

A COMPANY LIMITED BY GUARANTEE
CONSTITUTION
OF
AVOCADOS AUSTRALIA LIMITED

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**A COMPANY LIMITED BY GUARANTEE
CONSTITUTION
of
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1 GENERAL

1.1 Name of Company

The name of the Company is Avocados Australia Limited.

1.2 Replaceable Rules

The Replaceable Rules do not apply to the Company.

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these rules unless it is inconsistent with the subject or context in which it is used:

‘**ABS Figures**’ means, where the context requires, the annual avocado production figures published by the Australian Bureau of Statistics for an area within Australia or for the whole of Australia, as the case may be.

‘**Act**’ means the Corporations Act 2001 (Cth);

‘**Associate Member**’ means a person admitted as an Associate Member under **rule 5.4**;

‘**Board**’ means the board of directors of the Company;

‘**Business day**’ means a day on which banks (as that term is defined in the *Banking Act 1959*) are open for business in Brisbane;

‘**Chairman**’ includes an acting Chairman under **rule 10.4**;

‘**Commercial Avocado Grower**’ means any person that grows avocados in Australia as a business or for commercial benefit and who either:

- (a) paid levies to Australian Forestry, Fisheries & Agriculture, its successor or assigns, in the immediately preceding financial year; or
- (b) has not less than 0.5 hectares of avocados under production.

‘**Committee**’ means a committee to which powers have been delegated by the Board pursuant to **rule 16.7**;

‘**Company**’ means Avocados Australia Limited;

'Constitution' means the constitution of the Company, as amended from time to time;

'Financial Member' means a Member who has paid all membership fees and other monies payable by the Member to the Company;

'First Directors' means those persons named as directors in the application for registration of the Company;

'Government' means local, state, territory and/or federal government;

'Growing Area' means, where the context requires, any one or more of the Australian geographical areas established by the Board pursuant to this Constitution, as such areas may be re-defined from time to time; and includes a new geographical area that is established pursuant to **rule 7**.

'Grower Member' means a person who is admitted as a Grower Member under **rule 5.3**;

'Grower Life Member' means a Life Member who, immediately before having Life membership conferred upon them, was a Grower Member or a Representative of a Grower Member;

'Honorary Member' means a person admitted as an Honorary Member under **rule 5.6**;

'Life Member' means a natural person admitted as a Life Member under **rule 5.7**;

'Member of the Board' or **'Director'** means a person appointed or elected from time to time to the office of director of the Company in accordance with these rules and includes any alternate director duly acting as a member of the Board;

'Member' means any person who becomes a member in accordance with the Act and this Constitution; and includes Grower Members, Associate Members, Affiliate Members, Honorary Members and Life Members, as those terms are used in this Constitution in accordance with **rule 5**;

'Members present' means Members present at a general meeting of the Company in person or, if applicable, by duly appointed corporate representative, proxy or attorney;

'non-Grower Director' means a director appointed under **rule 12.1(b)**

'non-Grower Member' means a Member who is not a Grower Member or Grower Life Member;

'Office' means the registered office from time to time of the Company;

'Production Level' means the percentage of total Australian avocado production represented by a Growing Area from time to time, based upon ABS Figures and calculated by averaging the production figure for the Growing Area over the immediately preceding 3 years for which ABS Figures are available..

‘Register’ means the register of Members of the Company established pursuant to the Act;

‘Registered Address’ means the address of a Member specified in the Register or any other address of which the Member notifies the Company as a place at which the Member will accept service of notices;

‘Replaceable Rules’ means all or any of the replaceable rules contained in the Act from time to time and includes any replaceable rule that was or may become, a provision of the Act;

‘Representative’ means, in respect of a Member, a natural person who is a partner, director, officer or principal of a partnership, company, trustee or other entity (‘body’) which is itself a Member.

‘Research and Development’ means any project, initiative, research, strategy or promotion designed to advance avocado production or the Australian avocado industry;

‘rules’ means the rules of this Constitution as altered or added to from time to time;

‘Seal’ means the common seal, if any, from time to time of the Company;

‘Secretary’ means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary;

‘Threshold Levels’ means the levels set by the Board from time to time in accordance with **rule 7**, being, in respect of the Growing Areas, the levels of production of avocados (as a percentage of total Australian avocado production based on the latest ABS Figures) that determine the entitlement of Grower Members from each Growing Area to appoint Directors to the Board and the number of persons entitled to be appointed to the Board based on those Threshold Levels.

2.2 Interpretation

- (a)** An expression defined in, or given a meaning for the purposes of the Act (except where defined, or given a meaning, in this Constitution) has the same definition or meaning in this Constitution where it relates to the same matters as the matters for which it is defined or given a meaning in the Act.
- (b)** Words in the singular include the plural and vice versa.
- (c)** Words importing a gender include each other gender.
- (d)** A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation or statutory instrument issued under, that legislation or legislative provision.
- (e)** The headings and sidenotes do not affect the construction of this Constitution.

- (f) A word denoting a person (except a natural person) includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa.
- (g) A reference to a matter being written includes that matter being in any mode of representing or reproducing words, figures or symbols in written form.

2.3 Representative

To avoid doubt, at any one time, for the purposes of this Constitution, a Member can have only 1 natural person as its Representative.

