

SHAREHOLDERS' AGREEMENT

BETWEEN

**AUSTRALIAN AUTOMOTIVE TERMINALS PTY LIMITED
ACN 098 458 229**

AND

**P&O WHARF MANAGEMENT PTY LIMITED
ACN 100 737 264**

AND

**PLZEN PTY LIMITED
ACN 065 905 571**

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BETWEEN **AUSTRALIAN AUTOMOTIVE TERMINALS PTY LIMITED** ACN 098 458 229
of Sommersville Road, Rozelle, New South Wales 2039 (*Company*)

AND **P&O WHARF MANAGEMENT PTY LIMITED** ACN 100 737 264 of Level 8,
160 Sussex Street, Sydney, New South Wales 2000 (*P&O*)

AND **PLZEN PTY LIMITED** ACN 065 905 571 of Lot 3, Pier 8/9 Walsh Bay,
23 Hickson Road, Millers Point, New South Wales 2000 (*Plzen*)

RECITALS

- A. The Shareholders own all of the issued capital of the Company.
- B. The Shareholders have agreed to conduct the Business on the terms of this Agreement.

1. DEFINITIONS

1.1 Definitions

In this Agreement:

Accounting Standards means the accounting standards prescribed under the *Corporations Act 2001* and if no relevant standard is prescribed, the standard acceptable to the Australian Accounting Research Foundation;

Authorised Officer means any Director or Secretary;

Board means the Board of Directors of the Company;

Budget means the budget for the financial operation of the Company as amended from time to time under clause 9.2 of this Agreement;

Business means the business of the Company and any subsidiaries of the Company which at the date of this Agreement is the management and development of wharf facilities and related infrastructure for motor vehicle cargo stevedoring and for on wharf PDI processing of motor vehicles more fully described in Annexure A, and any other business which the Directors resolve should be a business of the Company or any subsidiary of the Company;

Business Day means a day (other than a Saturday or Sunday) on which banks are open for business in Sydney;

Business Plan means the plan for the operation of the Business as amended from time to time under clause 9.2 of this Agreement;

Chairman means, as the case may be, chairman of the Board or chairman of the Company;

Commencement Date means the date of execution of this Agreement;

Constitution means the constitution of the Company;

Deadlock has the meaning given in clause 14;

Directors means the Directors of the Company or such number of them as have authority to act for the Company;

Encumbrance means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above;

Equity Proportion means the proportion (expressed as a percentage) which the number of Shares held by a Shareholder bears to the total number of issued Shares;

Fair Market Value means the value of a Share determined:

- (a) by the agreement of the parties; or
- (b) where the parties cannot agree, by an agreed major firm of chartered accountants (in the absence of agreement, whom the President of the Institute of Chartered Accountants appoints) who shall act in the capacity of an independent expert whose decision shall be binding on the parties and whose valuation must be based on the following principles:
 - (i) the value of a Share shall be calculated having regard to the value of the whole Company as a going concern;
 - (ii) there is to be no discount for the non-negotiability of a Share; and
 - (iii) there is to be no discount because no Share represents a controlling interest in the Company,

but in any case, must be calculated having regard to the Company as a whole having a value equal to at least the value of the net tangible assets of the Company;

General Manager means the person responsible for the day to day operation of the Company who at the date of this Agreement is Dean Wells;

Financial Benefit has the meaning given to that term in the *Corporations Act 2001*;

Joint Venture means the joint venture between the parties in relation to the Business as provided for in this Agreement;

Related Body Corporate has the meaning given to that term in *the Corporations Act 2001*;

Related Party has the meaning given to that term in the *Corporations Act 2001*;

Share means an issued share in the capital of the Company; and

Shareholder means any person who holds a Share from time to time, at the date of this Agreement being P&O and Plizen.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) reference to any statute, ordinance or other law includes all regulations and other Instruments and all consolidations, amendments, re-enactments or replacements for the time being in force;
- (d) all headings, bold typing and italics (if any) have been inserted for convenience of reference only and do not define, limit or affect the meaning or interpretation of this Agreement;
- (e) reference to a Recital, Schedule, Annexure or Exhibit is to a Recital, Schedule, Annexure or Exhibit of or to this Agreement;
- (f) reference to a person includes a natural person, body corporate, unincorporated association, government or governmental, semi governmental or municipal entity; and
- (g) reference to a party means a party to this Agreement and includes that party's successors and permitted assignees.

