



AUSTRALIAN PAYMENTS CLEARING ASSOCIATION

**ANNEXURES TO THE APPLICATION BY THE AUSTRALIAN PAYMENTS
CLEARING ASSOCIATION LIMITED ("APCA") PURSUANT TO SECTION 91C OF
THE TRADE PRACTICES ACT FOR REVOCATION AND SUBSTITUTION OF
AUTHORISATION BY THE AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION OF APCA'S BULK ELECTRONIC CLEARING SYSTEM
ARRANGEMENTS**

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- **CONSTITUTION OF APCA**
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REGULATIONS AND PROCEDURES**

CONSTITUTION

- of -

AUSTRALIAN PAYMENTS CLEARING ASSOCIATION LIMITED

A Company limited by Guarantee

**as adopted by special resolutions
passed on 30th May 2002**

Effective date: 17th August 2002

**Australian Payments Clearing Association Limited
(ABN 12 055 136 519)**

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AUSTRALIAN PAYMENTS CLEARING ASSOCIATION LIMITED

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AUSTRALIAN PAYMENTS CLEARING ASSOCIATION LIMITED

A Company limited by Guarantee

PART 1 PRELIMINARY

Introduction

- 1.1 The name of the Company is Australian Payments Clearing Association Limited.
- 1.2 The Company is limited by guarantee.

Definitions

- 1.3 The following words have these meanings in this Constitution unless the contrary intention appears.

“Adjusted NCV” means, at any time in respect of an Owner Member, Corporate Group or Electoral Group, the aggregate of that person’s or that group’s three highest:

- (a) percentage shares or aggregate percentage shares, as the case may be, of National Transaction Volume (or similar measure); or
- (b) National Transaction Activity percentage or the aggregate of the National Transaction Activity percentages, as the case may be,

each as described in the definition of “National Clearing Volume” for the relevant Clearing Systems divided by three.

“Alternate Director” means a person appointed as alternate director under Article 7.5.

“Article” means an Article of this Constitution.

“Associate Member” means a person admitted as an Associate Member in accordance with Article 2.5.

“Auditor” means the auditor for the time being of the Company.

“Australian Cash Distribution and Exchange System (CS5)” means the systems and procedures from time to time adopted by the Company for the purposes of co-ordinating, facilitating and protecting the conduct and settlement of wholesale cash exchanges between ACDES Participating Members and for the exchange of financial data.

“Australian Paper Clearing System (CS1)” means the systems and procedures from time to time adopted by the Company for the purpose of co-ordinating, facilitating and protecting the conduct and settlement of paper exchanges between APCS Participating Members and for the exchange of financial data.

“Building Society” means a Constitutional Corporation that is permitted to use the expression “building society” under section 66 of the Banking Act 1959 of Australia.

“Bulk Electronic Clearing System (CS2)” means the systems and procedures from time to time adopted by the Company for the purpose of co-ordinating, facilitating and protecting the

conduct and settlement of bulk electronic exchanges between BECS Participating Members and for the exchange of financial data.

“Chief Executive Officer” means the person appointed as chief executive officer under Article 7.22.

“Clearing System” means:

- (a) Australian Paper Clearing System (CS1);
- (b) Bulk Electronic Clearing System (CS2);
- (c) Consumer Electronic Clearing System (CS3);
- (d) High-Value Clearing System (CS4);
- (e) Australian Cash Distribution and Exchange System (CS5);
- (f) any other domestic payments clearing and settlement system established in accordance with Article 2.28 which is to be operated by, or under the auspices of, the Company; or
- (g) any system operated by, or under the auspices of, the Company in respect of interconnections between any domestic payments system and any international payments system.

“Company” means Australian Payments Clearing Association Limited.

“Constitution” means this constitution as amended from time to time, and a reference to a particular Part or a particular Article has a corresponding meaning.

“Constitutional Corporation” has the same meaning as in the Payment Systems and Netting Act 1998 of Australia.

“Consumer Electronic Clearing System (CS3)” means the systems and procedures from time to time adopted by the Company for the purpose of co-ordinating, facilitating and protecting the conduct and settlement of low-value electronic exchanges (including without limitation Automatic Teller Machine transactions and point of sale transactions) between CECS Participating Members and for the exchange of financial data.

“Corporate Group” means:

- (a) a Constitutional Corporation which is an Owner Member; or
- (b) a body corporate and its subsidiaries, one of which is an Owner Member.

“Corporations Act” means the Corporations Act 2001 of Australia and any regulations made under it.

“Credit Union” means a Constitutional Corporation that is permitted to use the expression “credit union” or “credit society” under section 66 of the Banking Act 1959 of Australia.

“Director” means a director (whether voting or non-voting) for the time being of the Company and, where appropriate, includes an Alternate Director.

“Electoral Group” means two or more Owner Members who have notified the Company in writing that they are to be regarded as an Electoral Group for the purposes of this Constitution. Such notification may be:

- (a) for all purposes of this Constitution and of continuing effect until revoked by one of those Owner Members giving written notice of revocation to the Company and the other Owner Members which were members of the relevant Electoral Group; or
- (b) where a notification under paragraph (a) in relation to those Owner Members is not in effect, for specific purposes only.

For the avoidance of doubt, where such an Owner Member is a member of a Corporate Group, the Adjusted NCV or NCV of the Electoral Group is to be determined by reference to the Adjusted NCV or NCV of the Corporate Group (and not by reference to the Adjusted NCV or NCV of that Owner Member individually).

“Extraordinary Resolution” means a resolution of the Owner Members complying with the following provisions:

- (a) at least 28 days’ notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) specifying the matters set out in Article 3.4 must be given to such persons as are entitled to receive notices from the Company; and
- (b) the resolution is only taken to be carried if 80% or more of the maximum number of votes which could be cast on a poll if all Owner Members were present at that meeting are cast in favour of the resolution.

“High-Value Clearing System (CS4)” means the systems and procedures from time to time adopted by the Company for the purpose of co-ordinating, facilitating and protecting the conduct and settlement of various types of high-value exchanges between HVCS Participating Members and for the exchange of financial data.

“Industry Association” means a Constitutional Corporation:

- (a) approved by the Directors;
- (b) nominated by one or more other Constitutional Corporations which are Participating Members or who in accordance with the relevant Regulations are eligible to become participants in one or more Clearing Systems, subject only to the satisfaction of any formal, technical or operational standards; and
- (c) whose members do not include a member of a Corporate Group.

“Member” means a person for the time being entered in the Register as an Associate Member, an Owner Member or a Participating Member of the Company.

“National Clearing Volume” or **“NCV”** means, at any time in respect of an Owner Member, Corporate Group or Electoral Group, the aggregate of that person’s or that group’s:

- (a) percentage share or aggregate percentage share, as the case may be, of National Transaction Volume for the Australian Paper Clearing Systems (CS1) most recently determined in accordance with the APCS Regulations;
- (b) percentage share or aggregate percentage share, as the case may be, of National Transaction Volume for the Bulk Electronic Clearing System (CS2) most recently determined in accordance with the BECS Regulations;
- (c) percentage share or aggregate percentage share, as the case may be, of National Transaction Volume for the Consumer Electronic Clearing System (CS3) most recently determined in accordance with the CECS Regulations;

- (d) percentage share or aggregate percentage share, as the case may be, of National Transaction Volume for the High-Value Clearing System (CS4) most recently determined in accordance with the HVCS Regulations; and
- (e) National Transaction Activity percentage for the Australian Cash Distribution and Exchange System (CS5) for that person or the aggregate of the National Transaction Activity percentages for the Australian Cash Distribution and Exchange System (CS5) for the members of that group, as the case may be, each as most recently determined in accordance with the ACDES Regulations; and
- (f) percentage share or aggregate percentage share, as the case may be, of National Transaction Volume (or similar measure determined in accordance with the Regulations for the relevant Clearing System or approved by the Directors) most recently determined for each other Clearing System in accordance with the Regulations for that Clearing System (or in another manner approved by the Directors),

divided by the number of Clearing Systems then established and operating.

“**National Transaction Volume**” has, in respect of a Clearing System (other than the Australian Cash Distribution and Exchange System (CS5)), the meaning given to that term in the Regulations for that Clearing System.