3 OBJECTS AND POWERS

3.1 Objects of Company

The objects for which the Company is established are:

- (a) To promote and foster pro-active management and promotion of the interests of Commercial Avocado Growers and, in particular, without limiting the generality thereof, to promote the interests of Members and the Australian avocado industry, including:
 - (i) to facilitate and co-ordinate through leadership and planning the development of the Australian avocado industry;
 - (ii) to improve and facilitate communications within and between all sections of the Australian avocado industry, its participants and associated industries;
 - (iii) to assist and create new markets for Australian avocados, and expand market share in Australian and international markets;
 - (iv) to provide industry information to all levels of the Australian avocado industry, and to assist in market development and promotion, including the building of product recognition and image;
 - (v) to support the implementation of high quality standards, common bench marks and best practice for Commercial Avocado Growers;
 - (vi) to provide and co-ordinate support, and to assist in product development, implementation of new initiatives and developments designed to increase yield;
 - (vii) to ensure continuing investment and viability of the industry, along with research within the Australian avocado industry, and to co-ordinate and ensure the efficient use of such funds provided for investment and research;

- (viii) to act as a facilitator and coordinator of activities, including domestic and international marketing and promotion, within the Australian avocado industry;
 - (ix) to provide support and general assistance to all individuals and organisations connected with the Australian avocado industry;
 - (x) to develop proposals and applications for government in relation to the industry, and to liaise with other industry organisations;
 - (xi) to make and control all arrangements necessary for the carrying out of the above objects and to do all things as may be necessary to ensure the implementing of the objects.
- (b) To develop an Australian avocado industry with strong professional growers operating with a sense of common purpose and co-operation, with a focus on improving economic viability and sustainability;
 - (c) To increase confidence and demand by focussing on customer needs at the retail and wholesale level;
 - (d) To develop a close partnership with major retailers to ensure the best quality product and results for Retailers and consumers;
 - (e) To develop and implement planned grower directed research and development projects to be published, made available to and available for implementation by Grower Members;
 - (f) To develop a close working relationship with industry support bodies and to further develop industry support to ensure maximum and appropriate support;
 - (g) To develop a strong network of government and other statutory body liaison points and actively pursue planned consultation and feedback;
 - (h) To promote and foster the interests of Commercial Avocado Growers and their affiliates;
 - (i) To adopt such means of making known the objects of the Company as may to the Company seem expedient;
 - (j) To formulate and review from time to time a strategic plan to facilitate the achievement of the objects of the Company;
 - (k) To do all such other things as may be deemed incidental or conducive to the attainment of the objects of the Company or any of them but the Company cannot carry on the business of wholesale or retail trading in horticultural products or produce.

3.2 Separate objects

Each of the above objects constitutes a separate object of the Company, and no such object may be construed by reference to any other such object.

3.3 No power to issue shares

The Company has no power to issue or allot fully or partly paid shares to any person.

4 NON-PROFIT NATURE OF THE COMPANY

4.1 Non-profit

- (a) The income, property, profits and financial surplus of the Company, whenever derived, must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.
- (b) The Company is a non-profit organisation and shall not carry on business for the purpose of profit or gain to its individual Members and no portion of its income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, or the Board, or their relatives, except as provided by this Constitution.
- (c) Nothing in this Constitution prevents:

 - (i) the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any Member or member of the Board of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
 - (ii) the payment of interest at a rate not exceeding interest at the rate for the time being charged by the Company's bankers for overdrawn accounts on money borrowed from a Member;
 - (iii) reasonable and proper rent for premises demised or let by any Member to the Company.

4.2 No distribution of profits to Members on winding up

Where property remains after the winding-up or dissolution of the Company and satisfaction of all its debts and liabilities, it may not be paid to nor distributed among the Members of the Company but must be given to or transferred to another fund, authority or institution having objects similar to the objects of the Company, and whose Constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of this Constitution, which fund, authority or institution is to be determined by the Members of the Company at or before the time of the dissolution.

4.3 Limited liability on winding up

Each Member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while the person is a Member or within one year after the person ceases to be a Member for the payment of the debts and liabilities of the Company contracted before the person ceases to be a Member and of the costs charges and expenses of winding up and for adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding \$2.00.

5 MEMBERSHIP

5.1 Types of membership

Until otherwise determined by the Members in general meeting there shall be the following classes of Members:

- (a) Grower Members;
- (b) Associate Members;
- (c) Affiliate Members;
- (d) Honorary Members; and
- (e) Life Members.

5.2 Eligibility criteria for membership

- (a) Grower membership will be open to all Commercial Avocado Growers.
- (b) Associate membership will be open to businesses and enterprises which service the Australian avocado industry which comprise:
 - (i) processing and packing houses;
 - (ii) wholesalers (including agents of wholesalers);
 - (iii) retailers;
 - (iv) exporters; and
 - (v) transporters.
- (c) Affiliate membership will be open to the following persons:
 - (i) consumer groups;
 - (ii) any producer or participant in a service industry that is allied with the Australian avocado industry;
 - (iii) educational institutions;

- (iv) other persons with a non-commercial interest in the Australian avocado industry.
- (d) Honorary membership may be conferred upon such persons who, by reason of their special qualifications are, in the opinion of the Board, entitled to such privilege.
- (e) Life membership may be conferred on any Member by reason of their outstanding and meritorious service to the Company or the Australian avocado industry.
- (f) It will be the discretion of the Board as to whether or not a person is eligible for membership of the Company. Any such decision of the Board shall be final and shall not subject to review.
- (g) The names, addresses and category of membership will be placed on a register called the "Membership Register", and the category to which each Member belongs will be stated on the Membership Register.

5.3 Grower Members

- (a) The Board may in its absolute discretion admit as a Grower Member any person who is more than 18 years of age and who satisfies the criteria for Grower membership.
- (b) Subject to the Act, every applicant for Grower membership must complete, sign and date an application form as supplied by the Company. The contents and format of the form will be determined by the Board from time to time.
- (c) The entrance fee and the subscription payable by Grower Members will be determined by the Board from time to time. The Board may not deal with any application for Grower membership unless the entrance fee and subscription payable in respect of the application has been received by the Company.
- (d) Despite paragraph (c) of this rule, the Board may in its absolute discretion admit or reject any applicant for Grower membership without the necessity of assigning any reason. If an applicant is not admitted to Grower membership, all monies paid by the person to the Company must be returned forthwith in full.
- (e) Grower Members must receive a notice of every general meeting of the Company and are entitled to attend, speak and vote at general meetings except that a Grower Member is not entitled to vote whether in person or by proxy, attorney or representative at a general meeting unless all sums due and payable by that Grower Member in respect of its membership have been paid.

- (f) Grower Members shall have the right to:
 - (i) nominate Grower Members, their Representatives and Grower Life Members for the Board in accordance with this Constitution; and
 - (ii) vote on the election of Directors in accordance with this Constitution.