2. ESTABLISHMENT OF JOINT VENTURE

2.1 Establishment of Joint Venture

The Shareholders agree and will procure that the Company carries on the Business in accordance with the terms of this Agreement and the Constitution.

2.2 Constitution

The Constitution must in all respects reflect and be consistent with the provisions of this Agreement. If there is any inconsistency between the provisions of this Agreement and the Constitution, the provisions of this Agreement will prevail and the parties must act promptly to eliminate any such inconsistency by amending the Constitution.

2.3 Joint Venture Property

The Shareholders agree that the assets listed in Schedule 1 (*Transfer Assets*) have been or are to be transferred to the Company and represent the assets of the Company as at the date of this Agreement. The Shareholders agree to do all things and take all steps necessary to transfer those of the Transfer Assets not yet transferred to the Company.

2.4 Intellectual Property

All intellectual property owned and developed by the Company will remain the property of the Company and the Shareholders must not use it without the prior consent of the Company and each other Shareholder.

2.5 Rights and Obligations of the Company

The Shareholders acknowledge that the Company is a party to this Agreement and has certain rights and obligations under it. The Shareholders must do whatever is necessary to allow the Company to enforce the benefit of any of those rights and must procure the Company's compliance with any of those obligations.

2.6 Commencement Date

The Joint Venture commences on the Commencement Date.

2.7 Parties to Contribute

Each party agrees:

- (a) to co-operate so as to ensure that the Joint Venture and the Business are conducted in accordance with good business practice and under the terms of this Agreement;
- (b) to contribute its expertise at agreed rates for the benefit of the Company and the Joint Venture;
- (c) to conduct itself and to act so as to ensure that the sole benefit enjoyed by it from the conduct of the Business is that arising from its interest in the Company under this Agreement; and
- (d) to take all steps necessary to facilitate and promote the Business and to use all reasonable endeavours to ensure the success of the Business (including without limitation providing access to the Company to that party's facilities).

2.8 Governance

The parties will propose for adoption by the Board the Protocol for Board Governance contained in Annexure C. The Board may modify that Protocol from time to time.

3. TERM AND TERMINATION OF AGREEMENT

3.1 Term of this Agreement

This Agreement takes effect on the Commencement Date and terminates on the earlier to occur of:

- (a) any date agreed by the Shareholders;
- (b) the date on which the Company is wound up; and
- (c) the date on which a single Shareholder becomes the beneficial owner of all of the Shares.

3.2 Consequences of Termination

On termination, subject to clause 3.3, this Agreement comes to an end without affecting the accrued rights and obligations of parties.

3.3 Clauses Surviving Termination

Clauses 1, 17, 19, 21, 22 and 23 survive the termination of this Agreement.

4. ACCESSION

4.1 Accession Instrument

After the date of this Agreement, it shall be a condition precedent to the entry of any person on the register of Shareholders of the Company in respect of any Share, that the intending Shareholder shall have executed and delivered to the Company an instrument by which that person agrees to be bound by the provisions of this Agreement and the Constitution, and be in the form of the agreement comprising Annexure B.

4.2 Endorsement of Scrip

Upon the registration of such person as a Shareholder, the Company shall endorse all certificates issued to such person in respect of its shareholding with the following legend:

"The rights of the holder of the shares the subject of this certificate are affected by the provisions of an agreement made the day of 2002 to which all shareholders are bound either by original agreement or subsequent accession."

