; or
- (b) in a case where the person making the notification (or any other relevant person) no longer has a Notifiable Interest in shares comprised in that share capital, state that he (or that other person) no longer has that Interest.

**19.8** A notification shall include the following particulars, so far as known to the person making the notification at the date when it is made:

- (a) the identity of each Member, or other person who has an Interest in shares so comprised of which another is the registered Member, to which the notification relates and the number of such shares held by each of them; and
- (b) the nature of the relevant Interests in such shares.

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**19.9** A person who has an Interest or knows or becomes aware that any other person has an Interest in shares of which he is the registered Member, that Interest being notifiable, shall notify (or, to the extent he is not lawfully able to make such notification, shall use his reasonable endeavours to procure that such other person shall notify) the Company in writing:

- (a) of any particulars in relation to those shares which are specified in Bye-Law 19.8; and
- (b) of any change in those particulars,

of which in either case he becomes aware at any time after any Interest Notification Date and before the first occasion following that date on which he comes under any further obligation of disclosure with respect to his Interest. A notification required under this Bye-Law shall be made within the period of two days next following the day on which it arises. The reference to an **Interest Notification Date**, in relation to a person's Interest, is to either (a) the date of any notification made or procured by him with respect to his or any other person's Interest under this Bye-Law or (b) where he has failed to make, or procure the making of, a notification, the date on which the period allowed for making it came to an end.

**19.10** A person who at any time has a Notifiable Interest in shares is to be regarded under Bye-Law 19.9 as continuing to have a Notifiable Interest in them unless and until the registered holder of the shares in question comes under obligation to make or use his reasonable endeavours to procure a notification stating that he (or any other relevant person) no longer has such an Interest.

**19.11** Where a person authorises another (the **Agent**) to acquire or dispose of, on his behalf, Interests, he shall secure that the Agent notifies him immediately of acquisitions or disposals effected by the Agent which will or may give rise to any obligation of disclosure imposed on him by this Bye-Law with respect to his Interest.

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- 19.12** If it shall come to the notice of the Board that any Member has not, within the requisite period, made or, as the case may be, procured the making of any notification required by this Bye-Law, the Company may (at the absolute discretion of the Board) at any time thereafter by notice (a **Restriction Notice**) to such Member direct that, in respect of the shares in relation to which the default has occurred (the **Default Shares** which expression shall include any further shares which are issued in respect of any Default Shares), the Member shall not be entitled to be present or to vote on any question, either in person or by proxy, at any general meeting of the Company or separate general meeting of the holders of any class of shares of the Company, or to be reckoned in a quorum.
- 19.13** Where the Default Shares represent at least 0.25 per cent. (in nominal value) of the issued shares of the same class as the Default Shares, then the Restriction Notice may also direct that:
- (a) any dividend (or any part of a dividend) or other amount payable in respect of the Default Shares shall be withheld by the Company, which has no obligation to pay Interests on it; and shall be payable (when the Restriction Notice ceases to have effect) to the person who would but for the Restriction Notice have been entitled to them; and/or
  - (b) where an offer of the right to elect to receive shares of the Company instead of cash in respect of any dividend or part thereof is or has been made by the Company, any election made thereunder by such member in respect of such Default Shares shall not be effective; and/or
  - (c) no transfer of any of the shares held by any such Member shall be recognised or registered by the Board unless:
    - (i) the transfer is an excepted transfer; or

- (ii) the Member is not himself in default as regards supplying the requisite information required under this Bye-Law and, when presented for registration, the transfer is accompanied by a certificate by the member in a form satisfactory to the Board to the effect that after due and careful enquiry the Member is satisfied that none of the shares the subject of the transfer are Default Shares.

**19.14** Upon the giving of a Restriction Notice its terms shall apply accordingly.

**19.15** The Company shall send a copy of the Restriction Notice to each other person appearing to have an Interest in the shares the subject of such notice, but the failure or omission by the Company to do so shall not invalidate such notice.

**19.16** Any Restriction Notice shall have effect in accordance with its terms until not more than seven days after the Board is satisfied that the default in respect of which the Restriction Notice was issued no longer continues but shall cease to have effect in relation to any shares which are transferred by such Member. The Company may (at the absolute discretion of the Board) at any time give notice to the Member cancelling, or suspending for a stated period the operation of, a Restriction Notice in whole or in part.

**19.17** A person, other than the Member holding a share, shall be treated as appearing to have an Interest if the Member has informed the Company that the person is or may have an Interest, or if the Company (after taking account of information obtained from the Member, or pursuant to a notice under Bye-Law 20, from anyone else) knows or has reasonable cause to believe that the person is or may be have an Interest.

## **20. Power of the Company to investigate Interests in shares**

**20.1** The Company may by notice in writing request any person whom the Company knows or has reasonable cause to believe to be or, at any time during the three years immediately preceding the date on which the notice is issued, to have an Interest:



- (a) to confirm that fact or (as the case may be) to indicate whether or not it is the case; and
- (b) where he holds or has during that time held an Interest, to give such further information as may be requested in accordance with Bye-Law 20.2.

**20.2** A notice under Bye-Law 20.1 may request the person to whom it is addressed:

- (a) to give particulars of his own past or present Interest in respect of Relevant Share Capital held by him at any time during the three year period mentioned in Bye-Law 20.1);
- (b) where the Interest is a present Interest and any other Interest in the shares in question subsists or, in any case, where another Interest in the shares in question subsisted during that three-year period at any time when his own Interest subsisted, to give (so far as lies within his knowledge) such particulars with respect to that other Interest as may be requested by the notice including the identity of persons who have an Interest in the shares in question; and
- (c) where his Interest is a past Interest, to give (so far as lies within his knowledge) particulars of the identity of the person who held that Interest immediately upon his ceasing to hold it.

**20.3** A notice under Bye-Law 20.1 shall request any information given in response to the notice to be given in writing within such time as may be specified in the notice, being a period of not less than three days following service thereof.

## **ALTERATION OF SHARE CAPITAL**

### **21. Power to Alter Capital**

**21.1** The Company may if authorised by resolution of the Members increase, divide, consolidate, subdivide, change the currency denomination of, diminish or otherwise alter or reduce its share capital in any manner permitted by the Applicable Law.

**21.2** Where, on any alteration or reduction of share capital, fractions of shares or some other difficulty would arise, the Board may deal with or resolve the same in such manner as it thinks fit subject to the Applicable Law.

## **22. Variation of Rights Attaching to Shares**

If, at any time, the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound-up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a resolution passed by a majority of the votes cast at a separate general meeting of the holders of the shares of the class at which meeting the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.

## **DIVIDENDS AND CAPITALISATION**

### **23. Dividends**

**23.1** The Board may, subject to these Bye-laws and in accordance with the Act, declare a dividend to be paid to the Members, in proportion to the number of shares held by them, and such dividend may be paid in cash or wholly or partly in specie in which case the Board may fix the value for distribution in specie of any assets. No unpaid dividend shall bear interest as against the Company.

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- 23.2** The Board may fix any date as the record date for determining the Members entitled to receive any dividend.
- 23.3** The Company may pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.
- 23.4** The Board may declare and make such other distributions (in cash or in specie) to the Members as may be lawfully made out of the assets of the Company. No unpaid distribution shall bear interest as against the Company.

**24. Power to Set Aside Profits**

The Board may, before declaring a dividend, set aside out of the surplus or profits of the Company, such amount as it thinks proper as a reserve to be used to meet contingencies or for equalising dividends or for any other purpose.

**25. Method of Payment**

- 25.1** Any dividend or other moneys payable in respect of a share may be paid by cheque or warrant sent through the post directed to the address of the Member in the Register of Members (in the case of joint Members, the senior joint holder, seniority being determined by the order in which the names stand in the Register of Members), or by direct transfer to such bank account as such Member may direct. Every such cheque shall be made payable to the order of the person to whom it is sent or to such persons as the Member may direct, and payment of the cheque or warrant shall be a good discharge to the Company. Every such cheque or warrant shall be sent at the risk of the person entitled to the money represented thereby. If two or more persons are registered as joint holders of any shares any one of them can give an effectual receipt for any dividend paid in respect of such shares.
- 25.2** The Board may deduct from the dividends or distributions payable to any Member all moneys due from such Member to the Company on account of calls or otherwise.

- 25.3** Any dividend or other moneys payable in respect of a share which has remained unclaimed for 12 years from the date when it became due for payment shall, subject to the Applicable Law and if the Board so resolves, be forfeited and cease to remain owing by the Company. The payment of any unclaimed dividend or other moneys payable in respect of a share may (but need not) be paid by the Company into an account separate from the Company's own account. Such payment shall not constitute the Company a trustee in respect thereof.
- 25.4** The Company shall be entitled to cease sending dividend cheques and warrants by post or otherwise to a Member if those instruments have been returned undelivered to, or left uncashed by, that Member on at least two consecutive occasions, or, following one such occasion, reasonable enquiries have failed to establish the Member's new address. The entitlement conferred on the Company by this Bye-law 25.4 in respect of any Member shall cease if the Member claims a dividend or cashes a dividend cheque or warrant.
- 25.5** If a transfer of a share is registered after the time determined for entitlements to a dividend on that share but before the dividend is paid, the person transferring that share is, subject to the Operating Rules, entitled to that dividend.

## **26. Capitalisation**

- 26.1** The Board may capitalise any amount for the time being standing to the credit of any of the Company's share premium or other reserve accounts or to the credit of the profit and loss account or otherwise available for distribution by applying such amount in paying up unissued shares to be allotted as fully paid up bonus shares pro-rata (except in connection with the conversion of shares of one class to shares of another class) to the Members.
- 26.2** The Board may capitalise any amount for the time being standing to the credit of a reserve account or amounts otherwise available for dividend or distribution by applying such amounts in paying up in full, partly or nil paid up shares of those Members who

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would have been entitled to such amounts if they were distributed by way of dividend or distribution.

## MEETINGS OF MEMBERS

### 27. Annual General Meetings

The annual general meeting of the Company shall be held in each year (other than the year of incorporation) at such time and place as the President or the Chairman (if any) or the Board shall appoint.

### 28. Special General Meetings

The President or the Chairman (if any) or the Board may convene a special general meeting whenever in their judgment such a meeting is necessary.