“**National Transaction Activity**” has, in respect of the Australian Cash Distribution and Exchange System (CS5), the meaning given to that term in the ACDES Regulations.

“**Owner Member**” means a Constitutional Corporation admitted as an Owner Member in accordance with Article 2.12.

“**Part**” means a Part of this Constitution.

“**Participating Member**” means a Constitutional Corporation who in accordance with the relevant Regulations is a participant in one or more Clearing Systems and when that expression is prefaced by:

- (a) “**APCS**” means that such a Participating Member is a participant in the Australian Paper Clearing System (CS1);
- (b) “**BECS**” means that such a Participating Member is a participant in the Bulk Electronic Clearing System (CS2);
- (c) “**CECS**” means that such a Participating Member is a participant in the Consumer Electronic Clearing System (CS3);
- (d) “**HVCS**” means that such a Participating Member is a participant in the High-Value Clearing System (CS4);
- (e) “**ACDES**” means that such a Participating Member is a participant in the Australian Cash Distribution and Exchange System (CS5); or
- (f) another expression means that such a Participating Member is a participant in the Clearing System established in accordance with Article 2.28 which is designated by that expression.

A Participating Member may be a participant in a Clearing System in one or more of a number of different capacities as permitted by the relevant Regulations. A reference in this Constitution to a “**class of Participating Members**” is to all the Participating Members which

are participants in the relevant Clearing System irrespective of the capacity in which those Participating Members participate in that Clearing System.

“**Register**” means the register of Members of the Company to be kept under the Corporations Act and where appropriate includes a branch register.

“**Registered Office**” means the registered office for the time being of the Company.

“**Regulations**” means such rules, regulations and by-laws as may be prescribed from time to time in accordance with Part 9 for the use and operation of, or participation by users in, a Clearing System and when prefaced by:

- (a) “**APCS**” means such rules, regulations and by-laws with respect to the Australian Paper Clearing System (CS1);
- (b) “**BECS**” means such rules, regulations and by-laws with respect to the Bulk Electronic Clearing System (CS2);
- (c) “**CECS**” means such rules, regulations and by-laws with respect to the Consumer Electronic Clearing System (CS3);
- (d) “**HVCS**” means such rules, regulations and by-laws with respect to the High-Value Clearing System (CS4);
- (e) “**ACDES**” means such rules, regulations and by-laws with respect to the Australian Cash Distribution and Exchange System (CS5); or
- (f) another expression means such rules, regulations and by-laws with respect to the Clearing System established in accordance with Article 2.28 which is designated by that expression.

“**Representative**” means a person appointed to represent a corporate Member at any meeting of the Company in accordance with the Corporations Act.

“**Secretary**” means a person appointed by the Directors under Article 10.1 to perform the duties of secretary of the Company.

“**Section**” means a section of the Corporations Act.

“**Territory**” means the Australian Capital Territory or such other state or territory in which the Company is from time to time registered.

Interpretation

1.4 In this Constitution:

- (a) words importing any gender include the other genders;
- (b) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (c) the singular includes the plural and vice versa; and
- (d) a reference to a statute, code or the Corporations Act (or to a provision of a statute, code or the Corporations Act) means the statute, the code, the Corporations Act or the provision as modified or amended and in operation for the time being, or any statute, code or provision enacted (whether by the Territory or the Commonwealth of

Australia) in lieu thereof and includes any regulation or rule for the time being in force under the statute, the code, the Corporations Act or the provision.

- 1.5 Words defined in the Corporations Act have, unless the contrary intention appears, the same meaning in this Constitution.
- 1.6 An expression used in a particular part or division of the Corporations Act that is given by that part or division a special meaning for the purposes of that part or division has, in any part of this Constitution that deals with the matter dealt with by that part or division, unless the contrary intention appears, the same meaning as in that part or division.
- 1.7 Headings are inserted for convenience and do not affect the interpretation of this Constitution.

Replaceable rules not to apply

- 1.8 The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and, accordingly, do not apply to the Company.

Limited liability

- 1.9 The liability of the Members is limited.
- 1.10 Every person who is a Member of the Company undertakes to contribute to the assets of the Company, in the event of the Company being wound up while such person is a Member, or within one year after such person ceases to be a Member, for:
 - (a) payment of:
 - (i) the debts and liabilities of the Company (contracted before such person ceases to be a Member); and
 - (ii) the costs, charges and expenses of winding up; and
 - (b) the adjustment of the rights of the contributories among themselves.

The amount to be contributed is as follows:

- (c) in the case of an Associate Member, \$10;
- (d) in the case of an Owner Member, \$1,000; and
- (e) in the case of a Participating Member, \$10,000 for each Clearing System in which that Participating Member participates.

Distribution on a winding up

- 1.11 If, on the winding-up or dissolution of the Company, there remains, after satisfaction of all its debts and liabilities, any property whatsoever, such property must be:
 - (a) transferred to another company or institution determined by the Owner Members as having objects similar to the objects of the Company and whose constitution prohibits the distribution of its income and property among its members in a similar manner to this Article 1.11; or
 - (b) distributed among all or some of the Members in the manner determined by the Owner Members,

in either case, by Extraordinary Resolution at or before the time of winding-up or dissolution or, in default of such determination, by application to the Supreme Court of the Australian Capital Territory for determination.

Objects

- 1.12 The primary object for which the Company is incorporated is to co-ordinate, manage and ensure the implementation and operation of effective payments clearing and settlement systems, policies and procedures. Notwithstanding the preceding sentence, but subject to the terms of this Constitution, the Company has, both within and outside the Australian Capital Territory, the legal capacity of a natural person and, without limiting the generality of the foregoing, has, both within and outside the Australian Capital Territory, power to:
- (a) issue debentures of the Company;
 - (b) distribute any of the property of the Company among the Members, in kind or otherwise;
 - (c) grant a floating charge on property of the Company;
 - (d) procure the Company to be registered or recognised as a body corporate in any place outside Australia; and
 - (e) do any other act that it is authorised to do by any law.

Registered office

- 1.13 The registered office of the Company is to be in Sydney.

PART 2 MEMBERSHIP

Membership

- 2.1 Subject to the provisions of Part 2, a person may be:
- (a) an Associate Member;
 - (b) subject to the restrictions set out in Article 2.11, an Owner Member;
 - (c) a Participating Member which is a participant in one or more Clearing Systems; or
 - (d) both a Participating Member which is a participant in one or more Clearing Systems and, subject to the restrictions set out in Article 2.11, an Owner Member.
- 2.2 Except to the extent (if any) determined in accordance with Article 1.11, a Member may not share in any distribution of profits of the Company or in a distribution on a winding up or dissolution of capital of the Company.
- 2.3 The liability of a Member to contribute on a winding up or dissolution of the Company is limited to the amount specified in Article 1.10.
- 2.4 A Member may not transfer its membership in the Company.

Associate Members

- 2.5 The Directors may admit any person, other than an Owner Member or a Participating Member, as an Associate Member.
- 2.6 An Associate Member:
- (a) has no right to vote at any general meeting of the Company; and
 - (b) has the same rights as Owner Members to receive notices, annual reports and audited profit and loss accounts and audited balance sheets and to attend and speak at general meetings of the Company.

Termination of Associate Membership

- 2.7 An Associate Member ceases to be an Associate Member on:
- (a) resignation;
 - (b) death;
 - (c) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
 - (d) becoming of unsound mind or a person whose person or estate is liable to be dealt with any way under a law relating to mental health;
 - (e) if a corporation, being wound up, dissolved or otherwise ceasing to exist;
 - (f) the Directors terminating the person's membership in accordance with this Constitution; or
 - (g) becoming a Participating Member or an Owner Member.

- 2.8 An Associate Member may, by notice in writing to the Company, resign membership with immediate effect or with effect from a specified date occurring not more than 6 months after the service of the notice. The notice is irrevocable.
- 2.9 The Directors may, by notice in writing to an Associate Member, terminate the membership of that Associate Member with immediate effect or with effect from a specified date occurring not more than 6 months after the service of the notice. The Directors are not obliged to give any reason for such decision and may revoke any such notice at any time before it becomes effective.
- 2.10 Any termination of the membership of an Associate Member pursuant to Article 2.7 shall not affect any right or liability arising under this Constitution prior to the date such termination takes effect or arising in respect of any act, matter or thing occurring prior to that date.