5. FUNDING

5.1 Funding from Shareholders

- (a) Each Shareholder acknowledges that the Company will require funds for the purpose of commencing operations and each Shareholder agrees to inject its Equity Proportion of such funds up to an aggregate maximum of [REDACTED] (or such other amount as the Shareholders may agree) for each Shareholder (**Initial Funding Obligations**). The amount, timing and nature of such funding shall be in accordance with the determination of the Board.
- (b) In addition to the Initial Funding Obligations, the Board may also at any time determine by unanimous consent that additional funds are required for the Business (**Additional Funding Obligations**).
- (c) The Board shall determine in what manner the funds comprising the Initial Funding Obligations and the Additional Funding Obligations shall be procured by the Company including without limitation, external debt, shareholder loans or equity contributions from the Shareholders.
- (d) If the Board resolves that the Company shall procure the funds by way of shareholder loans, each Shareholder must enter into an identical agreement on the terms resolved by the Board which:
 - (i) provides that each Shareholder will lend to the Company its Equity Proportion of the total amount the Company has resolved to borrow;
 - (ii) provides that the shareholder loan is unsecured, not assignable and ranks pari passu in all respects as to repayment, rate of interest, security and otherwise; and
 - (iii) provides that the shareholder loan shall be subordinated to any proposed financing from third parties to the extent that such subordination is necessary to secure such financing.
- (e) If the Board resolves that the Company shall procure the funds by seeking equity contributions from the Shareholders, each Shareholder will subscribe to the

Company its Equity Proportion of the total amount the Company has resolved to seek by way of equity contribution.

- (f) In addition to meeting the Additional Funding Obligations, the Shareholders must also ensure the Company is able to meet its obligations under all lease commitments.

5.2 Repayment of Loans from Shareholders

If the Company resolves to repay money borrowed from Shareholders it must repay each Shareholder its Equity Proportion of the amount repaid at the same time.

5.3 Shareholder Guarantees

If the Company resolves to borrow monies from persons other than the Shareholders on terms requiring that the Shareholders provide guarantees or other securities, the liability of each Shareholder must be limited to its Equity Proportion of the amount borrowed.

5.4 Shareholder Indemnities

If a liability of the Company is recovered from a Shareholder (**Liabe Shareholder**) then each other Shareholder indemnifies the Liabe Shareholder such that the Liabe Shareholder's liability is limited to its Equity Proportion of both the amount recovered and any reasonable costs associated with that recovery.

5.5 Dilution of Non-Funding Party

- (a) If at any time during the term of this Agreement, a Shareholder falls to fulfill its Initial Funding Obligations or its Additional Funding Obligations (**Non-Funding Party**), then the other Shareholder (**Funding Parties**) shall be entitled, but not obliged, to provide the shortfall in funding (**Shortfall**) either by way of additional shareholder loans to the Company or by making further equity contributions to the Company.
- (b) If the Funding Party resolves (in its absolute discretion) to provide the Shortfall by making further equity contributions to the Company, the Non-Funding Party's shareholding in the Company shall be diluted on the basis that the Funding Party who has elected to contribute the Shortfall shall do so by subscribing for that number of additional Shares calculated as follows:

$$\text{Number of additional Shares} = \frac{\text{Funding shortfall to be subscribed by Funding Party}}{\text{Fair Market Value/Price per share at which Funding Party subscribes}}$$

6. MAJOR TRANSACTIONS

Transactions requiring Approval

Without the prior written unanimous consent of the Shareholders (which consent the Shareholders may grant or decline in their absolute discretion), the Company must not:

- (a) (**Further Issues**) issue or allot or grant any right to have issued or allotted any further Shares or securities convertible into Shares, redeem, repay any amounts owing, buy back or vary the rights attaching to any Shares in the capital of the Company;