### 29. Requisitioned General Meetings

The Board shall, on the requisition of Members holding at the date of the deposit of the requisition not less than one-tenth of such of the paid-up share capital of the Company as at the date of the deposit carries the right to vote at general meetings, forthwith proceed to convene a special general meeting and the provisions of the Act shall apply.

### 30. Notice

**30.1** At least 21 days' notice of an annual general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, place and time at which the meeting is to be held, that the election of Directors will take place thereat, and as far as practicable, the other business to be conducted at the meeting.

**30.2** At least 21 days' notice of a special general meeting shall be given to each Member entitled to attend and vote thereat, stating the date, time, place and the general nature of the business to be considered at the meeting.

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- 30.3** The Board may fix any date as the record date for determining the Members entitled to receive notice of and to vote at any general meeting.
- 30.4** A general meeting shall, notwithstanding that it is called on shorter notice than that specified in these Bye-laws, be deemed to have been properly called if it is so agreed by (i) all the Members entitled to attend and vote thereat in the case of an annual general meeting; and (ii) by a majority in number of the Members having the right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of the shares giving a right to attend and vote thereat in the case of a special general meeting.
- 30.5** The accidental omission to give notice of a general meeting to, or the non-receipt of a notice of a general meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.

**31. Giving Notice and Access**

- 31.1** A notice may be given by the Company to a Member:
- (a) by delivering it to such Member in person, in which case the notice shall be deemed to have been served upon such delivery; or
  - (b) by sending it by post to such Member's address in the Register of Members, in which case the notice shall be deemed to have been served three days after the date on which it is deposited, with postage prepaid, in the mail; or
  - (c) by sending it by courier to such Member's address in the Register of Members, in which case the notice shall be deemed to have been served two days after the date on which it is deposited, with courier fees paid, with the courier service; or
  - (d) by transmitting it by electronic means (including facsimile and electronic mail, but not telephone) in accordance with such directions as may be given by such Member to the Company for such purpose, in which case the notice shall be

deemed to have been served at the time that it would in the ordinary course be transmitted; or

- (e) by delivering it in accordance with the provisions of the Act pertaining to delivery of electronic records by publication on a website, in which case the notice shall be deemed to have been served at the time when the requirements of the Act in that regard have been met.

**31.2** Any notice required to be given to a Member shall, with respect to any shares held jointly by two or more persons, be given to whichever of such persons is named first in the Register of Members and notice so given shall be sufficient notice to all the holders of such shares.

**31.3** The Company shall be under no obligation to send a notice or other document to the address shown for any particular Member in the Register of Members if the Board considers that the legal or practical problems under the laws of, or the requirements of any regulatory body or stock exchange in the territory in which that address is situated are such that it is necessary or expedient not to send the notice or document concerned to such Member at such address, and the Company may require a Member with such an address to provide the Company with an alternative acceptable address for delivery of notices by the Company.

**31.4** In proving service under paragraphs 31.1(b), (c) and (d), it shall be sufficient to prove that the notice was properly addressed and prepaid, if posted or sent by courier, and the time when it was posted, deposited with the courier or transmitted by electronic means.

## **32. Postponement or Cancellation of General Meeting**

The Chairman or the President may, and the Secretary on instruction from the Chairman or the President shall, postpone or cancel any general meeting called in accordance with these Bye-laws (other than a meeting requisitioned under these Bye-laws) provided that notice of postponement or cancellation is given to each Member before the time for such meeting. Fresh

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notice of the date, time and place for the postponed or cancelled meeting shall be given to the Members in accordance with these Bye-laws.

**33. Electronic Participation and Security at General Meetings**

**33.1** Members may participate in any general meeting by such telephonic, electronic or other communications facilities or means as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting.

**33.2** The Board may, and at any general meeting, the chairman of such meeting may make any arrangement and impose any requirement or restriction it or he considers appropriate to ensure the security of a general meeting including, without limitation, requirements for evidence of identity to be produced by those attending the meeting, the searching of their personal property and the restriction of items that may be taken into the meeting place. The Board and, at any general meeting, the chairman of such meeting are entitled to refuse entry to a person who refuses to comply with any such arrangements, requirements or restrictions.

**34. Quorum at General Meetings**

**34.1** At any general meeting two or more persons who are entitled to vote and who are present in person or by proxy at the start of and throughout the meeting shall form a quorum. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day one week later, at the same time and place or to such other day, time and place as the Board may determine. Unless the meeting is adjourned to a specific date, place and time announced at the meeting being adjourned, fresh notice of the date, place and time for the resumption of the adjourned meeting shall be given to each Member entitled to attend and vote thereat in accordance with these Bye-laws.



**34.2** If the Company (or a class of Members in respect of a class meeting) shall have only one Member, then one Members present in person or by proxy shall constitute the necessary quorum.

**34.3** For the purposes of determining whether a quorum is present under this Bye-law 34:

- (a) where a Member appoints more than one proxy, only one such proxy will be counted;
- (b) a Member who is present in their own capacity and as a proxy or representative of another Member will be counted only once; and
- (c) a person attending as proxy of more than one Member will be counted only once.

**35. Chairman to Preside at General Meetings**

Unless otherwise agreed by a majority of those attending and entitled to vote thereat, the Chairman, if there be one, and if not the President, if there be one, shall act as chairman at all general meetings at which such person is present. In their absence, a chairman shall be appointed or elected by those present at the meeting and entitled to vote.

**36. Voting on Resolutions**

**36.1** Subject to the Act and these Bye-laws, any question proposed for the consideration of the Members at any general meeting shall be decided by the affirmative votes of a majority of the votes cast in accordance with these Bye-laws and in the case of an equality of votes the chairman of such meeting shall be entitled to a second or casting vote.

**36.2** No Member shall be entitled to vote at a general meeting unless such Member has paid all the calls on all shares held by such Member.

**36.3** Subject to any rights or restrictions attached to any class of shares, each Member entitled to vote may vote in person or by proxy.

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- 36.4** At any general meeting a resolution put to the vote of the meeting shall, in the first instance, be voted upon by a show of hands and, subject to these Bye-laws and any rights or restrictions for the time being lawfully attached to any class of shares, every Member present in person and every person holding a valid proxy at such meeting shall be entitled to one vote and shall cast such vote by raising his or her hand.
- 36.5** A Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where that vote is prohibited by the Applicable Law, an order of a court of competent jurisdiction or the Stock Exchange.
- 36.6** In the event that a Member participates in a general meeting by telephone, electronic or other communications facilities or means, the chairman of the meeting shall direct the manner in which such Member may cast his vote on a show of hands.
- 36.7** At any general meeting if an amendment is proposed to any resolution under consideration and the chairman of the meeting rules on whether or not the proposed amendment is out of order, the proceedings on the substantive resolution shall not be invalidated by any error in such ruling.
- 36.8** At any general meeting a declaration by the chairman of the meeting that a question proposed for consideration has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in a book containing the minutes of the proceedings of the Company shall, subject to these Bye-laws, be conclusive evidence of that fact.
- 37. Power to Demand a Vote on a Poll**
- 37.1** Notwithstanding the foregoing, at any general meeting of the Company, a poll may be demanded by any of the following persons:
- (a) the chairman of such meeting; or
  - (b) at least three Members present in person or represented by proxy; or

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- (c) any Member or Members present in person or represented by proxy and holding between them not less than one-tenth of the total voting rights of all the Members having the right to vote at such meeting; or
  - (d) any Member or Members present in person or represented by proxy holding shares in the Company conferring the right to vote at such meeting, being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total amount paid up on all such shares conferring such right.

**37.2** Where in accordance with the provisions of Bye-law 37.1 a poll is demanded, subject to any rights or restrictions for the time being lawfully attached to any class of shares, each Member present at such meeting in person or by proxy shall, in respect of

- (a) each fully paid share held by him or in respect of which he is appointed a proxy, have one vote; and
- (b) subject to Bye-law 36.2, each partly paid share held by him or in respect of which he is appointed a proxy, have that fraction of one vote which the amount paid (not credited) on that share bears to the total amount paid and payable (but not credited) on that share, and, if the total number of votes does not constitute a whole number, then the Company shall disregard the fractional part of the total,

and such vote shall be counted in the manner set out in Bye-law 37.4, or in the case of a general meeting at which one or more Members are present by telephone, electronic or other communications facilities or means, in such manner as the chairman of the meeting may direct and the result of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded and shall replace any previous resolution upon the same matter which has been the subject of a show of hands. A person entitled to more than one vote need not use all his votes or cast all the votes he uses in the same way.

37.3 A poll demanded for the purpose of electing a chairman of the meeting or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time and in such manner during such meeting as the chairman (or acting chairman) of the meeting may direct. Any business other than that upon which a poll has been demanded may be conducted pending the taking of the poll.

37.4 Where a vote is taken by poll, each person physically present and entitled to vote shall be furnished with a ballot paper on which such person shall record his vote in such manner as shall be determined at the meeting having regard to the nature of the question on which the vote is taken. Each ballot paper shall be signed or initialled or otherwise marked so as to identify the voter and the registered holder in the case of a proxy. Each person present by telephone, electronic or other communications facilities or means shall cast his vote in such manner as the chairman shall direct. At the conclusion of the poll, the ballot papers and votes cast in accordance with such directions shall be examined and counted by a committee of not less than two Members or proxy holders appointed by the chairman for the purpose. The result of the poll shall be declared by the chairman.

### **38. Voting by Joint Holders of Shares**

In the case of joint holders, the vote of the senior who tenders a vote (whether in person or by proxy) shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose seniority shall be determined by the order in which the names stand in the Register of Members.

### **39. Instrument of Proxy**

39.1 A Member may appoint a proxy by (a) an instrument appointing a proxy in writing in substantially the following form or such other form as the Board may determine from time to time:

Proxy

[ ] (the "Company")

I/We, [insert names here], being a Member of the Company with [number] shares, HEREBY APPOINT [name] of [address] or failing him, [name] of [address] to be my/our proxy to vote for me/us at the meeting of the Members to be held on the [ ] day of [ ], 20[ ] and at any adjournment thereof. (Any restrictions on voting to be inserted here.)

Signed this [ ] day of [ ], 20[ ]

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Member(s)

or (b) such telephonic, electronic or other means as may be approved by the Board from time to time.

**39.2** The appointment of a proxy must be received by the Company at the registered office or at such other place or in such manner as is specified in the notice convening the meeting or in any instrument of proxy sent out by the Company in relation to the meeting at which the person named in the appointment proposes to vote, and an appointment of proxy which is not received in the manner so permitted shall be invalid.