5.4 Associate Members

- (a) The Board may in its absolute discretion admit as an Associate Member any person who satisfies the criteria for Associate membership.
- (b) Subject to the Act, every applicant for Associate membership must complete, sign and date an application form as supplied by the Company. The contents and format of the form will be determined by the Board from time to time.
- (c) The entrance fee and subscription payable by Associate Members will be determined by the Board from time to time. The Board may not deal with any application for Associate membership unless the entrance fee and subscription payable in respect of the application have been received by the Company.
- (d) Despite paragraph (c) of this rule, the Board may in its absolute discretion admit or reject any applicant for Associate membership without the necessity of assigning any reason. If an applicant is not admitted to Associate membership, all monies paid by the person to the Company must be returned forthwith in full.
- (e) Associate Members are entitled to receive notice of, attend and speak at general meetings, but are not entitled to:
 - (i) vote at a general meeting of the Company;
 - (ii) nominate persons for the office of, or vote for on the election of, Directors;
 - (iii) become a Member of the Board, unless the Member or its Representative is invited by the Board to be appointed, and is so appointed by the Directors, as a Member of the Board.

5.5 Affiliate Members

- (a) The Board may in its absolute discretion admit as an Affiliate Member any person who satisfies the criteria for Affiliate membership.
- (b) Subject to the Act, every applicant for Affiliate membership must complete, sign and date an application form as supplied by the Company. The contents and format of the form will be determined by the Board from time to time.

- (c) The entrance fee and subscription payable by Affiliate Members will be determined by the Board from time to time. The Board may not deal with any application for Affiliate membership unless the entrance fee and subscription payable in respect of the application have been received by the Company.
- (d) Despite paragraph (c) of this rule, the Board may in its absolute discretion admit or reject any applicant for Affiliate membership without the necessity of assigning any reason thereto. If an applicant is not admitted to Affiliate membership, all monies paid by the person to the Company must be returned forthwith in full.
- (e) Affiliate Members are entitled to receive notice of, attend and speak at general meetings, but are not entitled to:
 - (i) vote at a general meeting of the Company;
 - (ii) nominate persons for the office of, or vote for on the election of, Directors;
 - (iii) become a Member of the Board, unless the Member or its Representative is invited by the Board to be appointed, and is so appointed by the Directors, as a Member of the Board.

5.6 Honorary Members

- (a) The Board may confer Honorary membership, upon such terms and subject to such conditions as the Board may from time to time determine.
- (b) The currency of an Honorary membership may not exceed 1 year, unless renewed by the Board. The Board may in its absolute discretion revoke any honorary membership at any time.
- (c) There cannot be more than 10 Honorary Members at any one time.
- (d) Honorary Members are entitled to attend and speak at general meetings, but are not eligible to hold office in the Company and are not entitled to vote at general meetings.

5.7 Life Members

- (a) The Board may recommend for life membership any natural person who, in the opinion of the Board, is regarded worthy of life membership by reason of their outstanding and meritorious service to the Company or the Australian avocado industry.
- (b) A natural person shall be admitted as a Life Member, on recommendation of the Board, if that recommendation is approved by three quarters majority of Members present and entitled to vote, at an annual general meeting of the Company.
- (c) A Life Member is entitled for life to all the privileges of membership without the payment of any further subscriptions.

- (d) Subject to **rule 5.7(e)** Life Members are entitled to attend and speak at general meetings, but are not entitled to:
- (i) vote at a general meeting of Members;
 - (ii) nominate persons for the office of, or vote for on the election of, Directors;
 - (iii) become a Member of the Board, unless the Member is invited by the Board to be appointed, and is so appointed, as a Member of the Board.
- (e) Grower Life Members are entitled to the full rights and privileges of Grower membership set out at **rules 5.3(e)** and **5.3(f)**.

6 RIGHTS AND OBLIGATIONS

6.1 Amount of fees and subscriptions payable

The entrance fees and the annual subscription fees for the various classes of membership are such amounts and are due at such times as the Board from time to time determines.

6.2 Variation of rights of Members

Whilst the membership is divided into different classes, the rights attached to any class (unless otherwise provided by the terms of application for membership of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of Members with at least 75% of the votes in the class, or with the sanction of a special resolution passed at a separate meeting of the Members of that class.

7 GROWING AREAS AND PRODUCTION LEVELS

7.1 Establishment of Growing Areas

The Board must, forthwith after the formation of the Company, establish Growing Areas.

7.2 Determination of Production Levels and Board Representation

The Board must, forthwith after the formation of the Company, set threshold levels of production of avocados (as a percentage of total Australian avocado production based on the latest ABS Figures) in respect of the Growing Areas ("Threshold Levels") in order to determine the entitlement of Grower Members from each Growing Area to appoint Directors to the Board and the number of persons entitled to be appointed to the Board based on those Threshold Levels. To avoid doubt, the number of Grower Members, their Representatives and Grower Life Members on the Board cannot exceed the number set out at **rule 12.1(a)**.

7.3 Review

- (a) Every 5 years from the year of incorporation of the Company or the anniversary of that year, as the case may be, and at least 3 months prior to the annual general meeting in that year, the Board shall review the Growing Areas and Threshold Levels in respect of the Growing Areas (“Review”), and may:-

 - (i) in respect of any or all Growing Areas maintain, abolish, re-define, amalgamate, or rename the Growing Areas, or create a new Growing Area or Growing Areas;
 - (ii) revise the Threshold Levels which determine the entitlement of Grower Members from each Growing Area to appoint Directors to the Board and the number of persons entitled to be appointed to the Board based on those Threshold Levels.
- (b) In conducting the Review, the Board shall, without limitation, have regard to the following factors:

 - (i) the proximity of Grower Members to each other within each Growing Area and the similarity of growing conditions in each Growing Area, relative to the other Growing Areas;
 - (ii) the Production Level in each Growing Area;
 - (iii) the need for equitable representation on the Board based on the Production Levels of the Growing Areas.
- (c) The decision of the Board in respect of any Review shall be final.
- (d) The Board shall cause the Company to notify all Members of the results of the Review.

