

**SYLVANIA PLATINUM LIMITED**  
**EXEMPTED COMPANY (REGISTRATION NO. 44512)**

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**NOTICE OF ANNUAL GENERAL MEETING**

**and**

**EXPLANATORY MEMORANDUM**

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Date of Meeting: 30 October 2015

Time of Meeting: 10.00 am

Place of Meeting: Clarendon House

2 Church Street

Hamilton

BERMUDA

This Notice of Annual General Meeting and Explanatory Memorandum should be read in their entirety. If Shareholders are in doubt as to how they should vote, they should seek advice from their accountant, solicitor or other professional adviser prior to voting.

# SYLVANIA PLATINUM LIMITED

EXEMPTED COMPANY (REGISTRATION NO. 44512)

## NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that an annual general meeting of shareholders of Sylvania Platinum Limited (**Company**) will be held at Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda at 10.00am on 30 October 2015.

The Explanatory Memorandum which accompanies and forms part of this Notice of Annual General Meeting describes the various matters to be considered and contains a glossary of defined terms for terms that are not defined in full in this Notice.

### AGENDA

#### CHAIRMAN

To appoint a chairman of the Meeting.

#### NOTICE AND QUORUM

To confirm notice and quorum.

#### FINANCIAL STATEMENTS AND REPORTS

To receive and consider the financial statements, the directors' report and auditors' report for the Company and its controlled entities for the year ended 30 June 2015.

The financial statements, the directors' report and auditors' report for the Company and its controlled entities for the year ended 30 June 2015 (the **Financial Report**) are available in PDF on the home page of the Company's website ([www.sylvaniaplatinum.com](http://www.sylvaniaplatinum.com)). If you wish to receive the Financial Report by mail, please contact Computershare Investor Services PLC on +44 (0)370 702 0000.

#### RESOLUTIONS

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#### 1. Amendment to Bye-Laws – Shareholder Protection Provisions

To consider and, if thought fit, to pass, with or without amendment, the following resolution:

*“That, in accordance with Bye-law 80.1 of the Company’s Bye-laws and for all other purposes, the amendments to the Bye-laws set out in Part 1 of Schedule A to the Explanatory Memorandum be approved and adopted with immediate effect.”*

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#### 2. Amendment to Bye-Laws – General Amendments

To consider and, if thought fit, to pass, with or without amendment, the following resolution:

*“That, in accordance with Bye-law 80.1 of the Company’s Bye-laws and for all other purposes, the amendments to the Bye-laws set out in Part 2 of Schedule A to the Explanatory Memorandum be approved and adopted with immediate effect.”*

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### 3. Reduction of Share Capital

To consider and, if thought fit, to pass, with or without amendment, the following resolution:

*“That, with effect from 30 October 2015 (“the Effective Date”):*

- (a) the Company’s authorised share capital be reduced from US\$100,000,000 divided into 1,000,000,000 common shares of par value US\$0.10 each to US\$10,000,000 divided into 1,000,000,000 common shares of US\$0.01 each, by reducing the par value of each authorised share from US\$0.10 per common share to US\$0.01 per common share;*
- (b) the Company’s issued share capital be reduced from US\$29,798,189.60 divided into 297,981,896 common shares of par value US\$0.10 each to US\$2,979,818.96 divided into 297,981,896 common shares of par value US\$0.01 each, by reducing the par value of each authorised share from US\$0.10 per common share to US\$0.01 per common share (the **Reduction of Share Capital**);*
- (c) the surplus resulting from the Reduction of Share Capital be credited to the contributed surplus account of the Company, such surplus being an amount that is in excess of the capital requirements of the Company;*
- (d) any liability to the holder of shares in the Company prior to the Reduction of Share Capital to pay subscription amounts on excess of US\$0.01 per common share be, and is hereby, extinguished; and*
- (e) in accordance with Bye-law 80.1 of the Company’s Bye-laws, and for all other purposes, Bye-Law 4.1 is amended, in respect of the par value of the common shares, by replacing the reference to ‘US\$0.10’ with ‘US\$0.01’ as set out in Part 3 of Schedule A.”*

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### 4. Ratification of appointment of Ms Eileen Carr

To consider and, if thought fit, to pass, with or without amendment, the following resolution:

*“That the appointment of Ms Eileen Carr, who was appointed a Director of the Company to fill a casual vacancy with effect from 1 May 2015, be ratified in accordance with Bye-law 44.3 of the Company’s Bye-laws and for all other purposes.”*

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### 5. Appointment of Auditor

To consider and, if thought fit, to pass, with or without amendment, the following resolution:

*"That KPMG Inc. be and are hereby appointed as auditors of the Company for a term expiring at the 2016 annual general meeting of the Company, at a fee to be agreed by the Directors."*

**BY ORDER OF THE BOARD**

Louis Carroll  
Assistant Secretary  
DATED: 1 October 2015

# SYLVANIA PLATINUM LIMITED

EXEMPTED COMPANY (REGISTRATION NO. 44512)

## EXPLANATORY MEMORANDUM

This Explanatory Memorandum has been prepared for the information of Shareholders in connection with the business to be considered at the Annual General Meeting of Sylvania Platinum Limited to be held at Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda at 10.00 am on 30 October 2015.

The Explanatory Memorandum should be read in conjunction with the accompanying Notice of Annual General Meeting. For the assistance of Shareholders, a glossary of defined terms is included at the end of the Explanatory Memorandum.

Full details of the business to be considered at this Annual General Meeting are set out below.