Owner Members

- 2.11 A Constitutional Corporation which is also:
- (a) a Participating Member or who in accordance with the relevant Regulations is eligible to become a participant in one or more Clearing Systems, subject only to the satisfaction of any formal, technical or operational requirements; or
 - (b) an Industry Association,
- is qualified to become an Owner Member, provided that:
- (i) at any time only one member of a Corporate Group may be an Owner Member; and
 - (ii) a member of a corporate group (being, in this case, a body corporate and its subsidiaries), which includes a member of an Industry Association and such Industry Association is an Owner Member, may not be an Owner Member.
- 2.12 The Directors may admit such a Constitutional Corporation as an Owner Member. The Directors may not refuse to admit a Constitutional Corporation as an Owner Member if it satisfies the qualifications to be an Owner Member set out in Article 2.11.

Such admission may be conditional upon an existing Owner Member resigning as an Owner Member. Each body corporate which was a Share Member (i.e. a person who held any share of any class in the Company) immediately prior to 17th August 2002 is deemed to have been admitted as an Owner Member under this Article 2.12 so long as such body corporate satisfies the requirements of Article 2.11.

- 2.13 An Owner Member:
- (a) has the right to attend, speak and vote at general meetings of the Company and at any meetings of all or any of the Owner Members. An Owner Member's voting entitlement at such meetings shall be determined in accordance with Article 4.20;
 - (b) is entitled to participate in the election of Directors in accordance with Article 5.3;
 - (c) is entitled to receive all notices, annual reports and audited profit and loss accounts and audited balance sheets required to be distributed by the Company to members of a company limited by guarantee by the Corporations Act or any other applicable law; and
 - (d) has all other rights conferred on Owner Members by:
 - (i) this Constitution or the Regulations; or

- (ii) on members of a company limited by guarantee by the Corporations Act or any other applicable law.

Termination of Owner Membership

- 2.14 An Owner Member ceases to be an Owner Member on:
- (a) resignation;
 - (b) becoming insolvent or making an arrangement or composition with creditors generally;
 - (c) being wound-up, dissolved or otherwise ceasing to exist;
 - (d) that Owner Member ceasing to be a Constitutional Corporation;
 - (e) that Owner Member no longer satisfying any other eligibility criteria which entitled the Owner Member to become an Owner Member; or
 - (f) the Directors terminating the person's membership in accordance with this Constitution.
- 2.15 An Owner Member, may by notice in writing to the Company, resign membership with immediate effect or with effect from:
- (a) a specified date occurring not more than 6 months after the service of the notice;
 - (b) the admission of another Constitutional Corporation within the same Corporate Group as an Owner Member; or
 - (c) the admission of an Industry Association of which that Owner Member is a member as an Owner Member.
- 2.16 If two or more Owner Members are or become members of the same Corporate Group, then all but one of those Owner Members must resign membership with effect from a date no later than 3 months (or such longer period specified by the Directors) after the date they first became Owner Members or members of the same Corporate Group.
- If the required number of Owner Members fail to do so, the Directors, may by notice to all the affected Owner Members, terminate the membership of all the affected Owner Members with effect from a specified date occurring not more than 3 months after the service of the notice. The Directors may revoke any such notice in respect of one affected Owner Member at any time before it becomes effective and must do so if so requested by all the affected Owner Members.
- 2.17 If an Owner Member becomes a member of an Industry Association which is an Owner Member, then that Owner Member must resign membership with effect from a date no later than 3 months (or such longer period specified by the Directors) after the date it first became a member of that Industry Association.
- If the Owner Member fails to do so, the Directors, may by notice to that Owner Member, terminate the membership of that Owner Member with effect from a specified date occurring not more than 3 months after the service of the notice. The Directors may revoke any such notice at any time before it becomes effective.
- 2.18 Any termination of the membership of an Owner Member pursuant to Article 2.14 shall not affect any right or liability arising under this Constitution prior to the date such termination takes effect or arising in respect of any act, matter or thing occurring prior to that date.

Participating Members

- 2.19 There shall be the following classes of Participating Members:
- (a) APCS Participating Members;
 - (b) BECS Participating Members;
 - (c) CECS Participating Members;
 - (d) HVCS Participating Members;
 - (e) ACDES Participating Members; and
 - (f) other classes of Participating Members established in accordance with Article 2.28.
- 2.20 Subject to the approval of the Directors or the committee of management established pursuant to Part 8 in respect of the relevant Clearing System being obtained in accordance with the relevant Regulations, any Constitutional Corporation which:
- (a) satisfies the eligibility criteria set out in the APCS Regulations is qualified to become an APCS Participating Member;
 - (b) satisfies the eligibility criteria set out in the BECS Regulations is qualified to become a BECS Participating Member;
 - (c) satisfies the eligibility criteria set out in the CECS Regulations is qualified to become a CECS Participating Member;
 - (d) satisfies the eligibility criteria set out in the HVCS Regulations is qualified to become a HVCS Participating Member;
 - (e) satisfies the eligibility criteria set out in the ACDES Regulations is qualified to become an ACDES Participating Member; and
 - (f) satisfies the eligibility criteria set out in the Regulations for any other Clearing System established in accordance with Article 2.28 is qualified to become a Participating Member of that Clearing System.
- 2.21 In granting any such approval, the Directors or the relevant committee of management shall specify the capacity in which the relevant Constitutional Corporation is a participant in the relevant Clearing System and may admit such a Constitutional Corporation as a Participating Member.
- 2.22 A Participating Member (in its capacity as a Participating Member):
- (a) has no right to vote at any general meeting of the Company;
 - (b) has the right to attend, speak and vote at any meetings of any class of Participating Members to which that Participating Member belongs. A Participating Member's voting entitlement at such meetings shall be determined in accordance with the relevant Regulations; and
 - (c) has the same rights as Owner Members to receive notices, annual reports and audited profit and loss accounts and audited balance sheets and to attend and speak at general meetings of the Company.

- 2.23 A Participating Member of a particular class of Participating Members has the right to be a participant in the Clearing System established by the Company relevant to that particular class on the terms and conditions set out in the relevant Regulations.

Termination of Participating Membership

- 2.24 A Participating Member ceases to be a Participating Member on:
- (a) resignation;
 - (b) becoming insolvent or making an arrangement or composition with creditors generally;
 - (c) being wound-up, dissolved or otherwise ceasing to exist; or
 - (d) the Directors terminating that Participating Member's membership in accordance with this Constitution.

- 2.25 A Participating Member, may by notice in writing to the Company, resign that Participating Member's membership (in respect of one or more Clearing Systems) with effect from a specified date occurring not less than the minimum period prescribed in the relevant Regulations and not more than 6 months after the service of the notice. The notice is irrevocable.

- 2.26 The Directors (after consultation with the committee(s) of management established pursuant to Part 8 in respect of the relevant Clearing System(s)), may by notice in writing to a Participating Member, terminate the membership of that Participating Member (in respect of one or more Clearing Systems) with immediate effect or with effect from a specified date or a date determined in accordance with the relevant Regulations occurring not less than the minimum period prescribed in the relevant Regulations and not more than 6 months after the service of the notice, provided that the Directors may not terminate the membership of a Participating Member in respect of a Clearing System unless the pre-conditions (if any) specified in the relevant Regulations have been fulfilled. The Directors are not obliged to give any reasons for such decision and may revoke any such notice at any time before it becomes effective.

- 2.27 Any resignation, termination or other cessation of the membership of a Participating Member pursuant to Articles 2.24 - 2.26 shall not affect any right or liability arising under this Constitution prior to the date such resignation, termination or other cessation takes effect or arising in respect of any act, matter or thing occurring prior to that date. A Participating Member whose membership in respect of a Clearing System ceases pursuant to Articles 2.24 - 2.26 shall continue to be bound by this Constitution and the relevant Regulations in respect of

- (a) any act, matter or thing occurring prior to the date such termination takes effect; and
- (b) any other act, matter or thing prescribed by the relevant Regulations for the purposes of Articles 2.24 - 2.26.