8 FINANCIAL RECORDS

8.1 Keeping of financial records

- (a) The financial year of the Company commences on the first day of July and ends on the 30th day of June in the following calendar year
- (b) Proper books and financial records must be kept and maintained showing correctly the financial affairs of the Company. The Company must ensure the relevant accounting and auditing requirements of the Act are duly complied with.
- (c) The Board must distribute to all Members at the end of each financial year, copies of the financial report including a copy of the auditor’s report and any other documentation required under the Act.
- (d) The Board must cause to be made out and laid before each annual general meeting a balance sheet, profit loss statement and cash flow

statement made up to a date not more than 6 months before the date of the meeting.

8.2 Banking of monies

All the monies of the Company shall be banked in the name of the Company in a bank account at such bank as the Board may from time to time direct.

8.3 Appointment of Auditor

The Company must appoint and retain a properly qualified auditor whose duties are determined in accordance with the Act. No Member may act as auditor of the Company.

8.4 Inspection of records of the Company

- (a) The Board may at its sole discretion determine whether and to what extent, and at what time and place and under what conditions the financial records and other documents of the Company or any of them will be open to the inspection of Members other than the Board.
- (b) No Member other than the members of the Board has the right to inspect any document of the Company except as provided by law or as authorised by the Board.

9 GENERAL MEETINGS

9.1 General Meetings

- (a) General meetings of the Company may be called and held at the times and places and in the manner determined by the Board.
- (b) Except as permitted by the Act, the Members may not convene a meeting of the Company.
- (c) By resolution of the Board any general meeting (other than a general meeting which has been requisitioned or called by Members in accordance with the Act) may be cancelled or postponed prior to the date on which it is to be held.

9.2 Notice of General Meeting

- (a) Not less than 21 days' notice of a general meeting must be given by the Board in the form and in the manner the Board thinks fit including notice of any general meeting at which the Board proposes or these rules require that an election of the Board be held.
- (b) Notice of meetings shall be given to the Members and to such persons as are entitled under these rules or the Act to receive notice.
- (c) The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.

- (d) If the meeting is to be held at 2 or more places the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Act in relation to the use of such technology.

10 PROCEEDINGS OF MEETINGS

10.1 Business of General Meetings

- (a) The business of an annual general meeting is to receive and consider the financial and other reports required by the Act to be laid before each annual general meeting, to declare the results of the election by postal vote of members of the Board in the place of those retiring under these rules, when relevant to appoint an auditor, and to transact any other business which, under these rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special.
- (b) Except with the approval of the Board, with the permission of the Chairman or pursuant to the Act, no person may move at any meeting either:
 - (i) in regard to any special business of which notice has been given under **rule 9.2**, any resolution or any amendment of a resolution; or
 - (ii) any other resolution which does not constitute part of special business of which notice has been given under **rule 9.2**.
- (c) The auditors and their representative are entitled to attend and be heard on any part of the business of a meeting which concerns the auditors. The auditors or their representative, if present at the meeting, may be questioned by the Members, as a whole, about the audit.

10.2 Quorum

- (a) A quorum for a meeting is that number of members, present and eligible to vote, that is one greater than the number of the Members of the Board at the date of the meeting.
- (b) No business may be transacted at any meeting except the election of a Chairman and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business.

10.3 Adjournment in Absence of Quorum

If within 15 minutes after the time specified for a general meeting a quorum is not present, the meeting, if convened upon a requisition or called by Members, is to be dissolved, and in any other case it is to be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is

not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

10.4 Chairman

- (a) The Chairman of the Board shall be entitled to chair every general meeting of the Company.
- (b) If at any general meeting:
 - (i) the Chairman of the Board is not present at the specified time for holding the meeting; or
 - (ii) the Chairman of the Board is present but is unwilling to act as Chairman of the meeting,

the deputy Chairman of the Board is entitled to take the chair at the meeting.

- (c) If at any general meeting:
 - (i) there is no Chairman of the Board or deputy Chairman of the Board;
 - (ii) the Chairman of the Board and deputy Chairman of the Board are not present at the specified time for holding the meeting; or
 - (iii) the Chairman of the Board and the deputy Chairman of the Board are present but each is unwilling to act as Chairman of the meeting,

the members of the Board present may choose another member of the Board as Chairman of the meeting and if no member of the Board is present or if each of the members of the Board present are unwilling to act as Chairman of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

10.5 Acting Chairman

- (a) If during any general meeting the Chairman acting pursuant to **rule 10.4** is unwilling to act as chairman for any part of the proceedings, the Chairman may withdraw as chairman during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a member of the Board or who has been nominated for election as a member of the Board at the meeting to be acting chairman of the meeting during the relevant part of the proceedings.
- (b) Upon the conclusion of the relevant part of the proceedings the acting chairman is to withdraw and the Chairman is to resume acting as chairman of the meeting.

10.6 General Conduct of Meeting

- (a) Except as provided by the Act, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined by the Chairman.
- (b) The Chairman may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present.
- (c) The Chairman may require the adoption of any procedure which is in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

10.7 Adjournment

- (a) The Chairman may at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.
- (b) If the Chairman exercises a right of adjournment of a meeting pursuant to this rule, the Chairman has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chairman exercises that discretion, no vote may be taken by the Members present in respect of the adjournment.
- (c) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

10.8 Voting

- (a) Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote. Subject to paragraph (b) of this rule, in the case of an equality of votes, the Chairman has, both on a show of hands and on a poll, a casting vote in addition to the vote or votes to which the Chairman may be entitled as a Member or as a proxy, attorney or, if applicable, a duly appointed corporate representative of a Member.
- (b) On a show of hands, where the Chairman has 2 or more appointments that specify different ways to vote on a resolution, the Chairman cannot vote but has a casting vote in the case of an equality of votes cast by Members entitled to vote at the meeting.

10.9 Declaration of Vote on a Show of Hands; When Poll Demanded

- (a) At any meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Company signed by the Chairman of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) A poll may be demanded by:
 - (i) the Chairman; or
 - (ii) at least 5 Members present and entitled to vote on the resolution.
- (c) No poll may be demanded on the election of a Chairman of a meeting.

10.10 Taking a Poll

- (a) If a poll is demanded as provided in **rule 10.9**, it is to be taken at the meeting in which it is demanded and in the manner the Chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.
- (b) The demand for a poll may be withdrawn.
- (c) In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in respect of the dispute made in good faith is final.