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### 1. Voting entitlements and proxies

#### 1.1 Voting entitlement

For the purposes of determining voting entitlements at the Annual General Meeting:

- Shares will be taken to be held by the persons who are registered as holding the Shares on the Register of Members of the Company at 5.00pm (GMT) on 27 October 2015; and
- Depository Interests will be taken to be held by the persons who are registered as holding Depository Interests on the Depository Interest Register at 5.00pm (GMT) on 26 October 2015.

Accordingly:

- issues and transfers of Shares registered after 5.00pm (GMT) on 27 October 2015 will be disregarded in determining a Shareholders entitlement to attend and vote at the Annual General Meeting; and
- any changes to entries on the Depository Interest Register after 5.00pm (GMT) on 26 October 2015 shall be disregarded in determining the rights of any person requesting via the Depository to attend and vote at the meeting.

#### 1.2 Shareholders only: Form of Proxy and Electronic Voting Instructions

Shareholders entitled to attend and vote at the Meeting may appoint one or more proxies to attend and vote in their place. A proxy need not be a Shareholder. A proxy or proxies may be appointed using the procedures set out below. The appointment of a proxy will not preclude a Shareholder from subsequently attending and voting at the Annual General Meeting.

Along with this Notice, Shareholders will receive a Proxy Form. Shareholders may appoint a proxy using the enclosed Proxy Form or the online proxy appointment service provided by the Company's Registrar, Computershare available at [www.investorcentre.co.uk/eproxy](http://www.investorcentre.co.uk/eproxy) (described below). The Proxy Form contains further instructions regarding proxy appointment.

To appoint a proxy online you must register for Computershare's online proxy service at [www.investorcentre.co.uk/eproxy](http://www.investorcentre.co.uk/eproxy). For the purposes of online registration you will need the Control Number and also your SRN and PIN numbers each of which you will find on the Proxy Form enclosed with this Notice. Full details of procedures are set out on the Computershare online proxy service website.

In order to be valid, the appointment of proxy must be effected by using one of the following methods:

- by sending a duly authorised Proxy Form to the Company's Registrars, Computershare at: Computershare Investor Services (Jersey) Limited, C/O The Pavilions, Bridgwater Road, Bristol BS99 6ZY; or
- by utilising Computershare's online proxy appointment service at [www.investorcentre.co.uk/eproxy](http://www.investorcentre.co.uk/eproxy),

and in each case the appointment of proxy must be received by Computershare no later than **5.00pm (GMT) on 27 October 2015**.

### **1.3 Depository Interest Holders only: Form of Instruction and Electronic Voting Instructions**

**Generally, only Shareholders (or their proxies and, in the case of corporate shareholders, those persons appointed pursuant to Letters of Representation) are entitled to attend and vote at the Meeting.** Depository Interest Holders may, however, issue voting instructions to the registered holder of the shares underlying their Depository Interest using the procedures set out below. The issue of a voting instruction will not preclude a Depository Interest Holder from subsequently attending and voting at the Annual General Meeting. However, should a Depository Interest Holder wish to attend and/or vote at the Meeting (or should they wish to appoint a representative to attend the Meeting on their behalf), the Depository Interest Holder (or their representative) can only do so if a Letter of Representation is obtained from the Depository by contacting them in writing or email to [UKALLDITeam2@computershare.co.uk](mailto:UKALLDITeam2@computershare.co.uk).

Depository Interest Holders may issue a voting instruction by submitting the hard copy Form of Instruction enclosed with this Notice or by lodging a voting instruction online either via the online voting instruction service provided by the Company's Depository, Computershare, or, for Depository Interest Holders who are also CREST members, via the CREST electronic voting appointment service (each described below).

The Form of Instruction contains further information regarding the issue of voting instructions. To issue your voting instruction online via Computershare's online electronic voting service at [www.investorcentre.co.uk/eproxy](http://www.investorcentre.co.uk/eproxy) you will need the Control Number and also your SRN and PIN numbers, each of which you will find on the Form of Instruction enclosed with this Notice. Full details of voting procedures are set out on the Computershare online electronic voting service website. Further instruction in relation to the issue of voting instructions via the CREST electronic voting appointment service are set out below.

In order to be valid, the voting instruction must be submitted by one of the following methods:

- by sending a duly authorised Form of Instruction to the Company's Depository, Computershare at: Computershare Investor Services PLC, C/O The Pavilions, Bridgwater Road, Bristol BS99 6ZY;
- by issuing a voting instruction through Computershare's online electronic voting service at [www.investorcentre.co.uk/eproxy](http://www.investorcentre.co.uk/eproxy); or

- by issuing a voting instruction through CREST electronic voting appointment service available from [www.euroclear.com/CREST](http://www.euroclear.com/CREST),

and in each case, the voting instruction must be received by Computershare or, in the case of lodgement with CREST, the Custodian (see below), no later than **5.00pm (GMT) on 26 October 2015**.

### **CREST Electronic Voting Appointment System**

If you are a Depository Interest Holder and a CREST member and wish to issue an instruction through the CREST electronic voting appointment service, you may do so by using the procedures described in the CREST manual (available from [www.euroclear.com/CREST](http://www.euroclear.com/CREST)). CREST personal members or other CREST sponsored members, and those CREST members who have appointed a voting service provider(s), should refer to their CREST sponsor or voting services provider(s), who will be able to take the appropriate action on their behalf.