**39.3** A Member who is the holder of two or more shares may appoint more than one proxy to represent him and vote on his behalf in respect of different shares.

**39.4** The decision of the chairman of any general meeting as to the validity of any appointment of a proxy shall be final.

#### **40. Representation of Corporate Member**

**40.1** A corporation which is a Member may, by written instrument, authorise such person or persons as it thinks fit to act as its representative at any meeting and any person so

authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual Member, and that Member shall be deemed to be present in person at any such meeting attended by its authorised representative or representatives.

**40.2** Notwithstanding the foregoing, the chairman of the meeting may accept such assurances as he thinks fit as to the right of any person to attend and vote at general meetings on behalf of a corporation which is a Member.

#### **41. Adjournment of General Meeting**

**41.1** The chairman of any general meeting at which a quorum is present may with the consent of Members holding a majority of the voting rights of those Members present in person or by proxy (and shall if so directed by Members holding a majority of the voting rights of those Members present in person or by proxy), adjourn the meeting.

**41.2** In addition, the chairman may adjourn the meeting to another time and place without such consent or direction if it appears to him that:

- (a) it is likely to be impracticable to hold or continue that meeting because of the number of Members wishing to attend who are not present; or
- (b) the unruly conduct of persons attending the meeting prevents, or is likely to prevent, the orderly continuation of the business of the meeting; or
- (c) an adjournment is otherwise necessary so that the business of the meeting may be properly conducted.

**41.3** Unless the meeting is adjourned to a specific date, place and time announced at the meeting being adjourned, fresh notice of the date, place and time for the resumption of the adjourned meeting shall be given to each Member entitled to attend and vote thereat in accordance with these Bye-laws.

**42. Written Resolutions**

- 42.1** Subject to these Bye-laws anything which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the Members may, without a meeting be done by written resolution in accordance with this Bye-law.
- 42.2** Notice of a written resolution shall be given, and a copy of the resolution shall be circulated to all Members who would be entitled to attend a meeting and vote thereon. The accidental omission to give notice to, or the non-receipt of a notice by, any Member does not invalidate the passing of a resolution.
- 42.3** A written resolution is passed when it is signed by, or in the case of a Member that is a corporation on behalf of, the Members who at the date that the notice is given represent such majority of votes as would be required if the resolution was voted on at a meeting of Members at which all Members entitled to attend and vote thereat were present and voting.
- 42.4** A resolution in writing may be signed by any number of counterparts.
- 42.5** A resolution in writing made in accordance with this Bye-law is as valid as if it had been passed by the Company in general meeting or by a meeting of the relevant class of Members, as the case may be, and any reference in any Bye-law to a meeting at which a resolution is passed or to Members voting in favour of a resolution shall be construed accordingly.
- 42.6** A resolution in writing made in accordance with this Bye-law shall constitute minutes for the purposes of the Act.
- 42.7** This Bye-law shall not apply to:
- (a) a resolution passed to remove an Auditor from office before the expiration of his term of office; or

- (b) a resolution passed for the purpose of removing a Director before the expiration of his term of office.

**42.8** For the purposes of this Bye-law, the effective date of the resolution is the date when the resolution is signed by, or in the case of a Member that is a corporation whether or not a company within the meaning of the Act, on behalf of, the last Member whose signature results in the necessary voting majority being achieved and any reference in any Bye-law to the date of passing of a resolution is, in relation to a resolution made in accordance with this Bye-law, a reference to such date.

#### **43. Directors Attendance at General Meetings**

The Directors shall be entitled to receive notice of, attend and be heard at any general meeting.

### **DIRECTORS AND OFFICERS**

#### **44. Election of Directors**

**44.1** The Board shall consist of not less than three Directors and not more than such maximum number of Directors, not exceeding ten Directors, as the Board may from time to time determine. At least one of the Directors shall not be an employee of the Company or any other entity in the Group.

**44.2** Subject to these Bye-laws, the Company in general meeting may by ordinary resolution elect or appoint any person as a Director. Directors shall hold office for such term as the Members may determine or, in the absence of such determination, until their successors are elected or appointed or their office is otherwise vacated.

**44.3** The Board may appoint any person as a Director to fill any vacancy in their number. Any appointment of a Director by the Board must be ratified by ordinary resolution at the next general meeting following the appointment.



**44.4** Any member or the Board may propose any person for election as a Director. Where any person, other than a Director retiring at the meeting or a person proposed for re-election or election as a Director by the Board, is to be proposed for election as a Director, notice must be given to the Company of the intention to propose him and of his willingness to serve as a Director. That notice must be given not later than:

- (a) 90 days before the first anniversary of the last annual general meeting prior to the giving of notice for the next annual general meeting; or
- (b) 10 days after the notice of the annual general meeting or special general meeting, as the case may be, at which the Directors are to be elected was posted to Members or the date on which public disclosure of the date of the annual general meeting was made, whichever is earlier,

and must contain all the information relating to the person proposed that is required to be disclosed under the Listing Rules.

**44.5** All acts done bona fide by any meeting of the Board or by a committee of the Board or by any person acting as a Director or any person to whom the Board may have delegated any of its powers shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any Director or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director or act in the relevant capacity.

#### **45. Alternate Directors**

**45.1** At any general meeting, the Members may elect a person or persons to act as a Director in the alternative to any one or more Directors or may authorise the Board to appoint such Alternate Directors.

**45.2** Unless the Members otherwise resolve, any Director may appoint a person or persons to act as a Director in the alternative to himself by notice deposited with the Secretary.

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Any person so elected or appointed shall have all the rights and powers of the Director or Directors for whom such person is appointed in the alternative provided that such person shall not be counted more than once in determining whether or not a quorum is present.

**45.3** An Alternate Director shall be entitled to receive notice of all meetings of the Board and to attend and vote at any such meeting at which a Director for whom such Alternate Director was appointed in the alternative is not personally present and generally to perform at such meeting all the functions of such Director for whom such Alternate Director was appointed.

**45.4** An Alternate Director's office shall terminate:

- (a) in the case of an Alternative Director elected by the Members:
  - (i) on the occurrence in relation to the Alternative Director of any event which, if it occurred in relation to the Director for whom he was elected to act, would result in the termination of that Director's directorship; or
  - (ii) if the Director for whom he was elected in the alternative ceases for any reason to be a Director, provided that the alternate removed in these circumstances may be re-appointed by the Board as an alternate to the person appointed to fill the vacancy; and
- (b) in the case of an Alternate Director appointed by a Director:
  - (i) on the occurrence in relation to the Alternate Director of any event which, if it occurred in relation to his appointor, would result in the termination of the appointor's directorship; or
  - (ii) when the Alternate Director's appointor revokes the appointment by notice to the Company in writing specifying when the appointment is to terminate; or

- (iii) if the Alternate Director's appointor ceases for any reason to be a Director.

#### **46. Removal of Directors**

**46.1** Subject to any provision to the contrary in these Bye-laws, the Members entitled to vote for the election of Directors may, at any special general meeting convened and held in accordance with these Bye-laws, remove a Director, only with cause, provided that the notice of any such meeting convened for the purpose of removing a Director shall contain a statement of the intention so to do and be served on such Director not less than 14 days before the meeting and at such meeting the Director shall be entitled to be heard on the motion for such Director's removal.

**46.2** If a Director is removed from the Board under the provisions of this Bye-law the Members may fill the vacancy at the meeting at which such Director is removed. In the absence of such election or appointment, the Board may fill the vacancy.

**46.3** For the purpose of Bye-law 46.1, "cause" shall mean a conviction for a criminal offence involving dishonesty or engaging in conduct which brings the Director or the Company into disrepute and which results in material financial detriment to the Company.

#### **47. Vacancy in the Office of Director**

**47.1** The office of Director shall be vacated if the Director:

- (a) is removed from office pursuant to these Bye-laws or is prohibited from being a Director by law;
- (b) is or becomes bankrupt, or makes any arrangement or composition with his creditors generally;
- (c) is or becomes of unsound mind or dies; or
- (d) resigns his office by notice to the Company.

47.2 The Members in general meeting or the Board shall have the power to appoint any person as a Director to fill a vacancy on the Board occurring as a result of the death, disability, disqualification or resignation of any Director or as a result of an increase in the size of the Board and to appoint an Alternate Director to any Director so appointed.

**48. Remuneration of Directors**

48.1 The remuneration (if any) of the Directors who do not hold executive office for their services shall not exceed in aggregate US\$500,000 per annum or such higher amount as may be determined by the Company in general meeting from time to time.

48.2 Provided that the aggregate remuneration paid to the non-executive Directors does not exceed the aggregate fixed sum determined in accordance with Bye-law 48.1, the Directors will determine:

- (a) the amount of remuneration to be paid to, or applied for the benefit of, each non-executive Director; and
- (b) the proportions and the manner in which such remuneration will be paid or applied,

and until so determined, the aggregate fixed sum will be paid to the non-executive directors equally.

48.3 The remuneration of any Director holding executive office must, subject to the provisions of any contract between each of them and the Company, be fixed by the Directors, and must not be set as a commission on, or percentage of, operating revenue.

48.4 The Directors may be also be paid all travel, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board, any committee appointed by the Board, general meetings of the Company, or in connection with the business of the Company or their duties as Directors generally.

48.5 Any Director may participate in any fund, trust or scheme for the benefit of:

- (a) past or present employees or Directors of the Company or a related body corporate of the Company; or
- (b) the dependants of, or persons connected with, any person referred to in paragraph (a) as such persons are determined pursuant to the terms of any such fund, trust or scheme.

**49. Directors to Manage Business**

49.1 The business of the Company shall be managed and conducted by the Board. In managing the business of the Company, the Board may exercise all such powers of the Company as are not, by the Act or by these Bye-laws, required to be exercised by the Company in general meeting.

49.2 Subject to these Bye-laws, the Board may delegate to any company, firm, person, or body of persons any power of the Board (including the power to sub-delegate).