10.11 Continuation of Business

- (a) A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (b) A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

10.12 Special Meetings

All the provisions of these rules as to general meetings apply to any special meeting of any class of Members which may be held pursuant to the operation of these rules or the Act.

11 VOTES OF MEMBERS

11.1 Voting Rights

- (a) The entitlement of Members to vote on a show of hands and on a poll is as follows:

 - (i) every Grower Member has the right to 1 vote;
 - (ii) every Grower Life Member has the right to 1 vote; and
 - (iii) Associate Members, Affiliate Members and Honorary Members have no voting rights.
- (b) If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.
- (c) A Grower Member whose annual subscription is more than one month in arrears at the date of the general meeting shall not be taken to be a Financial Member and is not entitled to vote at that meeting.

11.2 Appointment of Proxies

- (a) Any Member entitled to vote at a general meeting may appoint one proxy.
- (b) A proxy must be a Member of the Company who is entitled in their own right to vote at a general meeting of the Company.
- (c) The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, faxed to the Office or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting, at least 48 hours (or a lesser period as the Board may determine and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.
- (d) No instrument appointing a proxy is, except as provided in this rule or the Act, valid after the expiration of 12 months after the date of its execution. Any Member may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Company until revocation.

11.3 Voting by Corporation

Any corporation, being a Member and entitled to vote, may by resolution of its Directors or other governing body or by an instrument of proxy authorise any

person or any person occupying a particular office from time to time, to act as its representative, and such representative is, in accordance with his authority and until his authority is revoked by the corporation which he represents, entitled to exercise the same powers at meetings on behalf of the corporation which he represents as that corporation could exercise if it were a natural person who was a Member and exercise any other powers permitted to be exercised by a body corporate representative under the Act.

11.4 Validity of Vote

- (a) A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy or power of attorney in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind or revocation has been received at the Office before the meeting or any adjourned meeting.
- (b) A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

11.5 Form and Execution of Instrument of Proxy

- (a) An instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, executed in accordance with the Act or signed by a duly authorised officer and in the form which the Board may from time to time prescribe to accept.
- (b) The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.
- (c) An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Act and the Board may authorise completion of the proxy by the insertion of the name of any member of the Board as the person in whose favour the proxy is given provided that that member of the Board is also entitled to vote at the general meeting as required by **rule 11.2(b)**.

11.6 Board to Issue Forms of Proxy

The Board may issue with any notice of general meeting of Members or any class of Members forms of proxy for use by the Members. Each form is to make provision for the Member to write in the name of the person to be appointed as proxy and may provide that, if the Member does not so write in a name, the proxy is to be a person named on the form. The form may include the names of any of the members of the Board or of any other person as a suggested proxy. The forms

are to be worded so that a proxy may be directed to vote either for, against or to abstain from each or any of the resolutions to be proposed

11.7 Attorneys of Members

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

12 THE BOARD

12.1 Members of the Board

- (a) The Board shall consist of at least 7 and not more than 10 Grower Members or their Representatives or Grower Life Members (inclusive of the Chairperson) and may include not more than 2 non-Grower Members or their Representatives appointed under **rule 12.1(b)** provided that the total number of directors does not exceed 10 at any time.
- (b) The Board may in its absolute discretion appoint not more than 2 non-Grower Members or their Representatives to the Board. Such appointees shall hold office for a term being not more than one year, as determined by the Board. The Board may re-appoint a non-Grower Member or its Representative to the Board for further terms not exceeding one year each.

12.2 Board Representation for Growing Areas

Grower Members from a Growing Area shall be entitled to representation of the Board as determined in accordance with **rule 7**.

12.3 Term of office

Subject to **rules 12.1(b), 12.5(a), 12.6(b) and 12.6(c)**, Board members will hold office from the close of the annual general meeting at which they are taken to be elected until the third annual general meeting after their election or re-election, as the case may be.

12.4 Manner of election

The Members of the Board shall be elected by postal vote.

12.5 First election of Directors

- (a) On or before June 30, 2004, the Company shall conduct an election of all Directors ("First Election").

- (b) The First Election shall occur in the following manner:
- (i) At least 5 Grower Members from the same Growing Area may nominate from their Growing Area another Grower Member or its Representative to serve as a member of the Board (“nominee”).
 - (ii) Except where a First Director is seeking re-election, no person is eligible for election to the Board unless the person is a nominee and the persons who nominated the person in accordance with **rule 12.5(b)(i)** (“nominators”) have given a notice in writing to the Company that:
 - (A) nominates the nominee;
 - (B) is signed by each of the nominators; and
 - (C) is signed by the nominee giving consent to the nomination and signifying candidature for the office of Director.

To be valid, the notice must be received at the Office not later than the time set by the Board.
 - (iii) Voting papers shall be:
 - (A) prepared in respect of each Growing Area, listing in alphabetical order the candidates’ names for that Growing Area; and
 - (B) forwarded to all Grower Members in that Growing Area.
 - (iv) Completed voting papers must be returned to the Officer specified in the Notice of Meeting not later than 48 hours prior to the time set by the Board for counting the votes.
 - (v) A Grower Member is entitled to vote only for candidates from their Growing Area.
 - (vi) If the number of candidates from a Growing Area is less than or equal to the number of Board positions available in respect of that Growing Area, the candidates shall be taken to be appointed to the Board with effect on and from the day following the day set by the Board for counting the votes, without the need to count votes in respect of that Growing Area.
 - (vii) If the candidates from a Growing Area do not equal or exceed the number of Board positions available in respect of that Growing Area, the Board may fill the available position or positions but only with a Grower Member or its Representative from the applicable Growing Area.
 - (viii) The votes shall be counted not later than June 30, 2004, declared and notified to all Grower Members.

- (ix) The First Election of persons as Directors shall take effect as at the day following the day set by the Board for counting the votes, and the First Directors shall cease to hold office at midnight on the day set by the Board for counting the votes unless elected as a Director in the First Election, in which case, their term of office commences on the day following the day set by the Board for counting the votes.