In order for instructions made using the CREST service to be valid, the appropriate CREST message (**CREST Voting Instruction**) must be properly authenticated in accordance with the specifications of Euroclear UK & Ireland Limited (**EUI**) and must contain the information required for such instructions, as described in the CREST Manual.

The CREST Voting Instruction, regardless of whether it relates to the original voting instruction of the Depository Interest Holder or to an amendment thereto given to the Custodian must, in order to be valid, be transmitted so as to be received by the Custodian (ID 3RA50), no later than **5.00pm (GMT) on Monday 26 October 2015**. For this purpose, the time of receipt will be taken to be the time (as determined by the timestamp applied to the CREST Voting Instruction by the CREST applications host) from which the Custodian is able to retrieve the CREST Voting Instruction by enquiry to CREST in the manner prescribed by CREST.

CREST members and, where applicable, their CREST sponsors or voting service providers should note that EUI does not make available special procedures in CREST for any particular messages. Normal system timings and limitations will therefore apply in relation to the transmission of CREST Voting Instructions. It is the responsibility of the CREST member concerned to take (or, if the CREST member is a CREST personal member or sponsored member or has appointed a voting service provider(s), to procure that the CREST sponsor or voting service provider(s) take(s)) such action as shall be necessary to ensure that a CREST Voting Instruction is transmitted by means of the CREST service by any particular time. In this connection, CREST members and, where applicable, their CREST sponsors or voting service providers are referred, in particular, to those sections of the CREST Manual concerning practical limitations of the CREST system and timings.

You may not use any electronic address provided in this document to communicate with the Company for any purposes other than those expressly stated.

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## **2. Resolution 1 – Amendments to Bye-laws – Shareholder Protection Provisions**

### **2.1 General**

Resolution 1 proposes to amend the Bye-laws to insert certain shareholder protection provisions (the **Shareholder Protections Amendment**).

A copy of the Bye-laws incorporating the Shareholder Protections Amendment along with the General Amendments (discussed in paragraph 3 below) and the amendment to Bye-law 4.1 upon the Reduction of Share Capital (discussed in paragraph 4 below) (together, the **Proposed Amendments**) will be sent to any Shareholder upon request to the Company. A copy of the proposed Bye-laws incorporating the Proposed Amendments in mark-up will also be available for inspection during normal business hours at the Company's registered office in Bermuda (Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda) (including for 15 minutes prior to and during the Annual General Meeting) and at the offices of the Company's share registry in England (Computershare Investor Services PLC, The Pavilions, Bridgwater Road, Bristol). The Proposed Amendments are also set out in Schedule A to this Notice with all proposed amendments to the existing Bye-laws shown in mark-up for ease of reference for Shareholders.

## **2.2 Background to Shareholder Protection Provisions**

Under Sylvania's existing Bye-Laws and the regulatory regime in Bermuda, Sylvania's place of incorporation, the Company and its Shareholders do not receive the benefit of takeover-related, shareholder protection mechanisms such as those available to companies incorporated in the United Kingdom (pursuant to the UK City Code on Takeovers and Mergers). Further, the Companies Act does not contain laws regulating the takeover of companies.

In the absence of adequate shareholder protection provisions, Shareholders are exposed to the risk of a change of control occurring by the acquisition of shares from a limited number of Shareholders. Shareholders may not be afforded a reasonable opportunity to participate in the benefits offered by a person seeking control of Sylvania, and may not receive any compensation in the form of a 'control premium' which would ordinarily be paid by a person obtaining control of Sylvania.

The safeguard for Shareholders is normally provided by takeover protection mechanism, namely equal treatment of all shareholders and, accordingly, a compulsory offer for all shares. This safeguard is not currently available to Shareholders.

The Shareholder Protections Amendment is, therefore, being placed before Shareholders for consideration to mitigate the lack of protection and safeguards that are usually available to shareholders in a number of other jurisdictions including those available to UK incorporated companies under the UK City Code on Takeovers.

Although Bermuda law does not currently regulate takeovers or changes of control of Bermuda companies, Bermuda incorporated companies such as Sylvania that wish to establish shareholder protection mechanisms for the benefit of their shareholders may adopt bye-laws which regulate the acquisition of shares in the company.

The Directors, therefore, propose the adoption of shareholder protection measures to provide mechanisms that they consider appropriate to regulate the affairs of the Company.

## **2.3 Purpose and effect of the Shareholder Protections Amendment**

The following is a summary of the purpose and the more significant effects of incorporation of the Shareholder Protections Amendment. This summary is not exhaustive. For a comprehensive understanding of the Shareholder Protections Amendment, Shareholders should refer to Part 1 of Schedule A which sets out all of the Shareholder Protections Amendments in full or should otherwise inspect the consolidated Bye-laws which are available for inspection in accordance with Section 2.1.

(a) **Purpose of Shareholder Protections Amendment**

The primary purpose of the Shareholder Protections Amendment is to ensure, as far as possible, fair and equal treatment for all Sylvania Shareholders in the event of a change of control of the Company. The Directors consider that they need to initiate action to mitigate the absence of those shareholder protections which are generally available to shareholders of companies incorporated in a number of other jurisdictions (including the United Kingdom pursuant to the provisions of the City Code on Takeover and Mergers).

The Directors are concerned that, as Sylvania is not subject to any takeover or share acquisition regulations, a person may gain control of Sylvania without making an equal offer to all Shareholders. Shareholders may not be given the opportunity to participate in an offer or the benefits of any such offer. Indeed, under the current regime, Shareholders may not even be aware of any attempt by a person to gain control of Sylvania.