Additional Classes of Participating Members

- 2.28 Subject to this Constitution, the Company in general meeting by ordinary resolution may:
- (a) establish:
 - (i) a new domestic payments clearing and settlement system to be operated by, or under the auspices of, the Company; or
 - (ii) a system operated by, or under the auspices of, the Company in respect of interconnections between any domestic payments system and any international payment system;

- (b) establish any new class of Participating Members and prescribe the qualifications, rights, restrictions and obligations of Members in that class; and
- (c) vary or abrogate the qualifications, rights, restrictions or obligations of Members in any new or existing class of Participating Members.

Discretions

- 2.29 The Directors may exercise any discretion granted under this Part 2 and are not obliged to give any reasons for their determination. Any determination by the Directors pursuant to this Article 2.29 is final and conclusive.

Variations of rights

- 2.30 The identity and criteria to be satisfied by bodies corporate qualified to become Owner Members as set out in Articles 2.11 and 2.12 are designed to ensure that participants in operational payments clearing and settlement systems in Australia have an ability to participate (directly or indirectly) as Owner Members of the Company.

Accordingly, it may from time to time be necessary to review the identity and criteria to be satisfied by bodies corporate qualified to become Owner Members and/or the voting entitlements of Owner Members. In addition to the procedures set out in Part 3, any 3 Directors may propose a resolution to amend any of Articles 2.11 and 2.12 and/or the voting entitlements of Owner Members. The Directors must, on the requisition of those Directors immediately convene a general meeting of the Company to be held as soon as practicable, but in any case, not later than 3 months after the receipt by the Company of the requisition to consider that resolution. Part 3 applies to the requisitioning of a general meeting of the Company in accordance with this Article 2.30 in the same manner as it applies to the requisitioning of a general meeting by Members in accordance with the Corporations Act.

- 2.31 Any resolution to amend any of Articles 2.11, 2.12 or 2.30, this Article 2.31, Article 5.3 or the voting entitlements of Owner Members:

- (a) prior to being submitted to Owner Members in accordance with this Constitution, must be approved by a special majority of Directors, being such number of Directors as is equal to at least all Directors entitled to vote at meetings of Directors less two; and
- (b) must be an Extraordinary Resolution.

- 2.32 Subject to this Constitution and the Corporations Act, the Company in general meeting by Extraordinary Resolution may:

- (a) establish any new class of non-voting Members and prescribe the qualifications, rights, restrictions and obligations of Members in that class; and
- (b) vary or abrogate the qualifications, rights, restrictions or obligations of Members in any new or existing class.

Fees

- 2.33 Associate Members must pay to the Company an annual membership fee (if any) in such amount and by such date as is determined by the Directors from time to time. The Directors may waive the payment of any such fee by an Associate Member.

- 2.34 Owner Members in their capacity as Owner Members are not liable to pay any fees to the Company. Subject to the Corporations Act, the Company in general meeting may, by Extraordinary Resolution, determine otherwise.
- 2.35 Participating Members in their capacity as Participating Members must pay to the Company an annual membership fee (if any) in such amount and by such date as is determined by the Directors from time to time and such other fees and charges as are prescribed by the relevant Regulations from time to time.

PART 3 GENERAL MEETINGS

Annual general meeting

3.1 The Company must hold annual general meetings in accordance with the Corporations Act.

General meeting

3.2 The Directors may convene a general meeting of the Company and the Directors must convene and arrange to hold a general meeting when requisitioned by Members in accordance with the Corporations Law.

Notice of meeting

3.3 Subject to Article 2.31 and except where the Corporations Act permits shorter notice, at least 21 days notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) of a general meeting must be given to each Member (and each other person entitled to receive notices under this Constitution or the Corporations Act).

3.4 A notice of general meeting must:

- (a) set out the place, day and the hour of the meeting, and state the general nature of the business to be dealt with at the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner; and
- (b) state that:
 - (i) an Owner Member who is entitled to attend and cast a vote at the meeting has a right to appoint a proxy in accordance with this Constitution;
 - (ii) a proxy need not be a Member; and
 - (iii) an Owner Member who is entitled to cast two or more votes may not appoint separate proxies in respect of separate votes which the Owner Member is entitled to cast.

3.5 If a special resolution is to be proposed, the notice of meeting must set out an intention to propose the special resolution and state the resolution.

3.6 The non-receipt of notice of a meeting by, or the accidental omission to give notice of a meeting to, a person entitled to receive notice does not invalidate any resolution passed at the meeting.

Postponement or cancellation of meeting

3.7 Where a general meeting (including an annual general meeting) is convened by the Directors, they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.

3.8 Written notice of cancellation or postponement of a general meeting must be given to each Member (and each other person entitled to receive notices under this Constitution or the Corporations Act) and must specify the reason for cancellation or postponement (as the case may be).

3.9 A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the postponed meeting; and
 - (b) a place for the holding of the postponed meeting, which may be either the same as or different from the place specified in the notice convening the general meeting; and
 - (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the postponed meeting in that manner.
- 3.10 The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.
- 3.11 The only business that may be transacted at a general meeting, the holding of which is postponed, is the business specified in the notice convening the general meeting.
- 3.12 The accidental omission to give notice of the cancellation or postponement of a general meeting to, or the non-receipt of any such notice by, any Member or person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.
- 3.13 Where:
- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
 - (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this Article 3.13, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of representative unless the Member appointing the proxy, attorney or representative gives to the Company at its registered office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

PART 4 PROCEEDINGS AT GENERAL MEETINGS

Representation of Member

- 4.1 An Owner Member may be present and vote in person or may be represented at any meeting of the Company by:
- (a) a proxy;
 - (b) attorney;
 - (c) in the case of a Constitutional Corporation which is an Owner Member, a Representative.
- 4.2 Unless the contrary intention appears, a reference to a Member in this Part 4 means a Member or a proxy, attorney or a Representative of that Member.

Quorum

- 4.3 No business may be transacted at any general meeting unless a quorum is present comprising Owner Members who are entitled to cast not less than 75% of the maximum number of votes which could be cast on a poll if all Owner Members were present at that meeting.
- 4.4 An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is to be deemed to be present throughout the meeting unless the chairman of the meeting on the chairman's own motion or at the instance of a Member, proxy, attorney or Representative who is present otherwise declares.

Failure to achieve quorum

- 4.5 Where a meeting is convened on the requisition of Members in accordance with the Corporations Act and a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting must be dissolved.
- 4.6 Where a meeting is convened in any manner other than as specified in Article 4.5 and a quorum is not present within 30 minutes from the time appointed for the meeting:
- (a) the meeting must be adjourned to such day, time and place as the Directors determine or if no determination is made by them to the same day in the next week at the same time and place; and
 - (b) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting the meeting must be dissolved.

Appointment and powers of chairman of general meeting

- 4.7 If the Directors have appointed a chairman of their meetings, that person is entitled to preside as chairman at every general meeting of the Company and, except as otherwise specified in the Regulations for a Clearing System, every other meeting of all or any of the Members.
- 4.8 Where a general meeting is held and:
- (a) a chairman has not been appointed as provided by Article 4.7; or
 - (b) the appointed chairman is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be chairman of the meeting, or, if no Director is present or if all Directors present decline to take the chair, the Owner Members present must elect a person representing an Owner Member as chairman of the meeting.

- 4.9 The chairman of the general meeting:
- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for a proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
 - (c) may, having regard where necessary to Sections 250S and 250T, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this Article is final.

Adjournment of general meeting

- 4.10 The chairman may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 4.11 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting.
- 4.12 Except as provided by Article 4.11, it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.
- 4.13 A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- 4.14 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

Voting at general meeting

- 4.15 At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
- (a) the chairman; or
 - (b) an Owner Member.

Unless a poll is properly demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

Passing of resolutions

4.16 Subject to:

- (a) Articles 2.30, 2.31 and 2.32; and
- (b) any requirements of the Corporations Act including, without limitation, any requirement that a greater number of votes to be cast in favour of a resolution,

a resolution is taken to be carried if 66.67% or more of the maximum number of votes which could be cast on a poll if all Owner Members were present at that meeting are cast in favour of the resolution.

Poll

4.17 If a poll is properly demanded, it must be taken in such manner and (subject to Article 4.18) either at once or after an interval or adjournment or otherwise as the chairman directs. The result of the poll is the resolution of the meeting at which the poll was demanded.