12.6 Rotation of Directors

- (a) An election of directors (other than non-Grower Directors) shall take place at the second annual general meeting and thereafter at every subsequent annual general meeting.
- (b) In respect of the Board so elected under **rule 12.5:-**
 - (i) at the second annual general meeting of the Company 3 of their number shall retire and be eligible for re-election;
 - (ii) at the third annual general meeting of the Company 3 of their number who were elected at the First Election and who have not since been re-elected shall retire and be eligible for re-election; and
 - (iii) at the fourth annual general meeting of the Company the remaining Members of the Board who were elected at the First Election and who have not since been re-elected shall retire and be eligible for re-election.
- (c) At each subsequent annual general meeting (after the fourth annual general meeting) in each year one third of the Directors in office (other than non-Grower Directors) or if their number is not a multiple of 3, the number nearest to but not less than one third, shall retire from office. The Directors to retire by rotation at an annual general meeting are those who have been longest in office and the length of time a director has been in office shall be computed from his or her last election. As between Directors who have been in office an equal length of time, the Director to retire shall, in default of agreement between them, be determined by drawing lots in any manner determined by the Chairman or if he or she is not able and willing to act, by the Vice Chairman.

12.7 Subsequent Elections of Directors

Except for First Election, the election of Directors shall occur in the following manner:

- (a) Any 5 persons from the same Growing Area, being either Grower Members, Grower Life Members or both, may nominate from their Growing Area another Grower Member or its Representative or a Grower Life Member to serve as a member of the Board ("Nominee").
- (b) Except where a Director retires and is seeking re-election or was appointed to fill a casual vacancy or as an addition to the Board, no

person is eligible for election to the Board unless the person is a Nominee and the 5 Members who nominated the person in accordance with **rule 12.7(a)** (“Nominators”) have given a notice in writing to the Company that:

- (i) nominates the Nominee;
- (ii) is signed by each of the Nominators; and
- (iii) is signed by the Nominee giving consent to the nomination and signifying candidature for the office of Director.

To be valid, the notice must be received at the Office not less than 30 days, and not more than 40 days, before the annual general meeting.

- (c) Voting papers shall be:
 - (i) prepared in respect of each Growing Area, listing in alphabetical order the candidates’ names for that Growing Area; and
 - (ii) forwarded to all Grower Members and Grower Life Members in that Growing Area, with the notice of meeting for the annual general meeting.
- (d) Completed voting papers must be returned to the officer specified in the notice of meeting no later than 48 hours prior to the time for holding the annual general meeting.
- (e) Each Grower Member and Grower Life Member is entitled to vote only for candidates from their Growing Area.
- (f) If the number of candidates from a Growing Area is less than or equal to the number of vacancies for Board positions in respect of that Growing Area, the candidates shall be taken to be appointed to the Board with effect from the close of the relevant annual general meeting, without the need to count votes in respect of that Growing Area.
- (g) At the annual general meeting in respect of which the voting papers were sent to Grower Members and Grower Life Members:-
 - (i) the results of the postal votes shall be declared;
 - (ii) the persons elected as Directors shall be taken to have been elected at that annual general meeting; and
 - (iii) the election of persons as Directors shall take effect at the close of that annual general meeting.

12.8 Appointment of Chairman

The Board shall elect one of the Directors to be Chairman and may elect another to be Vice Chairman and determine the period for which each of those Directors is to hold that office.

12.9 Qualification for election to the Board

- (a) An elected member of the Board must be a Grower Member or its sole named Representative or a Grower Life Member who has the right to vote at a general meeting, or be nominated by the Board.
- (b) All members of the Board are required to be natural persons.

12.10 Casual vacancies

- (a) The Board has the power at any time and from time to time to appoint a qualified person to the Board either to fill a casual vacancy or as an addition to the Board but so that the total number of Directors does not at any time exceed the number fixed in accordance with this Constitution.
- (b) In relation to a casual vacancy resulting from the retirement, removal or death of a Director who was a Grower Member or the Representative of a Grower Member or a Grower Life Member ("Outgoing Director"), the Board must appoint a Grower Member or its Representative or a Grower Life Member from the same Growing Area as the Outgoing Director.
- (c) Any person appointed under this rule holds office until the next annual general meeting when an election will be held to fill the vacancy but such person is not to be taken into account in determining the number of members of the Board who are to retire by rotation at the meeting. Any person appointed under this rule is eligible for election at that general meeting.

13 RESIGNATION AND REMOVAL

13.1 Resignation

Any member of the Board may resign at any time as a director by notice in writing delivered to the Secretary but such resignation only takes effect at the time when such notice is received by the Secretary unless some later date is specified in the notice when it shall take effect on the later date.

13.2 Removal

- (a) A Member of the Board may be removed from office by resolution at a general meeting of the Company convened for that purpose. At any such general meeting the Member of the Board must be given the opportunity to fully present their case either orally or in writing or by both of these means.
- (b) A Member of the Board who ceases to be a director under paragraph (a) of this rule retains office until the dissolution or adjournment of the general meeting at which the member is removed.

13.3 Disqualification

- (a) In addition to the circumstances in which the office of a director becomes vacant by virtue of the Act, the office becomes vacant if that director:
 - (i) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (ii) becomes a bankrupt under the *Bankruptcy Act*.
- (b) A Director who vacates office pursuant to **rule 13.2** is not to be taken into account in determining the number of Directors who are to retire by rotation at any annual general meeting.

14 ELECTED OFFICERS

14.1 Appointment to office

- (a) Subject to paragraph (b) of this rule, the Chairman, vice Chairman or person holding another office on the Board shall be chosen by the Board from the Members of the Board at the first meeting of the Board after each annual general meeting.
- (b) The elected officers continue to hold office until the earlier of:
 - (i) their resignation from that office in accordance with **rule 13.1**;
 - (ii) their removal from that office in accordance with **rule 13.2**;
 - (iii) their office as Member of the Board becomes vacant in accordance with this Constitution or the person resigns or is removed from that office;
 - (iv) the date of the first meeting of the Board after the first anniversary of their appointment to that office.
- (c) The Board has the sole power at any time and from time to time to appoint any one of its members as an elected officer and to remove any member of the Board appointed under this Constitution from any of those offices but not from the office of director.