**50. Powers of the Board of Directors**

The Board may:

- (a) appoint, suspend, or remove any manager, secretary, clerk, agent or employee of the Company and may fix their remuneration and determine their duties;
- (b) exercise all the powers of the Company to borrow money and to mortgage or charge or otherwise grant a security interest in its undertaking, property and uncalled capital, or any part thereof, and may issue debentures, debenture stock and other securities whether outright or as security for any debt, liability or obligation of the Company or any third party;

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- (c) appoint one or more Directors to the office of managing director of the Company, who shall, subject to the control of the Board, supervise and administer all of the general business and affairs of the Company;
  - (d) appoint a person to act as manager of the Company's day-to-day business and may entrust to and confer upon such manager such powers and duties as it deems appropriate for the transaction or conduct of such business;
  - (e) by power of attorney, appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Board, to be an attorney of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board) and for such period and subject to such conditions as it may think fit and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Board may think fit and may also authorise any such attorney to sub-delegate all or any of the powers, authorities and discretions so vested in the attorney;
  - (f) procure that the Company pays all expenses incurred in promoting and incorporating the Company and listing the shares of the Company;
  - (g) delegate any of its powers (including the power to sub-delegate) to a committee appointed by the Board which may consist partly or entirely of non-Directors, provided that every such committee shall conform to such directions as the Board shall impose on them and provided further that the meetings and proceedings of any such committee shall be governed by these Bye-laws regulating the meetings and proceedings of the Board, so far as the same are applicable and are not superseded by directions imposed by the Board;
  - (h) delegate any of its powers (including the power to sub-delegate) to any person on such terms and in such manner as the Board may see fit;

- (i) present any petition and make any application in connection with the liquidation or reorganisation of the Company;
- (j) in connection with the issue of any share, pay such commission and brokerage as may be permitted by law; and
- (k) authorise any company, firm, person or body of persons to act on behalf of the Company for any specific purpose and in connection therewith to execute any deed, agreement, document or instrument on behalf of the Company.

**51. Register of Directors and Officers**

The Board shall cause to be kept in one or more books at the registered office of the Company a Register of Directors and Officers and shall enter therein the particulars required by the Act.

**52. Officers of the Company**

The Officers of the Company shall consist of a President or a Chairman, a Secretary and such additional Officers as the Board may from time to time determine, all of whom shall be deemed to be Officers for the purposes of these Bye-laws.

**53. Appointment of Officers**

The Board may appoint such officers (who may or may not be Directors) as the Board may determine.

**54. Duties of Officers**

The Officers shall have such powers and perform such duties in the management, business and affairs of the Company as may be delegated to them by the Board from time to time.

**55. Remuneration of Officers**

The Officers shall receive such remuneration as the Board may from time to time determine.

**56. Conflicts of Interest**

- 56.1** Any Director, or any Director's firm, partner or any company with whom any Director is associated, may act in a professional capacity for the Company and such Director or such Director's firm, partner or company shall be entitled to remuneration for professional services as if such Director were not a Director, provided that nothing herein contained shall authorise a Director or Director's firm, partner or company to act as Auditor to the Company.
- 56.2** A Director who is directly or indirectly interested in a contract or proposed contract or arrangement with the Company shall declare the nature of such interest as required by the Act.
- 56.3** Following a declaration being made pursuant to this Bye-law, a Director shall recuse himself from Board discussions related to such contract or proposed contract or arrangement and shall not be counted in quorum for such meeting or vote in respect of any contract or proposed contract or arrangement in which such Director is interested.
- 56.4** If a declaration is made pursuant to this Bye-law by the chairman of the relevant Board meeting, he shall not act as chairman in respect of the conduct of the business at the meeting in which he is interested, and the other Directors shall appoint a Director (who is not so interested) to act as chairman in respect of that business. After the business in which he is interested having been concluded, the original chairman of the relevant Board meeting shall resume his position as chairman of the meeting.
- 56.5** If, as a result of the operation of Bye-law 56.3, there are insufficient directors to form a quorum for a directors' meeting to consider, and vote upon, the contract or proposed contract or arrangement:
- (a) the Board may consider whether to call a general meeting to allow Members to consider, and if thought fit, resolve to approve the contract or proposed contract or arrangement;



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- (b) any Director who has declared his interest and recused himself in accordance with this Bye-law may, notwithstanding such interest, be counted in the quorum for, and may vote at, the directors' meeting to consider whether to convene a general meeting for the purpose set out in Bye-law 56.5(a); and
  - (c) a general meeting may pass a resolution to deal with a matter referred to Members in accordance with Bye-law 56.5(b).

## **57. Indemnification and Exculpation of Directors and Officers**

**57.1** The Directors, Resident Representative, Secretary and other Officers (such term to include any person appointed to any committee by the Board) for the time being acting in relation to any of the affairs of the Company or any subsidiary thereof and the liquidator or trustees (if any) for the time being acting in relation to any of the affairs of the Company or any subsidiary thereof, and every one of them, and their heirs, executors and administrators, shall be indemnified and secured harmless out of the assets of the Company from and against all actions, costs, charges, losses, damages and expenses which they or any of them, their heirs, executors or administrators, shall or may incur or sustain by or by reason of any act done, concurred in or omitted in or about the execution of their duty, or supposed duty, or in their respective offices or trusts, and none of them shall be answerable for the acts, receipts, neglects or defaults of the others of them or for joining in any receipts for the sake of conformity, or for any bankers or other persons with whom any moneys or effects belonging to the Company shall or may be lodged or deposited for safe custody, or for insufficiency or deficiency of any security upon which any moneys of or belonging to the Company shall be placed out on or invested, or for any other loss, misfortune or damage which may happen in the execution of their respective offices or trusts, or in relation thereto, PROVIDED THAT this indemnity shall not extend to any matter in respect of any fraud or dishonesty which may attach to any of the said persons.

- 57.2 Each Member agrees to waive any claim or right of action such Member might have, whether individually or by or in the right of the Company, against any Director or Officer on account of any action taken by such Director or Officer, or the failure of such Director or Officer to take any action in the performance of his duties with or for the Company or any subsidiary thereof, PROVIDED THAT such waiver shall not extend to any matter in respect of any fraud or dishonesty which may attach to such Director or Officer.
- 57.3 The Company may purchase and maintain insurance for the benefit of any Director or Officer against any liability incurred by him under the Act in his capacity as a Director or Officer or indemnifying such Director or Officer in respect of any loss arising or liability attaching to him by virtue of any rule of law in respect of any negligence, default, breach of duty or breach of trust of which the Director or Officer may be guilty in relation to the Company or any subsidiary thereof.
- 57.4 The Company may advance moneys to an Officer, Director or auditor for the costs, charges and expenses incurred by the Officer, Director or auditor in defending any civil or criminal proceedings against them, on condition that the Officer, Director or auditor shall repay the advance if any allegation of fraud or dishonesty is proved against him.

#### MEETINGS OF THE BOARD OF DIRECTORS

##### 58. Board Meetings

The Board may meet for the transaction of business, adjourn and otherwise regulate its meetings as it sees fit. Subject to these Bye-laws, a resolution put to the vote at a meeting of the Board shall be carried by the affirmative votes of a majority of the votes cast and in the case of an equality of votes the resolution shall fail. For the avoidance of doubt the chairman shall not have a second or casting vote.

##### 59. Notice of Board Meetings

A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Board. Notice of a meeting of the Board shall be deemed to be duly given to a Director if it is given to such Director verbally (including in person or by telephone) or otherwise communicated or sent to such Director by post, electronic means or other mode of representing words in a visible form at such Director's last known address or in accordance with any other instructions given by such Director to the Company for this purpose.

**60. Electronic Participation in Meetings**

Directors may participate in any meeting by such telephonic, electronic or other communications facilities or means as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and participation in such a meeting shall constitute presence in person at such meeting. Where a majority of the Directors participating in any meeting are in one location, the meeting shall be deemed to have been held in that location. Where there is not a majority of Directors participating in such meeting from a common location, the Board may determine the place of such meeting as being any of the places from which any of the Directors are participating in the meeting.

**61. Quorum at Board Meetings**

The quorum necessary for the transaction of business at a meeting of the Board shall be two Directors.

**62. Board to Continue in the Event of Vacancy**

The Board may act notwithstanding any vacancy in its number but, if and so long as its number is reduced below the number fixed by these Bye-laws as the quorum necessary for the transaction of business at meetings of the Board, the continuing Directors or Director may act for the purpose of (i) summoning a general meeting; or (ii) preserving the assets of the Company.

**63. Chairman to Preside**

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Unless otherwise agreed by a majority of the Directors attending , the Chairman, if there be one, and if not, the President, if there be one, shall act as chairman at all meetings of the Board at which such person is present. In their absence a chairman shall be appointed or elected by the Directors present at the meeting.

**64. Written Resolutions**

A resolution signed by all the Directors, which may be in counterparts, shall be as valid as if it had been passed at a meeting of the Board duly called and constituted, such resolution to be effective on the date on which the last Director signs the resolution. For the purposes of this Bye-law only, "the Directors" shall not include an Alternate Director.

**65. Validity of Prior Acts of the Board**

No regulation or alteration to these Bye-laws made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation or alteration had not been made.

### **CORPORATE RECORDS**

**66. Minutes**

The Board shall cause minutes to be duly entered in books provided for the purpose:

- (a) of all elections and appointments of Officers;
- (b) of the names of the Directors present at each meeting of the Board and of any committee appointed by the Board; and
- (c) of all resolutions and proceedings of general meetings of the Members, meetings of the Board, and meetings of committees appointed by the Board.

**67. Place Where Corporate Records Kept**

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Minutes prepared in accordance with the Act and these Bye-laws shall be kept by the Secretary at the registered office of the Company.

**68. Form and Use of Seal**

**68.1** The Company may adopt a seal in such form as the Board may determine from time to time. The Board may adopt one or more duplicate seals for use in or outside Bermuda.

**68.2** The seal of the Company shall not be affixed to any instrument except attested by the signature of a Director and the Secretary or any two Directors, or any person appointed by the Board for the purpose, provided that any Director, Officer or Resident Representative may affix the seal of the Company attested by such Director, Officer or Resident Representative's signature to any authenticated copies of these Bye-laws, the incorporating documents of the Company, the minutes of any meetings or any other documents required to be authenticated by such Director, Officer or Resident Representative.

## ACCOUNTS

**69. Books of Account**

**69.1** The Board shall cause to be kept proper records of account with respect to all transactions of the Company and in particular with respect to:

- (a) all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure relates;
- (b) all sales and purchases of goods by the Company; and
- (c) all assets and liabilities of the Company.