4.18 A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.

4.19 The demand for a poll may be withdrawn.

Entitlement to vote

4.20 The entitlement of each Owner Member to vote is to be determined by reference to NCV as follows:

- (a) where the NCV for an Owner Member, a Corporate Group or an Electoral Group equals or exceeds 20%, that Owner Member, the Owner Member which is a member of that Corporate Group or that Electoral Group (acting collectively), as the case may be, is entitled to 50 votes plus 1 vote for each 0.2% (or part thereof) that their NCV exceeds 20%, up to a maximum of 100 votes which must all be cast in favour or against a particular resolution (or all must not be cast);
- (b) where the NCV for an Owner Member, a Corporate Group or an Electoral Group equals or exceeds 5%, but is less than 20%, that Owner Member, the Owner Member which is a member of that Corporate Group or that Electoral Group (acting collectively), as the case may be, is entitled to 50 votes which must all be cast in favour or against a particular resolution (or all must not be cast); and
- (c) where the NCV for an Owner Member, a Corporate Group or an Electoral Group is less than 5%, that Owner Member, the Owner Member which is a member of the Corporate Group or that Electoral Group (acting collectively), as the case may be, is entitled to a proportion of 50 votes in accordance with its NCV (being one vote for every 0.1% (or part thereof) of its NCV), which must all be cast in favour or against a particular resolution (or all must not be cast).

Objection to voting qualification

4.21 An objection may be raised to the qualification of an Owner Member to vote only at the meeting or adjourned meeting before the vote objected to is given or tendered.

4.22 Any such objection must be referred to the chairman of the meeting, whose decision is final.

4.23 A vote not disallowed under such an objection is valid for all purposes.

Appointment of proxy

- 4.24 An instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. A proxy need not be a Member.
- 4.25 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- 4.26 An instrument appointing a proxy is deemed to confer authority to demand or join in demanding a poll.
- 4.27 An instrument appointing a proxy must be in the form approved by the Directors from time to time.
- 4.28 A proxy may vote on a show of hands or on a poll.

Deposit of proxy and other instruments

- 4.29 An instrument appointing a proxy is not to be treated as valid unless the instrument, and an original or certified copy of the power of attorney or other authority (if any) under which the instrument is signed, is or are received by the Company before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote at the Registered Office or at such other place as is specified for that purpose in the notice convening the meeting.

Validity of vote in certain circumstances

- 4.30 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the revocation of the instrument (or of the authority under which the instrument was executed) or of the power if no intimation in writing of the revocation has been received by the Company at its Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

Director entitled to notice of meeting

- 4.31 A Director is entitled to receive notice of, attend and speak at all general meetings of the Company and all other meetings of all or any of the Members.

Resolution in writing

- 4.32 Subject to the provisions of the Corporations Act, a resolution in writing signed by all the Owner Members is as valid and effectual as if it had been passed at a general meeting of the Company duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Owner Members.

Class Meetings

- 4.33 The provisions of Parts 3 and 4 apply (with any necessary adaptations) to meetings of any class of Members subject to the following modifications:
- (a) no Owner Member may requisition a meeting of a class of Owner Members;
 - (b) a Participating Member may only requisition a meeting of the class of Participating Members which are participants in a particular Clearing System in the manner specified in the Regulations for that Clearing System;

- (c) no Associate Member may requisition a meeting of all or any class of Associate Members;
- (d) a quorum is constituted:
 - (i) (in the case of Participating Members) in the manner specified in the relevant Regulations; and
 - (ii) (in any other case) by at least 2 Members of the relevant class;
- (e) a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman of the meeting or a Member of the relevant class;
- (f) if a poll is demanded:
 - (i) (in the case of a meeting of Owner Members or a class of Owner Members) each Owner Member has the number of votes specified in Article 4.20; and
 - (ii) (in the case of a meeting of a class of Participating Members) the number of votes to which each Participating Member is entitled shall be determined in the manner specified in the relevant Regulations; and
 - (iii) (in any other case), each Member has one vote; and
- (g) whether on a show of hands or a poll, the chairman of the meeting shall not have a casting vote.

PART 5 DIRECTORS

Number of Directors

- 5.1 Except as required by the Corporations Act, there is no minimum or maximum number of Directors.

Qualification of Directors

- 5.2 A Director is not required to be a Member of the Company.

Appointment and Removal of Directors¹

- 5.3 Without prejudice to the rights of the Directors to appoint non-voting Directors pursuant to Articles 7.13 and 7.22, the Directors shall be appointed, and may be removed, as follows:
- (a) each Owner Member and each Electoral Group (other than the Reserve Bank of Australia, any Building Society or Credit Union, any Industry Association or any Electoral Group which includes any of such entities) is entitled to appoint and remove one Director if such Owner Member (or members of the Corporate Group which includes that Owner Member) or the members of that Electoral Group individually or collectively:
 - (i) is a Participating Member or are Participating Members, as the case may be, of at least three different Clearing Systems; and
 - (ii) have an Adjusted NCV of 5% or more;
 - (b) whilst the Reserve Bank of Australia is an Owner Member, it shall be entitled to appoint and remove one Director;
 - (c) whilst any Building Society or any Industry Association nominated by one or more Building Societies is an Owner Member, such entities acting collectively shall be entitled to appoint and remove one Director and, in the event of a dispute between such entities, a majority of such entities by reference to Adjusted NCV shall prevail;
 - (d) whilst any Credit Union or any Industry Association nominated by one or more Credit Unions is an Owner Member, such entities acting collectively shall be entitled to appoint and remove one Director and, in the event of a dispute between such entities, a majority of such entities by reference to Adjusted NCV shall prevail;
 - (e) prior to 17th August 2004 (being the date two calendar years after the date this Article 5.3(e) takes effect), but not subsequently, while there exists any Owner Member which at any previous time held "A" class voting redeemable preference shares in the Company or which would be qualified to hold such shares if they were still on issue on the same terms as they were previously issued by the Company, that entity, or, if more than one, those entities acting collectively, shall be entitled to appoint and remove one Director and in the event of a dispute between such entities, a majority of such entities by reference to Adjusted NCV shall prevail; and
 - (f) the Directors may appoint one further voting Director if an identifiable group of Owner Members are not entitled to, or have not, appointed a Director in accordance with Articles 5.3(a)-(e).

¹ The particular entitlement given to the Reserve Bank of Australia under Article 5.3(b) is in recognition of its regulatory role in the payments system. The entitlements given to Building Societies and Credit Unions (or Industry Associations acting on their behalf) under Articles 5.3(c) and (d) are in recognition of their long standing role in providing payment services. This footnote is for the purposes of clarification and explanation only and does not form part of the Constitution.

In appointing a Director under Article 5.3(f), the Directors should have regard to the Adjusted NCV of the Owner Members concerned and to the number of Clearing Systems in which they are Participating Members (if any). In respect of these criteria, the Directors may from time to time set minimum conditions to be satisfied before they would consider exercising their discretion under Article 5.3(f). Any such conditions must be disclosed to the Owner Members and to prospective applicants who contact the Company about becoming Owner Members. The Directors may also attach such conditions to the appointment of a Director under Article 5.3(f) as are consistent with this Constitution and applicable law and are considered, in the reasonable opinion of the Directors, to be necessary or desirable to take account of the potential need to ensure new Owner Members are able to be represented on the board of directors of the Company

- 5.4 The appointment or removal of a Director shall be:
- (a) (in the case of Directors appointed in accordance with Articles 5.3(a)-(e)) in writing signed by or on behalf of the Owner Member or Owner Members entitled to make such appointment or effect such removal; or
 - (b) (otherwise) in writing signed by at least 66.67% of the Directors entitled to vote (other than the Director being removed).
- 5.5 Unless a Director is removed by the appointor beforehand, the appointment of a Director expires at the conclusion of the second annual general meeting of the Company following the Director's appointment. A Director whose term of office expires in accordance with this Article 5.5 may be re-appointed in accordance with Article 5.3.