The Shareholder Protections Amendment is therefore intended to ensure that:

- the acquisition of control of the Company takes place in an efficient, competitive and informed market;
- Shareholders know the identity of a person proposing to acquire, are given reasonable time to consider a proposal to acquire and are given enough information to assess the merits of a proposal to acquire, control of the Company;
- as far as practicable, Shareholders have a reasonable and equal opportunity to participate in any benefits accruing through a proposal to acquire control of the Company; and
- in the case of a Proportional Takeover Bid, Shareholders have the opportunity to approve the bid.

(b) **Limitation on acquiring more than 30%**

Proposed Bye-law 84.1 would have the effect, subject to certain exceptions, of prohibiting a person from acquiring an interest in Shares if, due to the acquisition, the person's voting power (together with that of his or her associates) in the Company either:

- increases from 30% or below to more than 30%; or
- increases from a starting point that is above 30% and below 50%,

(the **Basic Limitation**).

A person's voting power in the Company is calculated by reference to the number of voting shares in which the person has a "Relevant Interest". A person has a Relevant Interest if they have an interest in Shares that causes or permits that person to:

- 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

- dispose or influence (or restrain) the disposal of Shares,

including the legal ownership of a Share and an interest under an option agreement to acquire a Share.

(c) **Anti-avoidance provisions**

Proposed Bye-laws 84.3, 84.4 and 85 are anti-avoidance measures which prevent Shareholders from acting in concert or dealing in Shares through "affiliates" in order to circumvent the Basic Limitation. The anti-avoidance measures are subject to stated exceptions to ensure that transactions which are not designed or intended to circumvent the Basic Limitation do not result in a breach of the Basic Limitation.

(d) **Exceptions to the Basic Limitation**

Proposed Bye-law 86.1 sets out various exceptions to the Basic Limitation. The acquisition of Shares which confer on a Shareholder a Relevant Interest in, or voting power in respect of, more than 30% of Shares (or any increase in a Relevant Interest or voting power from a starting position of more than 30% and less than 50%) will not contravene the Basic Limitation where, amongst others:

- (i) the acquisition results from acceptances of offers under a Takeover Bid (refer to paragraph (f) below as to what constitutes a Takeover Bid) or occurs on-market during the currency of a Takeover Bid (subject to specified restrictions on the form of the Takeover Bid);
- (ii) the acquisition constitutes not more than a 1% "creep" in the voting power or Relevant Interest of the Shareholder in a rolling six month period;
- (iii) the acquisition has received the prior approval of the Company in special general meeting where no votes are cast in favour of the resolution by persons making the acquisition or from whom the acquisition is to be made and provided that Shareholders were given all information known to the Company or the person proposing to make the acquisition that is material to the decision on how to vote on the resolution;
- (iv) the acquisition is the result of a pro rata offer of Shares to Shareholders;  
or
- (v) the acquisition resulted from an acquisition by operation of law including by way of a merger conducted in accordance with the Bermuda Companies Act.

Bye-law 86.1 also contains other less significant exceptions to the Prohibition.

(e) **Enforcement and sanctions**

Bye-law 92.1 empowers the Board to cause the Company to exercise any one or more of the following remedies if the shareholder protections have been breached and the breach is continuing:

- (i) require, by notice in writing, the Shareholder to dispose of all or part of the Shares held in breach of the shareholder protections within the time specified in the notice;

- (ii) suspend and disregard the exercise by the Shareholder of all or part of the voting rights arising from the Shares;
- (iii) suspend the Shareholder from the right to receive all or part of the dividends or other distributions arising from the Shares held in breach of the shareholder protections; or
- (iv) in respect of certain breaches, 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.

Bye-law 92.3 provides that the Company may only exercise the remedies if it first obtains a judgment from a court of competent jurisdiction to the effect that a breach of the Prohibition has occurred and is continuing. However, Bye-law 92.4 provides where the Company is seeking, but has not yet received a judgment under Bye-law 92.3, the Company may exercise any of the remedies described in Bye-law 92.1 (excluding the remedy set out in subparagraph 2.3(e)(i) above) by written notice to the Shareholder with effect for a period ending on the earlier of 28 days after the notice has been given or one day after the judgement under Bye-law 92.3 has been given to the Company.

If the Company has obtained a judgment from a court of competent jurisdiction and given a Shareholder a notice requiring them to dispose of all or part of the Shares held in breach of the shareholder protections, then the Company must cause the Shares referred to in the notice to be sold on any relevant securities exchange on which they are quoted. Upon delivery to the Company of relevant share certificates (if any) for cancellation, the net proceeds of sale of the relevant Shares (after deducting the expenses of the sale) must be paid the Shareholder whose Shares were sold.

(f) **Takeover Bid principles**

A bid for Shares that at all relevant times fulfils the purposes described in paragraph (a) and complies with the principles in Bye-law 89 is a **Takeover Bid** for the purposes of the shareholder protections. The principles set out in Bye-law 89 include the following:

- (i) An offer for Shares must be an offer to acquire all Shares or a specified proportion of all Shares (which proportion must be the same for all Shareholders). Refer to Section 2.3(j) in relation to the requirement for Shareholders to approve a Proportional Takeover Bid.
- (ii) Subject to differences attributable to specific matters stated in Bye-law 89.1(c), all of the offers to Shareholders must be the same.
- (iii) The consideration offered for Shares must be at least equal to consideration provided, or agreed to be provided, by the offeror during the four months prior to the first day of the period of the offer.
- (iv) The person making a Takeover Bid must not give or agree to give a benefit to a Shareholder if the benefit is likely to induce the Shareholder to accept the offer or dispose of Shares and the benefit is not offered to all Shareholders.