15 EXERCISE OF VOTING POWER IN OTHER CORPORATIONS

The Board may exercise the voting power conferred by the shares in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the members of the Board or any of them), and a Member of the Board may vote in favour of the exercise of those voting rights notwithstanding that the Member of the Board is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

16 PROCEEDINGS OF THE BOARD

16.1 Procedures Relating to Board Meetings

- (a) The Board may meet together, upon each member of the Board being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) Until otherwise determined by the Board, the number nearest to (but greater than, if not a whole number) one half of the Directors, plus one form a quorum.
- (c) Notice is deemed to have been given to a member, and all members are hereby deemed to have consented to the method of giving notice, if notice is sent by mail, personal delivery, facsimile transmission or by electronic mail to the usual place of residence, fax number or electronic address of the member (if any fax number or electronic address is notified to the Company) or at any other address given to the Secretary by the member from time to time subject to the right of the member to withdraw such consent within a reasonable period before a meeting.

16.2 Meetings by Telephone or Other Means of Communication

The Board may meet either in person or by telephone or by other means of communication consented to by all members of the Board subject to the right of a member of the Board to withdraw their consent within a reasonable period before a meeting. All persons participating in the meeting must be able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the members of the Board attending the meeting, provided that at least one of the members present at the meeting is at that place for the duration of the meeting.

16.3 Votes at Meetings

Questions arising at any meeting of the Board are decided by a majority of votes. The chairman of the meeting of the Board shall, in addition to his deliberative vote, have a second or casting vote in the event of an equality of votes.

16.4 Convening of Meetings

The Board may at any time, and the Secretary, upon the request of any one member of the Board must, convene a meeting of the Board.

16.5 Chairman

The Chairman shall, if present, able and willing, preside as chairman at all meetings of the Board and if:

- (a) there is no such Chairman;
- (b) the Chairman is not present within 15 minutes after the time appointed for the meeting; or

(c) the Chairman is unable or unwilling to preside, then the Vice-Chairman if present at the meeting, able and willing or in the absence or unwillingness of both of them a member of the Board, appointed by the meeting, shall act as chairman of the meeting.

16.6 Powers of Meetings

A meeting of the Board or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

16.7 Delegation of Powers to Committees

- (a) The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees consisting of one or more members of the Board or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised to subdelegate any of the powers for the time being vested in the delegate.
- (b) Any decision made by a sub-committee must be referred back to the Board for ratification.
- (c) No sub-committee has the power to bind the Board or the Company unless they are specifically provided with such power, in writing by the Board.
- (d) Each sub-committee will have a Board representative as one of its members. This Board representative will be responsible for taking the minutes of each sub-committee meeting. After such minutes have been approved by the sub-committee to which they related, the Board representative will present them to the Board at the next Board meeting.

16.8 Proceedings of Committees

- (a) The meetings and proceedings of any Committee are to be governed by the provisions of these rules for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under **rule 16.7**.
- (b) A Committee in the exercise of the duties delegated or assigned to it shall conform to any regulations, directions or instructions that may be imposed or given by the Board.
- (c) A Committee appointed by the Board shall be under the control and direction of the Board and has no direct part or power in the management of the Company.

16.9 Validity of Acts

- (a) All acts done at any meeting of the Board or by a Committee or by any person acting as a member of the Board are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the members or the Committee or the person acting as a member of the Board or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a member of the Board or a member of the Committee (as the case may be).
- (b) If the number of members of the Board is reduced below the minimum number fixed pursuant to these rules, the continuing members of the Board may act for the purpose of increasing the number of members of the Board to that number or of calling a general meeting of the Company but for no other purpose.

16.10 Resolution in Writing

A resolution in writing of which notice has been given to all members of the Board entitled to vote on the resolution and which is signed by all such members is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted and may consist of several documents in the same form each signed by one or more of the members of the Board. A facsimile transmission or other document produced by mechanical or electronic means under the name of a member of the Board with the member's authority is deemed to be a document in writing signed by that member.

17 POWERS OF THE BOARD

17.1 General Powers of the Board

- (a) The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred upon them by these rules) may exercise all powers and do all things as are within the power of the Company and are not by these rules or by Act directed or required to be exercised or done by the Company in general meeting.
- (b) The Board may make such regulations and by-laws not inconsistent with the Constitution, as in the opinion of the Board are necessary or desirable for the proper control, administration and management of the Company's finances, affairs and property or are necessary for the convenience, comfort and well-being of the Members and amend or rescind from time to time any such regulations and by-laws.
- (c) A regulation or by-law of the Company made by the Board may be disallowed by the Company in a later general meeting.
- (d) A resolution or regulation made by the Company in general meeting cannot invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.

17.2 Member of the Board contracting with the Company

- (a) Neither the holding of office as a member of the Board nor the fiduciary relationship resulting from holding that office shall:
- (i) disqualify any member of the Board from holding any office or place of profit (other than that of auditor) in the Company;
 - (ii) disqualify any member of the Board from entering into any arrangement, contract or dealing with the Company in any capacity;
 - (iii) avoid or vitiate any arrangement, contract or dealing entered into by or on behalf of the Company in which a member of the Board is any way interested; or
 - (iv) subject to compliance with the following provisions of this **rule 17.2** render any Member of the Board or any corporation of which a Member of the Board is an officer or member or in any way interested or any partnership of which a member of the Board is a member or in any way interested liable to account for any profit arising out of the holding of any such office or place of profit or any such arrangement, contract or dealing.
- (b) A Director who has a material personal interest in a matter that relates to the affairs of the Company must give Directors notice of the interest unless the Act does not require the Director to give notice of an interest.
- (c) A notice required by **rule 17.2(b)** must:
- (i) give details of the interest, and the relation of the interest to the affairs of the Company; and
 - (ii) be given at a Directors' meeting as soon as practicable after the Director becomes aware of his interest in the matter.
- (d) A Director may provide details of a material personal interest either orally or in writing.
- (e) Details provided by a Director under **rule 17.2(c)** must be recorded in the Minutes of the Board meeting.
- (f) A Director who has a material personal interest in a matter that is being considered at a meeting of the Board must not:
- (i) be present while the matter is being considered at the meeting; or
 - (ii) vote on the matter;
- unless:
- (iii) **rules 17.2(g)** or **(h)** apply; or