Remuneration of Directors

- 5.6 The Directors may be paid such remuneration as is determined from time to time by the Company in general meeting. That remuneration is deemed to accrue from day to day.
- 5.7 The Directors may also be paid all travelling and other expenses properly incurred by them:
- (a) in attending and returning from:
 - (i) meetings of the Directors or any committee of the Directors; or
 - (ii) general meetings or any other meetings of all or any of the Members ; or
 - (b) otherwise in connection with the business of the Company.

Director's interests

- 5.8 No Director is disqualified by his office from holding any office or place of profit (other than that of Auditor) in the Company. Any Director may:
- (a) be or become a director of or otherwise hold office or a place of profit in any other company promoted by the Company or in which the Company may be interested as vendor, shareholder or otherwise; and
 - (b) contract or make any arrangement with the Company whether as vendor, purchaser, broker, solicitor or accountant or other professional person or otherwise.

Any contract or arrangement entered or to be entered into by or on behalf of the Company in which any Director is in any way interested is not avoided for that reason.

- 5.9 Any Director holding any office or place of profit under the Company or being a director of or otherwise holding office or a place of profit in any other company promoted by the Company or in which the Company may be interested or contracting or arranging with the Company as set out in Article 5.8 is not, by reason only of any of those facts or any interest resulting therefrom or the fiduciary relationship thereby established, liable to account to the Company for any remuneration or other benefits accruing therefrom.
- 5.10 Each Director must disclose his interests to the Company in accordance with the Corporations Act and the Secretary must record any such declaration in the minutes of the relevant meeting.
- 5.11 A Director may only vote in respect of any contract or proposed contract or arrangement in which he has a material interest (other than an interest arising merely as a director or employee of a Member) if he has first disclosed his interest to the Directors in accordance with the Corporations Act. If a Director is not permitted to vote under this Article, but does so vote, then his vote may not be counted although he may be counted in the quorum present at any Directors' meeting at which such contract or arrangement is considered.
- 5.12 The restrictions contained in Article 5.11 may at any time or times be suspended or relaxed to any extent and either prospectively or retrospectively by resolution of the Company in general meeting.
- 5.13 Subject to prior approval by resolution of the Company in general meeting, a Director who is not an employee of a Member may act by himself or his firm in a professional capacity (other than as Auditor) for the Company and he or his firm is entitled to remuneration for professional services as if he were not a Director.
- 5.14 A Director may, notwithstanding his interest, and whether or not he is entitled to vote or does vote, participate in the execution of any instrument by or on behalf of the Company and whether through signing or sealing the same or otherwise.

Vacation of office of Director

- 5.15 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act, the office of a Director becomes vacant if the Director:
- (a) 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;
 - (b) resigns his office by notice in writing to the Company;
 - (c) is absent without the consent of the Directors from meetings of the Directors held during a period of 6 months;
 - (d) is removed in accordance with Article 5.4; or
 - (e) the Owner Member or group of Owner Members entitled to appoint and remove that person as a Director cease to be an Owner Member or Owner Members.
- 5.16 Where:
- (a) a Director is removed pursuant to Article 5.3; or
 - (b) the office of a Director becomes vacant pursuant to Article 5.15,

the person who is appointed as a Director in accordance with Article 5.3 in place of the retiring Director shall only hold office for the remaining term of the removed or retiring Director. Such a person is eligible for re-appointment as a Director in accordance with Article 5.3.

PART 6 POWERS AND DUTIES OF DIRECTORS

Directors to manage Company

6.1 The Directors must not:

- (a) sell or dispose of the Company's main undertaking or sell, dispose of or discontinue the operations of a Clearing System; or
- (b) create or allow to exist any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation or other security interest (other than a lien arising by operation of law) on the whole or any part of the Company's present or future property,

without either:

- (i) the prior approval of the Company in general meeting and (in the case of a sale, disposal of or discontinuance of the operations of a Clearing System) approval of the Participating Members of that Clearing System; or
- (ii) such sale, disposal, discontinuance or security interest being subject to ratification by the Company in general meeting and (in the case of a sale, disposal of or discontinuance of the operations of a Clearing System) approval of the Participating Members of that Clearing System..

6.2 Subject to:

- (a) the Corporations Act;
- (b) Article 6.1; and
- (c) any other provision of this Constitution,

the business of the Company is managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

6.3 Without limiting the generality of Article 6.2 but subject to Article 6.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

Appointment of attorney

6.4 The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.

6.5 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

Minutes

- 6.6 The Directors must cause minutes to be made:
- (a) of the names of the Directors present at all general meetings, all meetings of all or any Members and all meetings of the Directors; and
 - (b) of all proceedings of general meetings, meetings of all or any Members and meetings of Directors,

and cause those minutes to be entered in the minute book as soon as practicable.

- 6.7 The minutes referred to in Article 6.6 must be signed as a true and correct record of the relevant meeting by the chairman of the next succeeding meeting of Directors following confirmation or amendment of those minutes at that next succeeding meeting of directors.

Execution of Company cheques etc.

- 6.8 All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Directors determine from time to time.

PART 7 PROCEEDINGS OF DIRECTORS

Directors' meetings

- 7.1 The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 7.2 A Director may at any time, and the Secretary must on the requisition of a Director, convene a meeting of the Directors.

Voting

- 7.3 Subject to this Constitution:
- (a) any questions arising in a meeting of Directors which involves the review of a decision of a committee of management appointed pursuant to Article 8.2 is to be answered in the affirmative if 55% or more of the maximum number of votes which could be cast on a poll if all Directors entitled to vote were present at that meeting are cast in favour of the question; and
 - (b) any other question arising in a meeting of Directors is to be answered in the affirmative if 66.67% or more of the maximum number of votes which could be cast on a poll if all Directors entitled to vote were present at that meeting are cast in favour of the question.

Any such decision is for all purposes deemed a decision of the Directors. A recommendation of a committee of management is not a decision for the purposes of this Article 7.3.

- 7.4 The entitlement of each Director appointed pursuant to Article 5.3 to vote is to be determined by reference to the NCV of:
- (a) the Owner Member or group of Owner Members (or, in either case, the Corporate Group which includes such an Owner Member) entitled to appoint and remove that person as a Director; or
 - (b) in the case of any Director appointed pursuant to Article 5.3(e), the NCV of the identifiable group of Owner Members referred to in Article 5.3(e),

(such Owner Member, group of Owner Members (or, in either case, the Corporate Group which includes such an Owner Member) or identifiable group, as the case may be, being referred to in this Article 7.4 as the "**Appointor(s)**") as follows:

- (i) where the NCV of the Appointor(s) equals or exceeds 20%, the Director is entitled to 50 votes plus 1 vote for each 0.2% (or part thereof) that the NCV of the Appointor(s) exceeds 20%, up to a maximum of 100 votes which must all be cast in favour or against a particular question (or all must not be cast);
- (ii) where the NCV of the Appointor(s) equals or exceeds 5%, but is less than 20%, the Director is entitled to 50 votes which must all be cast in favour or against a particular question (or all must not be cast); and
- (iii) where the NCV of the Appointor(s) is less than 5%, the Director is entitled to a proportion of 50 votes in accordance with the NCV of the Appointor(s) (being one vote for every 0.1% (or part thereof) of the NCV of the Appointor(s)), which must all be cast in favour or against a particular question (or all must not be cast).

An Alternate Director present at any meeting of Directors has the same number of votes as each Director for which he is an Alternate Director if the appointor is not present at such meeting. If an Alternate Director is also a Director, the Alternate Director also has the number of votes such person is entitled to as a Director.

Alternate Directors

- 7.5 Each Owner Member or group of Owner Members entitled to appoint and remove a Director pursuant to Article 5.3 may also appoint a person to be an Alternate Director to act in the place of the person appointed as a Director by that Owner Member or group of Owner Members. The Directors may also appoint an Alternate Director to act in the place of the person appointed as a Director under Article 5.3(e). The appointment of an Alternate Director shall be for a period corresponding to the period of appointment of the Director for whom that Alternate Director acts as the alternate.
- 7.6 An Alternate Director may be removed or replaced in the same manner as the Director for whom he acts as an Alternate Director.
- 7.7 An Alternate Director is entitled to notice of all meetings of the Directors and is entitled to attend those meetings. An Alternate Director is not entitled to speak at meetings of the Directors unless the Director for whom the Alternate Director acts as the alternate is not present or unless invited to do so by the chairman of that meeting.
- 7.8 In the absence of the Director for whom an Alternate Director acts as the alternate, that Alternate Director may exercise any powers which that Director may exercise and in the exercise of any such power by the Alternate Director he is an officer of the Company and is not deemed to be an agent of that Director.
- 7.9 An Alternate Director is not required to be a Member of the Company.
- 7.10 An Alternate Director is subject in all respects to the conditions attaching to the Directors generally, including without limitation the payment of remuneration under Article 5.7.