- (v) The period of the offer must commence on the date the first offer is made and last for at least one month and not more than 12 months, subject to automatic extension of the offer period in circumstances specified in Bye-law 89.1(h).
- (vi) Each Offer must be subject to a condition that may not be waived by the person making the Takeover Bid or the Company which provides that upon completion of the offer and any contract that results from an acceptance of the offer is subject to the person making the Takeover Bid having a Relevant Interest in more than 50% of the Shares at the end of the offer period.
- (vii) The offers must not be subject to conditions satisfying certain criteria specified in Bye-law 89.1(k), 89.1 (l) and 89.1(m) which include:
  - A. maximum acceptance conditions;
  - B. conditions which discriminate between Shareholders; and
  - C. conditions in respect of which their fulfilment depends on the opinion, belief or other state of mind of the offeror or the happening of an event that is in the sole control of the offeror or a person associated with the offeror.
- (viii) The offers may only be varied by improving the consideration offered or extending the period of offer.
- (ix) Every offer must be in writing and have the same date.
- (x) The offeror must, at the same time as it gives its offer to Shareholders, also give a document to Shareholders and the Company setting out specified information, which includes all information known to the offeror that is material to the making of a decision by a Shareholder whether or not to accept the offer.

(g) **Disclosure by the Company in event of Takeover Bid**

Bye-law 90.4 provides that, if a Takeover Bid is made, the Company must give the Shareholders and the offeror a document in a timely manner setting out all information (subject to specified limitations) that Shareholders and their professional advisers would reasonably require to make an informed assessment of whether to accept an offer. The document prepared by the Company must also contain a statement by each member of the Board making a recommendation regarding the offer and giving reasons for such recommendation, or otherwise giving reasons why a recommendation is not made.

(h) **Notification of details of Relevant Interests**

Bye-law 87.1 gives the Company the power to give a notice to a Shareholder requiring that Shareholder to disclose, amongst other things, full details of their Relevant Interest and the circumstances giving rise to the Relevant Interest. A statement responding to the Company's notice is required to be given within two business days of receipt of the notice.

(i) **Notification of substantial shareholdings**

Bye-law 87.2 requires a Shareholder to advise Sylvania within two business days of:

- (i) the person beginning, or ceasing to have (together with his or her associates) a relevant interest in 3% or more of the total number of votes attached to Shares (**Substantial Holding**);
- (ii) a movement of at least 1% in the person's Substantial Holding; or
- (iii) making a Takeover Bid,

and to provide the information prescribed in Bye-law 87.2.

(j) **Proportional Takeover Bid approval provisions**

Bye-law 93 provides that any Takeover Bid for a specified proportion of all Shares (**Proportional Takeover Bid**) may only proceed if it is approved (by a 50% majority) by a meeting of all Shareholders who are not either the bidder or associated with the bidder.

The Directors are required to call and arrange a meeting of those Shareholders entitled to vote on a resolution to approve a Proportional Takeover Bid. The meeting is to be called upon not less than ten days' notice and must be held not later than 14 days prior to the end of the offer period for the Proportional Takeover Bid.

If the Proportional Takeover Bid is not approved by Shareholders, Sylvania must refuse to register any transfer of Shares which purports to give effect to a takeover contract pursuant to that Proportional Takeover Bid. If the approving resolution is passed, the Proportional Takeover Bid may proceed and Sylvania is not prevented from registering transfers pursuant to the Takeover Bid.

## **2.4 Advantages and disadvantages of the Shareholder Protections Amendment**

The approval of the Shareholder Protections Amendment will result in the provisions set out in Part 1 of Schedule A being incorporated into the Bye-laws. This will have the effect of providing Shareholders with shareholder protection mechanisms and ensuring that a bidder cannot gain control of Sylvania in circumstances where Shareholders are not afforded a reasonable and equal opportunity to participate in the benefits offered.

The Shareholder Protections Amendment will establish a regime which regulates the manner in which effective control of Sylvania can be acquired.

Some of the more significant advantages which will flow from the establishment of the takeovers regime contained in the Shareholder Protections Amendment are as follows:

(a) **Person obtaining control pays fair value**

The control of a company confers certain benefits upon the person having such control. The nature and extent of those benefits depends on the level of control which a person holds.

Effective control of a company may be achieved at a shareholding level significantly below 50%. By virtue of the current composition of Shareholders, a person could obtain effective control of Sylvania by acquiring between 30% and 50% of Shares on issue.

By obtaining effective control of Sylvania, a Shareholder would have significant influence over the financial and operating decisions of the Company. Accordingly, the consideration payable for control should be more than the market value of the specific parcel of Shares which confers control on the Shareholders. The difference between what a Shareholder is capable of paying for control and what a Shareholder should fairly pay for that control is known as a "control premium".

The Shareholder Protections Amendment is designed to elicit the payment of a full and fair value, including the payment of a premium for control, by a person who wishes to obtain control of Sylvania.