**69.2** Such records of account shall be kept at the registered office of the Company, or subject to the Act, at such other place as the Board thinks fit and shall be available for inspection by the Directors during normal business hours.

**70. Financial Year End**

The financial year end of the Company may be determined by resolution of the Board and failing such resolution shall be 30 June in each year.

**AUDITS****71. Annual Audit**

Subject to any rights to waive laying of accounts or appointment of an Auditor pursuant to the Act, the accounts of the Company shall be audited at least once in every year.

**72. Appointment of Auditor**

**72.1** Subject to the Act, the Members shall appoint an auditor to the Company to hold office for such term as the Members deem fit or until a successor is appointed.

**72.2** The Auditor may be a Member but no Director, Officer or employee of the Company shall, during his continuance in office, be eligible to act as an Auditor of the Company.

**73. Remuneration of Auditor**

The remuneration of the Auditor appointed by the Members shall be fixed by the Company in general meeting or in such manner as the Members may determine. In the case of an Auditor appointed pursuant to Bye-law 78, the remuneration of the Auditor shall be fixed by the Board.

**74. Duties of Auditor**

**74.1** The financial statements provided for by these Bye-laws shall be audited by the Auditor in accordance with generally accepted auditing standards. The Auditor shall make a written report thereon in accordance with generally accepted auditing standards.

**74.2** The generally accepted auditing standards referred to in this Bye-law may be those of a country or jurisdiction other than Bermuda or such other generally accepted auditing

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standards as may be provided for in the Act. If so, the financial statements and the report of the Auditor shall identify the generally accepted auditing standards used.

**75. Access to Records**

The Auditor shall at all reasonable times have access to all books kept by the Company and to all accounts and vouchers relating thereto, and the Auditor may call on the Directors or Officers for any information in their possession relating to the books or affairs of the Company.

**76. Financial Statements**

Subject to any rights to waive laying of accounts pursuant to the Act, financial statements as required by the Act shall be laid before the Members in general meeting annually. A resolution in writing made in accordance with Bye-law 42 receiving, accepting, adopting, approving or otherwise acknowledging financial statements shall be deemed to be the laying of such statements before the Members in general meeting.

**77. Distribution of Auditor's report**

The report of the Auditor shall be submitted to the Members in general meeting.

**78. Vacancy in the Office of Auditor**

If the office of Auditor becomes vacant by the resignation or death of the Auditor, or by the Auditor becoming incapable of acting by reason of illness or other disability at a time when the Auditor's services are required, the vacancy thereby created shall be filled in accordance with the Act.

## **VOLUNTARY WINDING-UP AND DISSOLUTION**

**79. Winding-Up**

If the Company shall be wound up the liquidator may, with the sanction of a resolution of the Members, divide amongst the Members in specie or in kind the whole or any part of the assets

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of the Company (whether they shall consist of property of the same kind or not) and may, for such purpose, set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the Members or different classes of Members. The liquidator may, with the like sanction, vest the whole or any part of such assets in the trustees upon such trusts for the benefit of the Members as the liquidator shall think fit, but so that no Member shall be compelled to accept any shares or other securities or assets whereon there is any liability.

### CHANGES TO CONSTITUTION

#### 80. Changes to Bye-laws

80.1 No Bye-law may be rescinded, altered or amended and no new Bye-law may be made until the same has been approved by a resolution of the Board and by a resolution of the Members.

#### 81. Discontinuance

The Board may exercise all the powers of the Company to discontinue the Company to a jurisdiction outside Bermuda pursuant to the Act.

### LIMITATIONS ON THE RIGHT TO HOLD SHARES

#### 82. Additional Definitions

In addition to the meanings and rules of interpretation set out in Bye-law 1.1, capitalised terms used in Bye-laws 82 to 93 have the following meanings:

**Affiliated Companies** of a Person means:

- (a) a Parent Company of the Person;
- (b) a Subsidiary Company of the Person; and/or



- (c) another company where the Person and that company are both Subsidiary Companies of the same Parent Company.

**Associate** of a Person means:

- (a) an Affiliated Company of the Person; and/or
- (b) another Person with whom such Person has entered into a Relevant Agreement, or proposes to enter into a Relevant Agreement, for the purpose of:
  - (i) holding or acquiring a Relevant Interest; or
  - (ii) controlling or influencing the composition of the Board or the conduct of the Company's affairs.

**Bid Securities** means each share the subject of an Offer.

**Control** over a Person means:

- (a) the ability to exercise, directly or Indirectly:
  - (i) more than thirty per cent (30%) of the voting rights in a general meeting of such Person; or
  - (ii) the right to dismiss or appoint more than fifty per cent (50%) of the members of such Person's board; or
- (b) in respect of a Person that is not a legal entity, being liable (whether actually or contingently and alone or together with one or more Affiliated Companies) for the debts owed by such Person to one or more third parties.

**Derivative** means a financial product which provides a financial return based on price movements of securities, including exchange traded options or options granted by third parties, and includes financial products (including equity swaps, caps and collars and other hedging

arrangements) which have the effect of limiting exposure to risks associated with such price movements.

**Foreign Ineligible Holder** means a Member resident, located or having a registered address in a jurisdiction in which an offer of shares under Bye-law 86.1(j) or under a Takeover Bid would require compliance with the applicable law of that jurisdiction and such compliance is determined by the Company (in respect of an offer under Bye-law 86.1(j)) or the Offeror (in respect of a Takeover Bid) to be unreasonable having regard to each of the following:

- (a) the total number of Members in the jurisdiction;
- (b) the total number and value of securities the Members would be offered; and
- (c) the cost of complying with the legal requirements and requirements of a regulatory authority in the jurisdiction.

**Indirectly** means by, through or in concert with:

- (a) an Associate of such Person; or
- (b) a nominee or trustee for the Person.

**Offer** means an offer to acquire Bid Securities under a Takeover Bid.

**Offer Period** means the period during which offers under a Takeover Bid are open for acceptance.

**Offeror** means the Person making the Takeover Bid.

**On Market Transaction** means a transaction that is effected on a Relevant Stock Exchange and is:

- (a) an on-market transaction as defined in the rules governing the operation of that Relevant Stock Exchange; or

- (b) if those rules do not define on-market transactions, effected in the ordinary course of trading on that Relevant Stock Exchange.

**Parent Company** of a Person means a company which has Control over such Person.

**Person** means a natural person, a legal entity or any other legal form that under applicable law has the power to hold a Relevant Interest.

**Relevant Agreement** means an agreement, understanding or arrangement:

- (a) whether formal or informal or partly formal and partly informal; and
- (b) whether written or oral or partly written and partly oral; and
- (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights.

**Relevant Interest** means any interest in shares that causes or permits a Person to directly or Indirectly:

- (a) exercise, or influence or restrain the exercise of, voting rights on shares (whether through the giving of voting instructions or as a proxy or otherwise); or
- (b) dispose, or influence or restrain the disposal of, shares,

including inter alia the legal or beneficial ownership of a share and an interest under an option agreement to acquire a share.

**Relevant Stock Exchange** means any stock exchange on which shares are traded from time to time.

**Shareholding Limitations** means Bye-laws 83 to 93 and Shareholding Limitation means any of them.

**Subsidiary Company** of a Person means a company over which such Person has Control.

A Person has a **Substantial Holding** in the Company if the total votes attached to shares in which they or their Associates:

- (a) directly or Indirectly have a Relevant Interest; or
- (b) would directly or Indirectly have a Relevant Interest but for the operation of Bye-law 85.1(g) or 85.1(i),

is 3% or more of the total number of votes attached to shares in the Company.

**Takeover Bid** means a bid for shares that at all relevant times fulfils the purposes set out in Bye-law 83 and complies with the principles in Bye-law 89.

**Voting Power** means a Person's voting power in the Company that is calculated in accordance with the following formula:

$$\frac{A}{B} \times 100$$

where:

A = the total number of votes attached to all the shares (if any) in which that Person or an Associate of that Person directly or Indirectly has a Relevant Interest; and

B = is the total number of votes attached to all shares in the Company.

### 83. Underlying Purposes

83.1 The purposes of the Shareholding Limitations are to ensure that:

- (a) the acquisition of control over shares takes place in an efficient, competitive and informed market; and
- (b) the Company, the Board and each Member:

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- (i) know the identity of any Person who proposes to acquire a Substantial Holding in the Company; and
  - (ii) are given a reasonable amount of time to consider a proposal to acquire a Substantial Holding in the Company; and
  - (iii) are given enough information to assess the merits of a proposal to acquire a Substantial Holding in the Company; and
- (c) as far as practicable, all Members have a reasonable and equal opportunity to participate in any benefits accruing through any proposal under which a Person would acquire a Substantial Holding in the Company.

**83.2** In the interpretation of a Shareholder Limitation, a construction that would promote the purpose of the Shareholding Limitations described in Bye-law 83.1 is to be preferred to a construction that would not promote that purpose.

#### **84. Basic Limitation**

**84.1** Subject to the exceptions in Bye-law 86, a Person must not acquire a Relevant Interest if, because of the acquisition, that Person's or someone else's Voting Power in the Company increases:

- (a) from thirty per cent (30%) or below to more than thirty per cent (30%); or
- (b) from a starting point that is above thirty per cent (30%) and below fifty per cent (50%).

**84.2** Any holding of a share or acquisition of a Relevant Interest in breach of Bye-law 84.1 does not cause such acquisition or holding to be invalid.

**84.3** A Person:

- (a) holding or acquiring a Relevant Interest; or

- (b) exercising Voting Power at a general meeting,

shall together with his Affiliated Companies be considered as one Person in respect of such Relevant Interest or exercise of Voting Power, and each of them, to the extent he holds one or more shares shall be jointly and severally liable for each other's obligations under these Bye-laws. In addition, there may be imposed on each of them the other remedies referred to in Bye-law 92.

**84.4** If one or more Persons pursuant to an agreement or a nominee or trustee arrangement act together for the purpose of:

- (a) holding or acquiring a Relevant Interest; or
- (b) exercising Voting Power at a general meeting; or
- (c) circumventing the prohibition as referred to in Bye-law 84.1 or the obligations in Bye-law 87,

all of them shall be considered as one Person in respect of such Relevant Interest, exercise of Voting Power or circumvention of the prohibition or obligation. Each of them, to the extent they hold one or more shares shall be jointly and severally liable for each other's obligations under these Bye-laws. In addition, there may be imposed on each of them the other remedies referred to in Bye-law 92.