Quorum for Directors' meetings

- 7.11 At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is:
- (a) such number of Directors who are entitled to cast not less than 75% of the maximum number of votes which could be cast on a poll if all Directors entitled to vote were present at that meeting; or
 - (b) such greater number as is determined by the Directors from time to time.

Remaining Directors may act

- 7.12 In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Director or Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, only for the purpose of convening a general meeting of the Company.

Chairman and Deputy Chairman

- 7.13 The Directors must appoint a person as a non-voting Director and chairman of the Company. A person who holds office as a voting Director appointed under Article 5.3 may not simultaneously hold the office of chairman of the Company.

The Directors may remove a person appointed under this Article 7.13 from the office of chairman and appoint another to that office instead.

7.14 Unless the chairman is removed from the office of chairman by the Directors beforehand, the chairman's term of office expires on the day two calendar years after the date of his or her appointment. A chairman whose term of office expires in accordance with this Article 7.14 may be re-appointed in accordance with Article 7.13.

7.15 In addition, the Directors may elect one of their number as deputy chairman of the Company and may determine the period for which the deputy chairman is to hold office.

The deputy chairman is, in the chairman's absence, entitled to exercise any of the powers and obliged to carry out any of the obligations of the chairman which are granted to, or imposed upon, the chairman pursuant to this Constitution or the Regulations for any Clearing System.

7.16 Where a meeting of Directors is held and:

- (a) a chairman has not been elected or appointed as provided by Article 7.13; or
- (b) the chairman is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act,

and:

- (c) a deputy chairman has not been elected as provided by Article 7.14; or
- (d) the deputy chairman is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

- 7.17 (a) The chairman is not entitled to vote.
- (b) A voting Director elected as deputy chairman pursuant to Article 7.14, or as chairman of a meeting pursuant to Article 7.16, remains entitled to vote when acting in that capacity but shall not have a casting vote.

Written resolution by Directors

7.18 If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the Directors held on the day on which the document was last signed by a Director.

7.19 For the purposes of Article 7.18, 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors who are eligible to vote on the resolution are together deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

Directors' meetings defined

7.20 For the purposes of this Constitution, a meeting of Directors means:

- (a) a meeting of Directors assembled in person on the same day at the same time and place; or

- (b) the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion notwithstanding they (or one or more of them) are not physically present in the same place,

and a Director participating in the meeting under paragraph (b) is deemed to be present (including for the purposes of constituting a quorum) and entitled to vote at the meeting.

Validity of acts of Directors

- 7.21 All acts done by any meeting of the Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or to act as a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and were qualified to be a Director.

Chief Executive Officer

- 7.22 The Directors must appoint a person to the office of Chief Executive Officer either for a fixed term or, without limitation, as to period of appointment (but not for life), and may remove a person so appointed and appoint another instead.
- 7.23 The Chief Executive Officer may be appointed a non-voting Director of the Company.
- 7.24 The Chief Executive Officer may, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Directors determine.
- 7.25 The Directors may, on such terms and conditions and with such restrictions as they think fit, confer on the Chief Executive Officer any of the powers exercisable by them.
- 7.26 Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.
- 7.27 The Directors may at any time withdraw or vary any of the powers so conferred on the Chief Executive Officer.

PART 8 DIRECTORS' COMMITTEES AND COMMITTEES OF MANAGEMENT

Delegation of Powers

- 8.1 The Directors may delegate any of their powers, other than powers required by law to be dealt with by the Directors as a board, to a committee or committees consisting of at least one of their number and such other persons as they think fit. Any delegation of powers pursuant to this Article 8.1 may be subject to such conditions or restrictions as the Directors think fit.

Clearing System Committees of Management

- 8.2 In addition to any Directors' committees appointed pursuant to Article 8.1, the Directors must establish a committee of management in respect of each Clearing System. The Directors must delegate to each committee of management such of their powers, other than powers required by law to be dealt with by the Directors as a board, as necessary, desirable or expedient to enable that committee of management to properly perform its obligations under this Constitution. Furthermore, the Directors may delegate to a committee of management any of their other powers, other than powers required by law to be dealt with by the Directors as a board, as they think fit in order to enable that committee of management to properly perform its obligations under the Regulations for the relevant Clearing System.

Any delegation of powers pursuant to this Article 8.2 may be subject to such conditions or restrictions as the Directors think fit.

- 8.3 Each committee of management shall consist of:
- (a) if the Directors so elect, one person appointed by the Directors, being either:
 - (i) a Director entitled to vote at a meeting of Directors or an Alternate Director; or
 - (ii) a person qualified to be nominated for election to, or otherwise entitled to act as a member of, a committee of management in accordance with the Regulations for the relevant Clearing System, but who has not otherwise been appointed, elected or nominated pursuant to Article 8.3(b) to (d) inclusive;
 - (b) (in the case of each initial committee of management) such other persons as the Directors think fit representing the Participating Members of the relevant Clearing System on a basis similar to that proposed for the election of members of the committee of management pursuant to Article 8.3(c) in the draft Regulations for the relevant Clearing System;
 - (c) (in the case of each committee of management appointed upon the expiry of the term of the members of the initial committee of management appointed pursuant to Article 8.3(b)) such other persons elected at a meeting of the Participating Members of the relevant Clearing System, in accordance with the relevant Regulations or otherwise appointed or selected in accordance with the relevant Regulations; and
 - (d) if a representative of the Reserve Bank of Australia is not appointed or elected in accordance with Article 8.3(c), a person nominated by the Director appointed by the Reserve Bank of Australia in accordance with Article 5.3(b).

- 8.4 The Directors may at any time remove any person as a member of a committee of management without giving any reason for such removal. In such circumstances:
- (a) if the removed member was elected pursuant to Article 8.3(c), then the Participating Members of the relevant Clearing System may elect a replacement member of that committee of management; and
 - (b) if the removed member was nominated pursuant to Article 8.3(d), then the Director appointed by the Reserve Bank of Australia in accordance with Article 5.3 may nominate a replacement member of that committee of management.
- 8.5 The appointment of each member of a committee of management expires at the second annual general meeting of the Company following that member's appointment.

Responsibilities of Committees of Management

- 8.6 Each committee of management shall be responsible for the efficient operation and management of the relevant Clearing System, including without limitation:
- (a) technical standards;
 - (b) the setting of fees and charges payable by Participating Members of that Clearing System for the purpose of recovering the costs and expenses of operating that Clearing System and other costs and expenses incurred in connection with that Clearing System (including, without limitation, a proportionate share of the general operating and administrative costs and expenses of the Company);
 - (c) operating procedures;
 - (d) subject to a Participating Member being entitled to refer any dispute (whether initially or by way of a request for a review of a decision of a committee of management) to the Directors, the resolution of disputes by arbitration or otherwise between Participating Members which are participants in that Clearing System;
 - (e) supervision of the observance by Participating Members of the Regulations applicable to the relevant Clearing System;
 - (f) making such submissions as the committee of management thinks appropriate to governments, ministers, parliamentary committees, regulatory authorities or any other body on behalf of the relevant Clearing System and its Participating Members on issues of relevance to them;
 - (g) the establishment of local sub-committees; and
 - (h) such other matters as the Directors may consider necessary, desirable or expedient for the better and more efficient operation of that Clearing System.

The responsibilities of each committee of management in respect of the matters referred to in paragraphs (a) - (h) above are subject to the provisions of the Regulations for the relevant Clearing System.

Directions

- 8.7 A committee to which any powers have been delegated in accordance with Article 8.1 or 8.2 must exercise the powers delegated in accordance with any directions of the Directors. The Directors must consult with a committee of management before issuing any directions regarding the exercise of powers which have been delegated to that committee of management. A power so exercised is deemed to have been exercised by the Directors.