(b) **Equitable Shareholder participation in benefits of obtaining control**

Under Sylvania's existing Bye-laws, a Shareholder could increase their existing Shareholding, or a person could acquire a Shareholding, sufficient to confer effective control, by selectively dealing with one Shareholder or an exclusive group of Shareholders. Accordingly, in the absence of the shareholder protection mechanisms contained in the Shareholder Protections Amendment, the majority of Shareholders would not receive any benefit from a person obtaining control of the Company.

If the Shareholder Protections Amendment is approved, a person who wishes to obtain control of Sylvania will be required to deal with all Shareholders on an equal basis. For example, all Shareholders will be given equal access to information, an equal opportunity to deal in the market for their Shares and an equal opportunity to participate in any benefits accruing to other Shareholders under a bid.

(c) **Certainty of process**

In the absence of any provisions regulating the conduct of a takeover bid, the manner in which a bidder attempts to acquire Shares is largely at the bidder's discretion. The approval of the Shareholder Protections Amendment will put in place a process through which any takeover bid would need to be conducted. The process would be certain, and the place and role of all participants in the process, including the Company, the bidder and Shareholders, would be known to all other participants.

In the absence of a regulated process for the conduct of a takeover bid, the potential uncertainty could result in the bidder obtaining control of the Company without giving full and fair value, without Shareholders receiving the benefit of the bidder's assumption of control of the Company and without Shareholders receiving sufficient information to make a fully informed decision regarding the sale of their Shares.

(d) **Creation of an informed, efficient and competitive market**

The provisions set out in Part 1 of Schedule A are designed to ensure that Shareholders and market participants are given all information (by a bidder and the Company) that is material to the making of a decision by a Shareholder whether or not to accept an offer for their Shares. This in turn allows the market for Shares to

operate in an efficient and competitive manner which will ultimately benefit Shareholders as a whole.

(e) **Shareholder participation in decision to allow change of control**

The ability of the Board to exercise their managerial powers to either frustrate a bid or promote a bid will be diminished so that Shareholders ultimately decide whether change of control in Sylvania is desirable.

(f) **Shareholders will be prevented from acquiring or increasing a "blocking stake" in the Company**

The lack of an applicable takeover regime allows Shareholders to obtain Shareholding interests sufficient to block or discourage the acquisition of Shares in the Company. That is, a Shareholder currently has an unfettered ability to acquire a stake of more than 30% of the Shares on issue which stake might be sufficient to ensure that a takeover bid for the Company is not commercially attractive. Alternatively, a Shareholder acquiring a stake of more than 30% might have sufficient influence to decide the fate of any takeover bid that was commenced.

By removing the ability of a Shareholder to acquire such a strategic stake, approval of the Shareholder Protections Amendment would allow the "takeover premium" (i.e. the value in the price of Shares attributable to the potential for a fully valued takeover bid) to be retained.

The Directors do not consider there to be any material disadvantages associated with the approval of the Shareholder Protections Amendment.

## **2.5 Recommendation of the Board**

As noted above, the primary objective of the Directors in proposing the Shareholder Protections Amendment is to maximise value for the Sylvania Shareholders. The Directors consider that they need to take action to mitigate the lack of shareholder protection which is generally available to UK incorporated companies.

As a result of the absence of provisions regulating the acquisition of Shares, a person could discretely seek "creeping" control, execute a "dawn raid" or target a few major Shareholders and gain effective or actual control of Sylvania. In the absence of adequate shareholder protection provisions, Shareholders would not be afforded a reasonable opportunity to participate in the benefits offered by a person seeking control or would not receive any compensation in the form of a "control premium" which would ordinarily be paid by a person obtaining control of a company.

With Shareholder support (through the passing of Resolution 1 in the Notice and adoption of the Shareholder Protections Amendment) the Directors can ensure equal treatment for all Shareholders in the case of a change of effective control. Accordingly, the Board considers that it is in the best interests of Shareholders as a whole for Sylvania to incorporate into its Bye-laws takeover and substantial shareholder provisions in the form of the Shareholder Protections Amendment along with the proposed General Amendments to the Bye-laws set out below.

**The Directors unanimously recommend that Shareholders vote in favour of this resolution.**

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### 3. Resolution 2 – Amendments to Bye-laws – General Amendments

Resolution 2 proposes to amend certain Bye-laws to reflect the current share capital of the Company as well as current Bermuda law and regulations (the **General Amendments**). As the Board is proposing amendments to the Bye-laws to include the Shareholder Protections Amendment, the Board has decided to take the opportunity to also amend certain Bye-laws to reflect the current share capital of the Company as well as recent changes to the Companies Act and remove certain requirements which no longer reflect the position under Bermuda law.

These amendments are summarised below and set out in full in Part 2 of Schedule A:

- Bye-law 4 will be amended to remove the references to the former “Class A Shares” of the Company. Such shares were issued to effect the incorporation of the Company and subsequently cancelled by the Company on 18 March 2011 and redesignated as Shares. (It is noted that Bye-law 4.1 will be further amended if Resolution 3 is passed to reflect the reduction in par value of the Shares as discussed below in paragraph 4 and set out in full in Part 3 of Schedule A);
- Bye-law 31 will be amended to provide greater clarity in relation to the Company giving notice to members and where notice shall be deemed to have been given for these purposes;
- Bye-law 45 will be amended to incorporate separate provisions for the termination of office of an Alternate Director elected by Shareholders and an Alternate Director appointed by a Director;
- Bye-law 52 will be amended to remove the requirement to appoint a Vice President or Deputy Chairman as an officer of the Company. This Bye-law reflects a Bermudian legal requirement that is no longer in effect and on this basis the Board believes that it is appropriate, having regard to the size of the Company, to amend Bye-law 52 to remove the requirement that the Company have a Vice President or a Deputy Chairman; and
- Bye-law 56 will be amended to:
  - prevent any Director who has an indirect or direct interest in a contract or proposed contract or arrangement with the Company (an **Interested Director**) from being involved in Board discussions and voting in respect of such contract or proposed contract or arrangement; and
  - provide that if, by operation of Bye-law 56, there are not enough Directors to form a quorum for a Directors’ meeting to consider the contract or proposed contract or arrangement:
    - the Board may consider whether to call a general meeting to allow Shareholders to consider the contract or proposed contract or arrangement;
    - an Interested Director may be counted in the quorum of, and vote at, that Directors’ meeting to consider whether to call a general meeting, notwithstanding his declared interest; and