**85. Situations Not Giving Rise to a Relevant Interest**

**85.1** A Person is not considered to hold or acquire a Relevant Interest for the purpose of Bye-law 84.1 if the Relevant Interest arises merely because:

- (a) **nominees and trustees:** that Person acquires a Relevant Interest solely as a nominee or trustee for a Person who may direct the nominee or trustee as to the exercise of any power relating to the Relevant Interest;

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- (b) **intermediaries:** that Person holds shares as a securities intermediary provided such Person acts on behalf of someone else (and not for his own account) in the ordinary course of such Person's financial services business and provided such person is qualified to practise as or is licensed as an intermediary under any applicable law;
  - (c) **custodians and depositaries:** that Person holds shares as a custodian or depositary in order to enable shares to be traded on a Relevant Stock Exchange provided such Person is qualified to practise and/or licensed to provide such custodian or depositary services as required under applicable law;
  - (d) **buy-backs:** that Person holds or acquires a Relevant Interest as a result of the Company having entered into an agreement to buy back the shares;
  - (e) **mortgages, charges and securities:** of a mortgage, charge or other security taken for the purpose of a transaction entered into by the Person if:
    - (i) the mortgage, charge or security is taken or acquired in the ordinary course of the Person's business of providing financial services and on ordinary commercial terms; and
    - (ii) the Person whose property is subject to the mortgage, charge or security is not an Associate of the Person;
  - (f) **proxies and representatives:** the Person has been appointed to vote as a proxy or representative of a Member in accordance with Bye-law 39 provided that:
    - (i) the appointment is for one general meeting only; and
    - (ii) neither the Person nor any Associate gives valuable consideration for such appointment;
  - (g) **market traded options:** of

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- (i) an option over shares traded on a Relevant Stock Exchange; or
  - (ii) a right to acquire a Relevant Interest given by a Derivative,  
provided that this Bye-law 85.1(g) ceases to apply when the obligation to make or take delivery of the shares arises;
  - (h) **directors of holders of Relevant Interests:** the Person is a director of a legal entity which has a Relevant Interest; or
  - (i) **conditional agreements:** of an agreement if the agreement:
    - (i) is conditional on a resolution referred to in Bye-law 86.1(d); and
    - (ii) does not confer any control over, or power to substantially influence, the exercise of Voting Power attached to the shares; and
    - (iii) does not restrict disposal of the shares for more than 3 months from the date when the agreement is entered into.

The Person acquires a Relevant Interest in the shares when the condition referred to in Bye-law 85.1(i)(i) is satisfied.

**85.2** When a Person's Relevant Interest in a share is disregarded pursuant to Bye-law 85.1, the Person shall for the purposes of Bye-law 84.1 be taken not to be entitled to exercise, directly or Indirectly, its Voting Power.

## **86. Exceptions to the Basic Limitation**

**86.1** The prohibition as referred to in Bye-law 84.1 shall not apply to the extent that:

- (a) **Takeover Bids:** the holding or acquisition of a Relevant Interest results from the acceptance of offers under a Takeover Bid;



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- (b) **On Market Transactions:** the holding or acquisition of a Relevant Interest is the result of an On Market Transaction if:
- (i) the acquisition is by or on behalf of the Offeror; and
  - (ii) the acquisition occurs during the Offer Period; and
  - (iii) the Takeover Bid is for all the Bid Securities; and
  - (iv) the Takeover Bid is unconditional;
- (c) **creeping acquisitions:** the holding or acquisition of a Relevant Interest arises in the following circumstances:
- (i) throughout the six (6) months before the acquisition a Person directly, or Indirectly, had Voting Power of at least twenty-nine per cent (29%); and
  - (ii) as a result of the acquisition, directly or Indirectly, the Person would have Voting Power not more than one (1) percentage point higher than the Person had six (6) months before the acquisition;
- (d) **shareholder approval:** the holding or acquisition of a Relevant Interest has been approved previously by a general meeting if:
- (i) no votes are cast in favour of the resolution by:
    - (A) the Person proposing to make the acquisition and its Associates;  
or
    - (B) the Person (if any) from whom the acquisition is to be made and its Associates; and
  - (ii) the Members were given all information known to the Person proposing to make the acquisition or its Associates, or known to the Company, that was material to the decision on how to vote on the resolution, including:

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- (A) the identity of the Person proposing to make the acquisition and its Associates; and
  - (B) the maximum extent of the increase in that Person's Relevant Interest in the Company that would result from the acquisition; and
  - (C) the Relevant Interest that Person would have as a result of the acquisition; and
  - (D) the maximum extent of the increase in the Relevant Interest of each of that Person's Associates that would result from the acquisition; and
  - (E) the Relevant Interest that each of that Person's Associates would have as a result of the acquisition;
- (e) **mergers, amalgamations, schemes or compromises:** the holding or acquisition of a Relevant Interest results from an acquisition through operation of law including a merger, amalgamation, scheme or arrangement or compromise in accordance with the Act;
- (f) **acceptance of takeover offers:** the holding or acquisition of a Relevant Interest results from the acceptance of takeover offers made by the Company for the securities of another body corporate listed on the stock market of a securities exchange, which offers are made in accordance with applicable law regulating the conduct of takeovers of bodies corporate of that kind, where shares or securities convertible into shares are included in the consideration for the acquisition of securities under those offers;

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- (g) **convertible securities issued under takeover offers:** the holding or acquisition of a Relevant Interest results from the exercise of rights of conversion attaching to securities convertible into shares issued in accordance with Bye-law 86.1(f);
- (h) **receivers or receivers and managers:** the holding or acquisition of the Relevant Interest results from the exercise by a Person of a power or appointment as a receiver or receiver and manager under a mortgage, charge or other security, provided:
- (i) the Person's ordinary business includes the provision of financial accommodation by any means; and
  - (ii) the Person took or acquired the security in the ordinary course of business of the provision of financial accommodation by any means and on ordinary commercial terms;
- (i) **underwriters and sub-underwriters:** the holding or acquisition of a Relevant Interest results from an issue by the Company under a prospectus or offer document to a Person as underwriter or sub-underwriter to the issue where the prospectus or offer document disclosed the effect or range of possible effects that the issue would have on the number of shares in which that Person would have a Relevant Interest and on the voting rights of that Person; or
- (j) **rights issues:** the holding or acquisition of a Relevant Interest results from an issue of shares that satisfies all of the following conditions:
- (i) the Company offers to issue shares to a particular class;
  - (ii) offers are made to every person who holds shares in that class to issue them with the percentage of shares in that class to be issued that is the same as the percentage of shares that they hold before the issue;

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- (iii) all of those persons have a reasonable opportunity to accept the offers made to them;
  - (iv) agreements to issue are not entered into until a specified time for acceptances of offers are closed; and
  - (v) the terms of all of the offers are the same.

This Bye-law 86.1(j):

- (vi) includes the acquisition or holding of a Relevant Interest by a Person as underwriter to the issue or sub-underwriter; and
- (vii) applies even if the conditions set out above are not satisfied in respect of Foreign Ineligible Holders if, under the terms of the offers:
  - (A) the Company must appoint a nominee (being a person that is qualified to practise and/or licensed to act as a nominee to sell shares on behalf of, and distribute the net proceeds to the Foreign Ineligible Holders);
  - (B) the Company must issue or transfer to that nominee:
    - I. the shares that would otherwise be issued or transferred to the Foreign Ineligible Holders who accept the offer; or
    - II. the right to acquire those shares; and
  - (C) the nominee must sell those shares or rights and distribute to each of those Foreign Ineligible Holders their proportion of the proceeds of the sale net of expenses.

## 87. Disclosure of Substantial Holdings

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87.1 The Company may, by giving notice in writing, require the holder of a share give the Company, within two (2) Business Days after receiving the notice, a statement in writing setting out:

- (a) full details of the holder's Relevant Interest and of the circumstances giving rise to that Relevant Interest; and
- (b) the name and address of each other Person who has a Relevant Interest together with full details of:
  - (i) the nature and extent of the Relevant Interest; and
  - (ii) the circumstances that give rise to the Person's Relevant Interest; and
- (c) the name and address of each Person who has given the holder of the shares or the Person as referred to in Bye-law 87.1(b) above instructions about:
  - (i) the acquisition or disposal of a Relevant Interest; or
  - (ii) the exercise of any voting or other rights attached to a Relevant Interest;
  - (iii) any other matter relating to a Relevant Interest;

together with full details of those instructions (including the date or dates on which those relevant instructions were given).

- (d) A matter referred to in Bye-law 87.1(b) or (c) need only be disclosed to the extent to which it is known to the Person making the disclosure.
- (e) Where a statement is delivered to the Company containing any details as referred to in Bye-law 87.1(b) or (c), the Company may, by giving notice in writing, require a holder of a share to give to the Company or to use its best endeavours to procure that any other Persons as referred to in Bye-law 87.1(b) or (c) to give to the Company, within two (2) days after receiving the notice, a

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statement in writing setting out the details as referred to in Bye-law 87.1(a), (b) or (c).

**87.2** Within two (2) Business Days of:

- (a) a Person beginning to have, or ceasing to have, a Substantial Holding; or
- (b) where a Person has a Substantial Holding, the Person's Voting Power increasing or decreasing by one (1) or more percentage points from the percentage they last disclosed in accordance with this Bye-law 87.2; or
- (c) a Person making a Takeover Bid,

that Person must give the Company and each Relevant Stock Exchange a statement in writing setting out:

- (d) the Person's name and address;
- (e) full details of the Person's Relevant Interest;
- (f) details of any Relevant Agreement through which the Person would hold a Relevant Interest;
- (g) the name and address of each Associate who has a Relevant Interest together with full details of:
  - (i) the nature of their association with the Associate;
  - (ii) the Relevant Interest of the Associate; and
  - (iii) any Relevant Agreement through which the Associate has the Relevant Interest; and
- (h) if the information is being given because of an increase or decrease in the Person's Voting Power, the size and date of that movement; and

- (i) if the information is being given because a Person has ceased to be an Associate, the name of that Person,

and the statement must be accompanied by:

- (j) a copy of any document including any Relevant Agreement (endorsed with a statement that the copy of the document is a true copy) that contributed to the situation giving rise to the Person needing to provide the information which is in writing and readily available to the Person; and
- (k) a statement by the Person giving full and accurate details of any contract, scheme or arrangement that contributed to the situation giving rise to the person needing to provide the information which is not both in writing and readily available to the Person.