Proceedings of Committees

- 8.8 The person (if any) appointed to a committee of management by the Directors under Article 8.3(a) shall act as chairman of the meetings of that committee of management. Failing any such appointment, the Directors must select a member of the relevant committee of management to act as chairman at its meetings. The Directors must determine the period for which a person selected as chairman of a committee of management is to hold that office.
- 8.9 Where such a meeting is held and the chairman is not present within 15 minutes from the time appointed for the commencement of the meeting or is unable or unwilling to act, the members present may elect one of their number to be chairman of the meeting.
- 8.10 The quorum for a committee of management is such number as is specified in the relevant Regulations. A committee of management may meet and adjourn as it thinks proper.
- 8.11 Questions arising at a meeting of a committee of management are to be determined in the manner specified in the relevant Regulations.
- 8.12 Neither the member of a committee of management appointed pursuant to Article 8.3(a) nor the member nominated pursuant to Article 8.3(d) has a deliberative or a casting vote. Any person selected by the Directors under Article 8.8 to act as chairman of a committee of management retains a deliberative vote, but has no casting vote.
- 8.13 Articles 5.15 and 5.16 apply (with any necessary modifications) to members of committees of management as if such members were Directors.
- 8.14 Articles 7.18-7.21 inclusive apply to meetings of committees of management as if all members were Directors.

PART 9 REGULATIONS

Promulgation of Regulations

- 9.1 The Company must prescribe the Regulations for the use and operation of, or participation by, Participating Members in each Clearing System. Such Regulations shall include, without limitation, rules, regulations and by-laws with respect to:
- (a) the eligibility criteria to be satisfied before a Constitutional Corporation (including an Owner Member) may be admitted as a Participating Member in the relevant Clearing System (Article 2.20) and, if applicable, the criteria to be satisfied in order for that Participating Member to be a participant in that Clearing System in one or more of a number of different capacities as permitted by those Regulations;
 - (b) the rights (if any) of Participating Members to share in fees and profits (Article 2.2);
 - (c) the terms and conditions on which a Participating Member may be a participant in the relevant Clearing System (Article 2.23);
 - (d) where the Regulations permit a person to appoint a Participating Member as that person's agent for certain purposes, a form of undertaking from that person in favour of the agent and the Company;
 - (e) the minimum period of notice required before the resignation of a Participating Member becomes effective and the other acts, matters and things (if any) which are to be prescribed for the purposes of Article 2.27(b);
 - (f) the pre-conditions (if any) to be satisfied before the Directors may terminate the membership of a Participating Member in respect of the relevant Clearing System in accordance with Article 2.26;
 - (g) the circumstances in which a Participating Member may, if at all, requisition a meeting of all or any Participating Members of the relevant Clearing System (Article 4.33);
 - (h) the quorum for a meeting of all or any Participating Members of the relevant Clearing System (Article 4.33);
 - (i) the voting entitlement of Participating Members of the relevant Clearing System (Article 4.33);
 - (j) the quorum for a meeting of the relevant committee of management (Article 8.10);
 - (k) the voting entitlement of members of the relevant committee of management (Article 8.11);
 - (l) the fines and penalties (if any) which may be imposed for a breach of the relevant Regulations; and
 - (m) any of the matters referred to in Article 8.6.

In addition, the Regulations must expressly provide that the Company does not acquire any financial assets (other than in respect of fees and charges payable by Participating Members) or incur any liabilities as a result of the operation or management of a Clearing System.

- 9.2 The initial Regulations for each Clearing System must be adopted by the Directors following consultation with the relevant committee of management appointed pursuant to Article 8.2.

Amendment

- 9.3 The Regulations applicable to a Clearing System may be amended from time to time at a meeting of the Participating Members of that Clearing System, provided that the relevant committee of management has recommended the amendments.

Any amendment to the Regulations applicable to a Clearing System is effective from the date specified by the relevant committee of management, being not before the earlier of:

- (a) the date on which the amendment is approved by the Directors; and
- (b) the date which is 30 days after the date of the first meeting of the Directors at which the amendment (as approved by a meeting of the Participating Members of that Clearing System) is tabled by the chairman of the relevant committee of management,

unless the Directors have previously resolved to refer the amendment to the relevant committee of management for reconsideration by that committee and the Participating Members which are participants in the relevant Clearing System, in which event the amendment shall be null and void. The Directors may refer an amendment to the relevant committee for reconsideration on as many occasions as the Directors think fit.

Participating Members bound by Regulations

- 9.4 Subject to the Corporations Act, the Regulations of a Clearing System have the effect of a contract under seal:

- (a) between the Company and each Participating Member which is a participant in that Clearing System; and
- (b) between the Participating Members which are participants in that Clearing System.

- 9.5 Neither the Company nor any officer of the Company nor any member of a committee of management shall incur any liability to a Member by reason of, or in relation to, the prescribing of Regulations (including without limitation any amendment or replacement to any Regulation) pursuant to this Article 9.5 or the referral of any amendment to the relevant committee of management pursuant to Article 9.3.

PART 10 SECRETARY

Appointment of Secretary

- 10.1 There must be at least one Secretary of the Company who may be appointed by the Directors for such term, at such remuneration and on such conditions as they think fit.

Suspension and removal of Secretary

- 10.2 The Directors have power to suspend or remove the Secretary.

Powers and duties of Secretary

- 10.3 The Directors may vest in the Secretary such powers, duties and authorities as they may from time to time determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Directors.

Secretary to attend meetings

- 10.4 The Secretary is entitled to attend all meetings of the Directors and all general meetings and meetings of a class of Members of the Company and may be heard on any matter.

Assistant Secretary

- 10.5 The Directors may at any time appoint, suspend or remove an Assistant Secretary.

PART 11 COMMON SEAL AND OFFICIAL SEAL

Custody and use of common seal

- 11.1 The Directors must provide for the safe custody of the common seal.
- 11.2 The common seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the common seal. Every document to which the common seal is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

Use of official seals

- 11.3 The Company may have for use outside the State or Territory in which the common seal is kept in place of the common seal one or more official seals, each of which must be a facsimile of the seal with the addition on its face of the name of every place where it is to be used.
- 11.4 The Company may by writing under its common seal empower a person in a place either generally or in respect of a specified matter to affix its official seal for that place to any instrument to which the Company is a party.

PART 12 INSPECTION OF RECORDS

Inspection by Members

- 12.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors. A Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

PART 13 RESERVES

Reserves carried forward

- 13.1 The Directors may set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.
- 13.2 Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.
- 13.3 The Directors may carry forward so much of the profits remaining as they think fit without transferring those profits to a reserve.

PART 14 NOTICES

Service of notices

- 14.1 A notice may be given by the Company to any Member or other person receiving notice under this Constitution either by:
- (a) serving it personally; or
 - (b) by sending it by post, telex or facsimile transmission to the address shown in the register or the address supplied by that Member or person to the Company for the giving of notices; or
 - (c) sending an electronic mail message through such system and in such manner as that Member or person has agreed for the giving of notices.
- 14.2 Where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and the notice is deemed to have been served on the day after the date of its posting.
- 14.3 Where a notice is sent by telex or facsimile transmission, service of the notice is deemed to be effected by properly addressing the telex or facsimile transmission and transmitting same and to have been served in the case of a facsimile transmission on the day following its dispatch, and in the case of a telex transmission on the day following receipt by the sender of the answerback of the addressee.

Where a notice is sent by electronic mail, service of the notice is deemed to be effected by properly addressing the electronic mail and sending the same and to have been served on the day following its dispatch.

Persons entitled to notice of general meeting

- 14.4 Notice of every general meeting and meeting of all or any of the Members must be given in a manner authorised by Article 14.1 and in accordance with this Constitution and the Corporations Act to:
- (a) every Member entitled to attend the relevant meeting;
 - (b) every Director and Alternate Director; and
 - (c) the Auditor.
- 14.5 No other person is entitled to receive notices of general meetings, except as required by the Corporations Act or the order of a court of competent jurisdiction.

PART 15 INDEMNITY

Indemnity

15.1 Every person who is or has been a Director or Secretary of the Company is entitled to be indemnified out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

Insurance

15.2 The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.