- the general meeting may pass a resolution to deal with the contract or proposed contract or arrangement.

The Board believes that it would be beneficial to incorporate these changes to the Bye-laws to ensure that the Bye-laws reflect the current share capital of the Company and remain up to date with what is considered best practice under the Companies Act and Bermuda law.

**The Directors unanimously recommend that Shareholders vote in favour of this resolution.**

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#### **4. Resolution 3 – Reduction of Share Capital**

The Company, as an exempted company incorporated in Bermuda, is subject to the Companies Act. Under Bermuda law, a company is prohibited from issuing shares for consideration which is below their par value. The Board considers it prudent to reduce the par value of the Shares to mitigate the risk of the Company being prevented from issuing Shares in the future during any period where the market price per Share is lower than the par value of the Shares.

Pursuant to Resolution 3, the par value of the Company's common shares (both issued and unissued) will be reduced from US\$0.10 to US\$0.01 per Share by way of a reduction of share capital. Shareholders should note that if Resolution 3 is approved, the proposed Reduction of Share Capital will not change the number of issued Shares, or the percentage interest held by each Shareholder. All Shares on issue, and those issued in the future will have a par value of US\$0.01 and will each rank pari passu in all respects with each other. Approval of Resolution 3 will have no effect on the underlying assets, business operations, management or financial position of the Company.

As noted above, in the event that Resolution 3 is approved by Shareholders, Bye-law 4.1 will be amended to reflect the reduction in par value of the Shares by replacing the reference to 'US\$0.10' with 'US\$0.01' as set out in Part 3 of Schedule A.

The proposed Reduction of Share Capital will not result in the return of any share capital or other assets to Shareholders. Any capital cancelled will be credited to the contributed surplus of the Company.

**The Directors unanimously recommend that you vote in favour of this resolution.**

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#### **5. Resolution 4 – Ratification of appointment of Ms Eileen Carr**

Bye-law 4.3 provides that the Board may appoint any person as a Director to fill any vacancy in their number and that any such appointment must be ratified by an ordinary resolution at the next general meeting following the appointment.

Resolution 4 seeks ratification of the appointment of Ms Eileen Carr, who was appointed as a Director of the Company by the Board to fill a casual vacancy, created by the resignation of Mr Grant Button, with effect from 1 May 2015.

Ms Carr has over 25 years' experience in the resources sector, including becoming Finance Director at Cluff Resources Plc in 1993. Since then she has held several directorship positions including Nobel Holdings Inv Limited, Talvivaara Mining Company Plc and Monterrico Metals Plc.

Ms Carr is a fellow of the Chartered Association of Certified Accountants and holds an MSc in Management obtained from London University in 1997, in the same year becoming a SLOAN Fellow of London Business School.

**The Directors, excluding Ms Carr, recommend that you vote in favour of this resolution.**

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## **6. Resolution 5 – Appointment of Auditor**

Section 89(2) of the Companies Act provides that members of a company shall appoint one or more auditors to hold office until a successor is appointed. In addition, section 89(6) of the Companies Act provides that the remuneration of an auditor appointed by the members shall be fixed by the members or by the Directors, if they are authorised to do so by the members.

KPMG are the Company's auditors. Pursuant to Resolution 5, KPMG Inc. will be re-appointed the Company's auditors for a term expiring at the 2016 annual general meeting of the Company, at a fee to be agreed by the Directors.

**The Directors unanimously recommend that you vote in favour of this resolution.**

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## Glossary of Terms

The following terms and abbreviations used in the Notice of Annual General Meeting and this Explanatory Memorandum have the following meanings:

**"Annual General Meeting" or "Meeting"** means the annual general meeting of Shareholders to be held at Clarendon House, 2 Church Street, Hamilton, HM 11, Bermuda at 10.00 am on 30 October 2015 or any adjournment thereof.

**"Basic Limitation"** has the meaning given to it in Section 2.3(b).

**"Board"** means the board of directors of the Company.

**"Bye-laws"** means the bye-laws of the Company as amended from time to time.

**"CREST"** means the UK's system for paperless settlement of trade and the holding of uncertificated securities administered by Euroclear UK & Ireland Limited.

**"CREST Voting Instruction"** has the meaning given to that term in Section 1.3 of the Explanatory Memorandum.

**"Companies Act"** means the Companies Act 1981 of Bermuda as amended from time to time.

**"Company" or "Sylvania"** means Sylvania Platinum Limited.

**"Custodian"** means Computershare Company Nominees Limited.

**"Depository"** means Computershare Investor Service PLC.

**"Depository Interests"** means the depository interests issued by the Depository representing the Shares on a one-for-one basis.