- (iv) the interest does not need to be disclosed under Section 191 of the Act.
- (g) A Director may be present and vote if the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the Director, the nature and extent of the Directors interest in the matter and its relation to the affairs of the Company; and
 - (ii) states that those Directors are satisfied the interest should not disqualify the Director from voting or being present.
- (h) A Director may be present and vote if the Director is so entitled under a declaration or order made by the Australian Securities and Investments Commission under Section 196 of the Act.
- (i) Provided the provisions of this **rule 17.2** are otherwise complied with, a Director who has a material personal interest in a matter may participate in the signing of any instrument by or on behalf of the Company and whether by signing or by affixing or witnessing the affixing of the seal or otherwise.

18 COMPANY SECRETARY

The Secretary holds office on such terms and conditions as to remuneration and otherwise as the Board determines.

19 OTHER SALARIED OFFICERS

The Board may appoint such officers and employees at such salaries for such periods and on such terms as it thinks fit and may subject to conditions of the employment of such officers and employees dispense with their services and re-appoint or appoint other officers and employees as it thinks fit.

20 THE SEAL

20.1 Company Seal is optional

The Company may have a Seal.

20.2 Affixing the Seal

If the Company has a Seal, the Board is to provide for its safe custody and it should only be used by the authority of the Board. Every instrument to which the Seal is affixed is to be signed by a member of the Board and countersigned by the Secretary or by a second member of the Board or by another person appointed by the Board for the purpose. The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

20.3 Execution of documents without a Seal

The Company may execute a document, including a deed, by having the document signed by:

- (a) 2 Directors;
- (b) a Director and the Secretary; and

if the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in **rule 19.2** or this rule.

20.4 Other ways of executing documents

Notwithstanding the provisions of **rules 20.2** and **20.3**, any document including a deed, may also be executed by the Company in any other manner permitted by law.

21 MINUTES

The Board must ensure that minutes are duly recorded in any manner it thinks fit:

- (a) of the names of the members present at each meeting of the Company, the Board and of any Committees; and
- (b) of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and any Committees,

and the minutes of any meeting of the Board or of any Committee or of the Company, if purporting to be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting, are prima facie evidence of the matters stated in the minutes.

22 NOTICES

22.1 Service of Notices

- (a) A notice may be given by the Company to a Member, or in the case of joint holders to the Member whose name stands first in the Register, personally, by leaving it at the Member's Registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's Registered address or by sending it to the electronic address (if any) nominated by the Member.
- (b) All notices sent by prepaid post to persons whose Registered address is not in Australia may be sent by airmail or some other way that ensures that it will be received quickly.

22.2 When Notice Deemed to be Served

- (a) Any notice sent by post is deemed to have been served at the expiration of 48 hours after the envelope containing the notice is

posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.

- (b) Any notice served on a Member personally or left at the Member's Registered address is deemed to have been served when delivered.
- (c) Any notice served on a Member by facsimile transmission is deemed to have been served when the transmission is sent. A facsimile is deemed to be duly sent when the Company's facsimile system generates a message confirming successful transmission to the correct facsimile number of the total number of pages of the notice to the addressee.
- (d) Any notice served on a Member by electronic means is deemed to have been served when the electronic message is sent to the correct address.

22.3 Member Not Known at Registered Address

Where a Member does not have a Registered address or where the Company has bona fide reason to believe that a Member is not known at the Member's Registered address, all future notices are deemed to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the Member informs the Company of a registered place of address.

22.4 Signature to Notice

The signature to any notice to be given by the Company may be written or printed.

22.5 Reckoning of Period of Notice

Where a given number of days' notice or notice extending over any other period is required to be given, the day of service is not to be reckoned in the number of days or other period.

22.6 Service on Deceased Members

A notice delivered or sent by post to the Registered address of a Member pursuant to these rules is (notwithstanding that the Member is then dead and whether or not the Company has notice of the Member's death) deemed to have been duly served and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators.

22.7 Persons Entitled to Notice of General Meeting

- (a) Notice of every general meeting is to be given to:
 - (i) each Member;
 - (ii) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of general meetings.

22.8 Notification of change of address

Every Member must notify the Company of any change of his or her address and any such new address must be entered in the register of Members as required to be kept by the Act and upon being so entered becomes the Member's Registered address.

23 INDEMNITY

23.1 Indemnity for/in favour of members of the Board, Secretaries and Executive Officers

Subject to the law, the Company must indemnify every person who is or has been a member of the Board, Secretary or executive officer of the Company against a liability:

- (a) incurred by the person acting in their capacity as a member of the Board, Secretary or executive officer to a person other than the Company or a related body corporate where the liability does not arise out of a lack of good faith;
- (b) for the costs and expenses incurred by the person:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the law.

23.2 Indemnity to Employees

Every employee who is not a member of the Board, Secretary or executive officer of the Company may be indemnified out of the property of the Company against a liability;

- (a) incurred by the employee acting in that capacity;
- (b) for the costs and expenses incurred by an employee:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the law.

23.3 Personal Liability of Officer

If the Board or any member thereof or any officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, the Board may execute or cause to be executed any charge or security over or

affecting the whole or any part of the assets of the Company by way of indemnity to secure the persons or person so becoming liable as aforesaid from any loss in respect of such liability.

23.4 Insurance

- (a)** Subject to the law, the Company may pay insurance premiums in respect of insurance for the benefit of every person who is or has been a Member of the Board, Secretary or executive officer acting in that capacity against:

 - (i)** costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
 - (ii)** a liability arising from negligence or other conduct not being a liability incurred by the person acting in that capacity and arising out of conduct involving a wilful breach of duty in relation to the Company or a breach of the provisions of the Act dealing with improper use of information or position.

- (b)** The Company may pay insurance premiums in respect of insurance for the benefit of the auditor or an employee of the Company who is not a member of the Board, Secretary or executive officer concerned in the management of the Company.