## **88. Consequences of announcing a Takeover Bid**

If a Person either alone or with other Persons publicly proposes to make a Takeover Bid, the Person must make an Offer to each holder of Bid Securities on the proposed terms of the Takeover Bid Offers in compliance with Bye-law 89 (including sending holders of Bid Securities the document described in Bye-law 90) within 2 months of the date the Takeover Bid is publicly proposed.

## **89. Requirements for Takeover Bids**

**89.1** In addition to fulfilling the purposes in Bye-law 83.1, a Takeover Bid must comply with the following principles:

- (a) An Offer must be an offer to buy all the Bid Securities or a specified proportion of all the Bid Securities. The proportion specified must be the same for all holders of the Bid Securities.

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- (b) A Person who holds one (1) or more parcels of those securities as trustee or nominee for, or otherwise on account of, another Person may accept the offer as if a separate offer had been made in relation to:
- (i) each of those parcels; and
  - (ii) any parcel they hold in their own right.
- (c) All the Offers made must be the same. In applying this Bye-law 89.1(c), the following shall be disregarded:
- (i) any differences in the Offers attributable to the fact that the number of Bid Securities that may be acquired under each Offer is limited by the number of Bid Securities held by the holder;
  - (ii) any differences in the Offers attributable to the fact that the Offers relate to Bid Securities having different accrued dividend or distribution entitlements;
  - (iii) any differences in the Offers attributable to the fact that the Offers relate to Bid Securities on which different amounts are paid up or remain unpaid;
  - (iv) any differences in the Offers attributable to the fact that the Offeror may issue or transfer only whole numbers of securities as consideration for the acquisition; and
  - (v) any additional cash amount offered to holders instead of the fraction of a security that would otherwise be offered.

However, if the consideration offered under the Takeover Bid includes an offer of securities, the securities do not need to be offered to Foreign Ineligible Holders if under the terms of the Offers:



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- (vi) the Offeror must appoint a nominee (being a person that is qualified to practise and/or licensed to act as a nominee to sell shares on behalf of, and distribute the net proceeds to the Foreign Ineligible Holders) who is approved by the Company (such approval not to be unreasonably withheld or delayed);
  - (vii) the Offeror must issue or transfer to that nominee:
    - (A) the securities that would otherwise be issued or transferred to the Foreign Ineligible Holders who accept the Takeover Bid for that consideration; or
    - (B) the right to acquire those securities; and
  - (viii) the nominee must sell those securities or rights and distribute to each of those Foreign Ineligible Holders their proportion of the proceeds of the sale net of expenses.
  - (d) The consideration offered for Bid Securities must equal or exceed the maximum consideration that the Offeror (or any of its Associates) directly or Indirectly provided, or agreed to provide, for shares under any purchase or agreement during the four (4) months before the first day of the Offer Period.
  - (e) The Offeror must provide the consideration to each holder of Bid Securities on or before the earlier of:
    - (i) one month after the date of the holder's acceptance or, if the Offer is subject to conditions when you accept the Offer, within one month after the Offer becomes unconditional; and
    - (ii) 21 days after the end of the Offer Period.

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- (f) The Offeror must not directly or Indirectly, during the Offer Period, give, offer to give or agree to give a benefit to a Person if:
- (i) the benefit is likely to induce the Person directly or Indirectly to:
    - (A) accept the Offer; or
    - (B) dispose of shares; and
  - (ii) the same benefit is not offered to all holders of Bid Securities.
- (g) The Offer Period must:
- (i) start on the date the first Offer is made; and
  - (ii) last for at least one (1) month, and not more than twelve (12) months.
- (h) If, within the last seven (7) days of the Offer Period:
- (i) the Offers are varied to improve the consideration offered (including by offering an alternative form of consideration); or
  - (ii) the number of shares in which the Offeror directly or Indirectly holds a Relevant Interest, or both, increases to more than fifty per cent (50%) of the issued and outstanding share capital of the Company,
- the Offer Period is extended so that it ends fourteen (14) days after the event referred to in Bye-law 89.1(h)(i) or (ii).
- (i) If the Offer Period is extended for more than one month and the obligations of Offeror to deliver the consideration in accordance with Bye-law 89.1(e) are postponed for more than 1 month and, at the time, the Offer is subject to one or more of the conditions, the Offeror must:

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- (i) grant each holder of Bid Securities that has accepted an Offer the right to withdraw its acceptance of the Offer; and
  - (ii) give a written notice to all holders of Bid Securities who have accepted an Offer, all Relevant Stock Exchanges and the Company explaining the withdrawal rights under this Bye-law 89.1(i) and the process by which those rights may be exercised.

If a holder of Bid Securities exercises its rights under this Bye-law 89.1(i) any contract arising from its previous acceptance will become void. Nothing in this Bye-law 89.1(i) prevents a holder of Bid Securities from accepting an Offer, even if the holder has exercised its rights under this Bye-law 89.1(i) to withdraw a previous acceptance.

- (j) Each Offer must be subject to a condition that may not be waived by either the Offeror or the Company and provides that the completion of the Offer and any contract that results from an acceptance of the Offer is subject to the Offeror having a Relevant Interest in at least 50% of the Bid Securities at the end of the Offer Period.
- (k) Offers must not be subject to a maximum acceptance condition. A maximum acceptance condition is one that provides that the Offers will terminate, or the maximum consideration offered will be reduced, if effectively one or more of the following occurs:
  - (i) the number of Bid Securities for which the Offeror receives acceptances reaches or exceeds a particular number; or
  - (ii) the number of shares in which the Offeror directly or Indirectly holds a Relevant Interest, or both, reaches or exceeds a particular percentage of the issued and outstanding share capital of the Company; or

- (iii) the percentage of Bid Securities the Offeror has a Relevant Interest in reaches or exceeds a particular percentage of Bid Securities in that class.
- (l) Offers must not be subject to a discriminatory condition. A discriminatory condition is a condition that allows the Offeror to acquire, or may result in that Person acquiring, Bid Securities from some but not all of the people who accept the offers.
- (m) Offers must not be subject to a condition if the fulfilment of the condition depends on:
  - (i) the opinion, belief or other state of mind of the Offeror or an Associate; or
  - (ii) the happening of an event that is within the sole control of, or is a direct result of action by, any of the following:
    - (A) the Offeror (acting alone or together with an Associate); or
    - (B) an Associate (acting alone or together with the Offeror or another Associate of that Person).
- (n) The Offeror may only vary the Offers by:
  - (i) improving the consideration offered (including by offering an additional form of consideration); or
  - (ii) extending the Offer Period.
- (o) The terms of unaccepted Offers must be varied in the same way. Any person who has already accepted an Offer must be entitled to the improved consideration and, in the case of the addition of a new form of consideration, be entitled to make a fresh election.

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- (p) A Person making an Offer that is unconditional may extend the Offer Period at any time before the end of the Offer Period.
  - (q) If the Offers are still subject to conditions the Offeror may only extend the Offer Period:
    - (i) at least seven (7) days before the end of the Offer Period; or
    - (ii) during the seven (7) days before the end of the Offer Period, if another Person announces a bid for Bid Securities or improves the consideration offered under another bid for Bid Securities.
  - (r) Each Offer must be in writing and have the same date. This date is the day the first Offer is made.

## 90. Disclosure Obligations under a Takeover Bid

**90.1** The Offeror must, at the same time it makes the Offers to holders of Bid Securities, also give a document to those holders setting out all of the following information:

- (a) details of the Offeror's intentions regarding:
  - (i) the continuation of the Company's business;
  - (ii) any major changes to be made to the Company's business, including any redeployment of the Company's fixed assets; and
  - (iii) the future employment of the Company's present employees;
- (b) details of:
  - (i) any cash amounts held by the Offeror for payment of the consideration;
  - (ii) the identity of any other person providing, directly or indirectly, cash consideration from that person's own funds; and

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- (iii) any arrangement under which cash will be provided by such other person;
  - (c) if any securities are offered as consideration under the bid and the Offeror is the issuer of the securities or controls the issuer of the securities, all material that would be required for a prospectus for an offer of those securities by the Offeror under applicable law;
  - (d) if the Offer or an Associate provided, or agreed to provide, consideration for a share under a purchase or agreement during the four months before the date of the bid, the following information:
    - (i) to the extent to which the consideration includes a cash sum, the amount per share of the cash sum;
    - (ii) to the extent to which the consideration includes quoted securities, the market price per share of those securities; and
    - (iii) to the extent to which the consideration is neither a cash sum nor a quoted security, the value per share of that consideration, supported by a report prepared by a Person who is qualified to prepare such a report and who is not an Associate of the Offeror that states whether, in the Person's opinion, the value stated is fair and reasonable and gives the reasons for forming that opinion;
  - (e) if, during the four (4) month period before the date of the bid, the Offeror or an Associate gave or offered or agreed to give a benefit to another Person likely to induce the other Person or an Associate to either accept an Offer or dispose of a Bid Security, and the benefit is not offered to all holders of Bid Securities, details of the benefit;
  - (f) the following details in relation to the Bid Securities:

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- (i) the total number of Bid Securities; and
  - (ii) the number of Bid Securities in which the Offeror had a Relevant interest immediately before the first Offer is sent (expressed as a number or as a percentage of the total number of Bid Securities); and
  - (iii) the Offeror's Voting Power; and
- (g) any other information that:
- (i) is material to the making of the decision by a holder of Bid Securities whether to accept an Offer; and
  - (ii) is known to the Offeror.

**90.2** The Offeror must give the document described under Bye-law 90.1 to the Company and all Relevant Stock Exchanges at least fourteen (14) days before it is given to all holders of Bid Securities and must be dated. The date is the first date on which the document is given to a Relevant Stock Exchange.

**90.3** In respect of the document described under Bye-law 90.1, if the Offeror becomes aware of:

- (a) a misleading or deceptive statement in the document; or
- (b) an omission from the document of information required by Bye-law 83 or Bye-law 90.1; or
- (c) a new circumstance that:
  - (i) has arisen since the document was given to the Company; and
  - (ii) would have been required by Bye-law 83 or Bye-law 90.1 to be included in the document if it had arisen before the document was given to the Company,

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that is material from the point of view of a holder of Bid Securities, the Offeror must prepare a supplementary document that remedies this defect. The Offeror must give the supplementary document to the Company and give a copy to all Relevant Stock Exchanges. The supplementary document must be dated. The date is the first date on which the supplementary document is given to a Relevant Stock Exchange.