**"Depository Interest Holders"** means the holders of Depository Interests.

**"Directors"** means the directors of the Company, from time to time.

**"EUI"** means Euroclear UK & Ireland Limited.

**"Explanatory Memorandum"** means this explanatory memorandum.

**"Financial Report"** means the financial statements, the directors' report and auditors' report for the Company and its controlled entities for the year ended 30 June 2015.

**"General Amendments"** has the meaning given to it in Section 3.

**"Interested Director"** has the meaning given to it in Section 3.

**"Notice of Annual General Meeting" or "Notice"** means the notice of annual general meeting which accompanies this Explanatory Memorandum.

**"Prohibition"** means the prohibition on the acquisition of an interest in Shares if, due to the acquisition, the person's Relevant Interest (together with that of his or her associated) in Shares or in voting power of the Company either:

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

as set out in Section 2.3(b).

**"Proportional Takeover Bid"** has the meaning given to it in Section 2.3(j).

**"Proposed Amendments"** has the meaning given to it in Section 2.1.

**"Reduction of Share Capital"** has the meaning given to it in Resolution 3.

**"Relevant Interest"** has the meaning given to it in Section 2.3(b).

**"Resolution"** means a resolution in the Notice of Annual General Meeting.

**"Section"** means any section of this Explanatory Memorandum.

**"Shareholder Protections Amendment"** has the meaning given to it in Section 2.1.

**"Shareholders"** means registered holders of Shares.

**"Share"** means a fully paid common share in the capital of the Company.

**"Substantial Holding"** has the meaning given to it in Section 2.3(i)(i).

**"Takeover Bid"** has the meaning given in Section 2.3(f).

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## Schedule A – Proposed Amendments to Bye-laws

### 1. Shareholder Protections Amendment

#### 1.1 *Insert the following new Bye-laws 82 to 93 immediately after existing Bye-law 81*

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### 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:

- (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;
- (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
  - (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;
- (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:

- (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;
  - (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;
- (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**

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 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.
- (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:

- (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.
- (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:
  - (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.
- (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
    - (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:
  - (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,

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.

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;
- (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.
- 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

- (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 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 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.

## 2. General Amendments to Bye-laws

### 2.1 Delete current Bye-law 4.1 and 4.2 and replace with the following new Bye-laws 4.1 and 4.2

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4.1 At the date these Bye-laws are adopted, the share capital of the Company is divided into ~~two~~ single classes of

~~(a) common shares of par value US\$0.10 each (the "Common Shares"); and~~

~~(b) Class A shares of par value US\$0.10 each (the "Class A 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;<sup>5</sup>

~~provided that the Class A Shares shall cease to have any rights on the initial issue of Common Shares and shall immediately thereafter be purchased by the Company at the par value thereof and shall be cancelled and redesignated as Common Shares.~~

## **2.2 Delete current Bye-law 31 and replace with the following new Bye-law 31**

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### **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 ~~letter mail or courier 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
- ~~(e)(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
- ~~(d)(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 ~~Save as otherwise provided in Bye law 31.5, any notice shall be deemed to have been served at the time when the same would be delivered in the ordinary course of transmission and, in~~ proving ~~such~~ 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, ~~delivered to deposited with~~ the courier or transmitted by electronic means. ~~Any notice delivered in accordance with Bye law 31.1(a) shall be deemed to have been served upon such delivery. Any notice delivered in accordance with Bye law 31.1(d) shall be deemed to have been served at the time when the requirements of the Act in that regard have been met.~~

~~31.5 — Mail or courier notice shall be deemed to have been served three days after the date on which it is sent by pre-paid post, air mail or air courier.~~

## **2.3 Delete current Bye-law 45 and replace with the following new Bye-law 45**

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### **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. Any person so elected or appointed shall have all the rights and powers of the Director or Directors for whom such person is elected or 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 ~~cease-terminate:~~

(a) in the case of an Alternate Director elected by the Members:

- (i) on the occurrence in relation to the Alternate Director of any event which, if it occurred in relation to ~~be such if~~ the Director for whom he was ~~appointed~~ elected to act, would result in the termination of that Director's directorship; or
- (ii) if ~~the-as-a~~ Director for whom he was elected in the alternative ceases for any reason to be a Director, ~~but he 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 ~~in accordance with these Bye-laws; 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.

## **2.4 Delete current Bye-law 52 and replace with the following new Bye-law 52**

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### **52. Officers of the Company**

The Officers of the Company shall consist of a President ~~and a Vice President~~ or a Chairman ~~and a Deputy 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.

## **2.5 Delete current Bye-law 56 and replace with the following new Bye-law 56**

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### **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, ~~and unless disqualified by the chairman of the relevant Board meeting,~~ 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 ~~may vote in respect of any contract or proposed contract or arrangement in which such Director is interested and may be counted in the quorum for such meeting.~~
- 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. ~~The chairman so appointed may determine whether to disqualify a Director or not under the provisions of 56.3.~~ 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;~~
  - ~~(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).~~

### 3. Amendments to Bye-law on Reduction of Share Capital

#### 3.1 Delete current Bye-law 4.1 and replace with the following new Bye-laws 4.1

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4.1 ~~At the date these Bye-laws are adopted~~As of 30 October 2015, the share capital of the Company is divided into ~~two single classes: of~~

~~(a) common shares of par value US\$0.100.01 each (the "Common Shares"), and~~

~~(b) Class A shares of par value US\$0.10 each (the "Class A 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.