**90.4** If a Takeover Bid is made, the Company must give to all holders of Bid Securities, all Relevant Stock Exchanges and the Offeror a document in a timely manner setting out all information that the holders and their professional advisers would reasonably require to make an informed assessment whether to accept an Offer. The document must contain this information:

- (a) only to the extent to which it is reasonable for investors and their professional advisers to expect to see the information in the document; and
- (b) only if the information is known to any members of the Board; and

The document must also contain a statement by each member of the Board:

- (c) recommending that offers under the Takeover Bid be accepted or not accepted, and giving reasons for the recommendation; or
- (d) giving reasons why a recommendation is not made.

The document must be dated. The date is the first date on which the document is given to a Relevant Stock Exchange.

**90.5** In respect of the document described in Bye-law 90.4, if the Company becomes aware of:

- (a) a misleading or deceptive statement in the document; or
- (b) an omission from the document of information required by Bye-law 90.4; or
- (c) a new circumstance that:



- (i) has arisen since the document was given to the Offeror; and
- (ii) would have been required by Bye-law 90.5(a) to be included if it had arisen before the document was given to the Offeror,

that is material from the point of view of a holder of Bid Securities, prepare a supplementary document that remedies this defect and give it to the Offeror and all Relevant Stock Exchanges. The supplementary document must be dated. The date is the first date on which the supplementary document is given to a Relevant Stock Exchange.

**90.6** If the Company has been given a document in accordance with Bye-law 90.2, the Offeror may request the Company to provide the Offeror with the name and address of each Person who held Bid Securities and that Person's holding, at the specified time by the Offeror.

**90.7** The Company must give the information to the Offeror in a timely manner and:

- (a) in the form that the Person requests; or
- (b) if the Company is unable to comply with the request, in writing.

**90.8** If the Company must give the information to the Person in electronic form, the information must be readable but the information need not be formatted for the preferred operating system of the Offeror.

## **91. Withdrawing a Takeover Bid**

**91.1** An Offeror may not withdraw a Takeover Bid or any Offers without:

- (a) the written consent in writing of the Board, which consent may be subject to conditions;
- (b) providing notice of the withdrawal to each Relevant Stock Exchange and each holder of Bid Securities; and

- (c) complying with any other conditions imposed by the Board.

**91.2** If, at the time the Offers are withdrawn:

- (a) all the conditions to which the Offers are subject have been freed, all contracts arising from acceptance of the Offer before it was withdrawn will remain enforceable; or
- (b) the Offers remain subject to one or more conditions, all contracts arising from its acceptance will become void (whether or not the events referred to in the relevant conditions have occurred).

**91.3** A withdrawal pursuant to clause 91.1 will be deemed to take effect:

- (a) if the withdrawal is not subject to conditions imposed by the Board, on and after the date on which that consent in writing is given by the Board; or
- (b) if the withdrawal is subject to conditions imposed by the Board, on and after the date on which those conditions are satisfied.

## **92. Contravention of Shareholding Limitations**

**92.1** If a breach by a Person of the provisions of Bye-laws 84.1, 87.1, 87.2, 88, 89, 90 and/or 91 has occurred and is continuing then, subject to Bye-law 92.3, the Board may cause the Company to exercise any one or more of the following remedies:

- (a) require, by notice in writing, the Member to dispose all or part of the shares so held in breach of Bye-law 84.1, 87.1, 87.2, 88, 89, 90 and/or 91 within the time specified in the notice;
- (b) suspend and disregard the exercise by such Person of all or part of its Voting Power;

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- (c) suspend such Person from the right to receive all or part of the dividends or other distributions arising from the shares so held in breach of Bye-law 84.1, 87.1, 88, 89 and/or 90; or
- (d) in respect of a breach of Bye-laws 88, 89 and/or 90 refuse to register any purported transfers of shares to the Offeror as a consequence of an acceptance of an Offer under an announced Takeover Bid and any subsequent Takeover Bid announced within 6 months of the date of breach.
- 92.2** If a Person or its Associates breaches Bye-laws 84.1, 88, 89, 90 or 91 then neither the Person nor its Associates may within six months from the date of breach:
- (a) announce a Takeover Bid or an intention to make a Takeover Bid; or
- (b) acquire a Relevant Interest in the Company.
- 92.3** The Company may only exercise the remedies referred to in Bye-law 92.1 if a judgment has been obtained from a competent court that a breach of the prohibition in of Bye-law 84.1 or the obligations in Bye-laws 87.1, 87.2, 88, 89, 90 and/or 91 has occurred and is continuing. The Company must act in accordance with such judgment, including with respect to the remedies (if any) which the court requires or allows the Company to exercise.
- 92.4** Where the Company is seeking but has not received a judgment under Bye-law 92.3, the Company may also exercise any of the remedies described in Bye-law 92.1 (other than paragraph 92.1(a) of that Bye-law) by notice in writing to the Member but so that they have effect for the period commencing on the date the notice is given and ending on the earlier of:
- (a) twenty eight (28) days after the notice has been given; and
- (b) one (1) day after the judgement under Bye-law 92.3 has been given to the Company.

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- 92.5** If the requirements of any notice pursuant to Bye-law 92.1(a) are not complied with by the Person within the time specified in the notice:
- (a) the Company may:
    - (i) as an irrevocable proxy of the Member, without any further instrument, cause the shares referred to in the notice to be sold on any Relevant Stock Exchange or, if they are not so quoted, in accordance with these Bye-laws and the Act;
    - (ii) appoint a Person as transferor to effect a transfer in respect of any shares sold in accordance with Bye-law 92.5(a)(i) and to receive and give good discharge of the purchase money for them;
    - (iii) acknowledge the transfer despite the fact that the share certificates (if any) may not have been delivered to the Company;
    - (iv) issue a new share certificate (if required) in which event any previous certificates are deemed to have been cancelled;
  - (b) if the Person delivers the relevant share certificates to the Company for cancellation or there are no such share certificates in existence, the purchase money less the expenses of any sale made in accordance with Bye-law 92.5(a)(i) shall be paid by the Company to the Person whose shares were sold;
  - (c) if the Person does not deliver the relevant share certificates to the Company:
    - (i) the Company may bring an action against the Person for recovery of such share certificates;
    - (ii) the Person is not entitled to deny or dispute the Company's ownership and right to possession of any share certificate in any legal action; and

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- (iii) the Company need not pay the purchase money less the expenses of any sale made in accordance with Bye-law 92.5(a)(i) to the Person whose shares were sold until the relevant share certificates have been delivered or recovered or an indemnity to the satisfaction of the Company has been received;
  - (d) the Person shall be deemed to have represented to the Company and the Directors with effect immediately prior to the transfer of any shares and the issue of new certificate(s) representing such shares, that the shares to be transferred and the certificates not yet surrendered to the Company representing such shares have not been transferred, charged, lent or deposited or dealt with in any manner affecting the absolute title thereto and that, with respect to share certificates not yet surrendered, that the Person is named in such share certificate(s) and is entitled to be on the register in respect of all such shares;
  - (e) the Person shall indemnify the Company and its Directors and Officers against all claims and demands (and any expenses thereof) which may be made against the Company or the Directors in consequence of the transfer of any such shares or the issue of new share certificate(s) representing any such shares;
- 92.6** The Company may, by notice in writing, at any time require any Member to provide the Company any information or evidence (on oath or otherwise verified if the Company reasonably requires) as the Company may consider likely to be of assistance in determining whether or not that Person is eligible to remain a Member with respect to all its shares.
- 92.7** Despite anything in this Bye-law 92, the Company has no liability arising from any Person holding shares in circumstances which would result in or have the effect of causing an infringement or contravention of Bye-law 87.1, 87.2, 88, 89, 90 and/or 91. The

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Company and the members of its Board have no liability to any Person arising from any action taken by the Company under this Bye-law 92, provided that such action was taken in good faith.

92.8 Neither the Company, nor the Board, will have any liability whatsoever to any Person arising from any action taken by the Company under this Bye-law 92.

93. **Proportional Takeover Bid Approval**

93.1 In addition to the meanings and rules of interpretation set out in Bye-laws 1.1 and 82, capitalised terms used in this Bye-law 93 have the following meanings:

**Approving Resolution** means a resolution to approve a Proportional Takeover Bid in accordance with this Bye-law 93.

**Deadline** means the 14th day before the last day of the Offer Period for a Proportional Takeover Bid.

**Proportional Takeover Bid** means a Takeover Bid for a specified proportion of all shares.

**Voter** means a Person (other than the bidder under a Proportional Takeover Bid or an Associate of that bidder) who, as at the end of the day on which the first offer under that bid was made, held shares.

93.2 Where offers are made under a Proportional Takeover Bid, the Directors must call and arrange to hold a meeting of Voters for the purpose of voting on an Approving Resolution before the Deadline. Notwithstanding Bye-law 30, for the purposes of this Bye-law 93.2, the meeting of Voters may be called upon not less than 10 days' notice.

93.3 If an Approving Resolution in relation to a Proportional Takeover Bid is voted on in accordance with this Bye-law 93 before the Deadline, the Company must, on or before the Deadline, give the bidder and each Relevant Stock Exchange a written notice stating

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that an Approving Resolution has been voted on and whether the resolution was passed or rejected.

- 93.4** Notwithstanding any other Bye-law, the Board must refuse to register a transfer of shares giving effect to a takeover contract for a Proportional Takeover Bid unless and until an Approving Resolution is passed in accordance with this Bye-law 93.
- 93.5** Subject to Bye-law 93.2, the provisions of these Bye-laws concerning meetings of Members (with the necessary changes) apply to a meeting held pursuant to Bye-law 93.2.
- 93.6** Subject to these Bye-laws, every Voter present at the meeting held under Bye-law 93.2 is entitled to one vote for each share that the Voter holds.
- 93.7** To be effective, an Approving Resolution must be passed before the Deadline.
- 93.8** 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.
- 93.9** If no Approving Resolution has been voted on as at the end of the day before the Deadline, an Approving Resolution is taken, for the purposes of this Bye-law 93, to have been passed in accordance with this Bye-law 93.