- (b) **(Assets)** sell, purchase or revalue assets (either tangible or intangible) having a value greater than \$50,000 other than as included in an approved budget;
- (c) **(Capital Expenditure)** incur any capital expenditure greater than \$50,000 other than as included in an approved budget;
- (d) **(Auditor)** appoint or remove any auditor (it being acknowledged that an auditor may be changed, with the concurrence of the Shareholders, provided there is a manifest cost benefit for the Company in so doing);
- (e) **(Related Party Transactions)** enter into or vary any transaction with a Related Party including providing any Financial Benefit to any Related Party and disregarding the fact that the Company may not be a public company;
- (f) **(Loans Generally)** obtain or make any loan, provide any credit or other financial accommodation to any person other than a Related Party unless included in a budget approved by the Board;
- (g) **(Remuneration – Senior Management)** agree to or vary the remuneration of any senior staff member of the Company in office as at the date of this Agreement or agree to the payment of remuneration to any person who is appointed to a senior staff role in the Company after the date of this Agreement, in either case where the remuneration of that staff member exceeds \$50,000 per annum;
- (h) **(Appointment and Removal – Senior Management)** appoint or remove or procure the appointment or removal of any senior staff member (including, without limitation, any General Manager) of the Company where the remuneration of that staff member exceeds \$50,000 per annum;
- (i) **(Encumbrances etc)** create any Encumbrance over any asset or undertaking, enter into any borrowing or give any security, guarantee or indemnity that is not included in a budget approved by the Board;
- (j) **(Change Constitution)** change or attempt to change in any way the Constitution;
- (k) **(Accounts)** approve the annual accounts of the Company or make any change to any accounting period of the Company or the Accounting Standards or accounting policies adopted by the Company;
- (l) **(Acquisition)** acquire any interest in any other entity, whether by acquiring securities, partnership interests, joint venture interests or any interests under a trust;
- (m) **(Material Contracts)** enter into, amend or terminate any material contract to which the Company is a party, including any contracts with a value or commitment of greater than \$50,000;
- (n) **(Litigation)** become involved in any litigation, apart from debt collection in the ordinary course of business;
- (o) **(Dividends)** declare or pay or propose to declare or pay any dividends;
- (p) **(Unusual Transactions)** enter into any transactions outside the ordinary course of the Business as envisaged under the Business Plan;
- (q) **(Winding Up)** enter into or propose to enter into any scheme of arrangement, winding up or other reorganisation of the Company;

- (r) **(Listing)** list the Company, attempt to list the Company, or undertake any discussions with any advisors in relation to the proposed listing of the Company on any recognised stock exchange;
- (s) **(Employee Share Option Plan)** establish any employee share ownership plan or management incentive scheme;
- (t) **(Budgets)** adopt, vary or depart from any operating budget, capital budget or cash flow budget which would result in a material adverse divergence from the Business Plan from which such budget has been derived;
- (u) **(Business Plan)** adopt, vary or depart from the Business Plan; or
- (v) **(Special Resolution)** pass any resolution that would be regarded as a special resolution under the *Corporations Act 2001*.

7. DIRECTORS

7.1 Composition of Board of Directors

- (a) Each Shareholder is entitled to appoint two (2) Directors to the Board of the Company.
- (b) The Board will comprise a maximum of four (4) Directors.
- (c) The Initial Directors will be:
 - (i) William Hara;
 - (ii) Robert Gregory Mills;
 - (iii) Arthur David Owen; and
 - (iv) Andrew Gibson.
- (d) Other Directors may only be appointed with the consent of the Shareholders.

7.2 Appointment of Alternates

- (a) Each of the Shareholders may appoint an alternate for each Director they appoint to the Board.
- (b) Every alternate Director may receive notices of meetings of Directors. In the absence of the Director, the alternate Director may attend and vote at any such meeting in the absent Director's place.
- (c) Where any alternate Director is also a Director in his/her own right, that Director will have a separate vote on behalf of the Director he/she is representing in addition to his/her own vote.
- (d) An alternate Director must vacate that office immediately if the Director for whom the alternate Director acts as alternate, ceases to be a Director.

7.3 Appointment of Chairman

The Chairmanship of the Board shall rotate on an annual basis. A Director shall be appointed as the Chairman of the Board for a period of one year. The first Chairman will

be Andrew Gibson, appointed by P&O. Thereafter, each Shareholder (commencing with Pizer) shall appoint the Chairman on an annual basis.

7.4 Removal of Directors

Each Shareholder (but only that Shareholder) may remove any Director appointed by it and appoint another Director in place of the Director so removed. The appointor must indemnify the Company in respect of any claim for compensation for loss of office which may be brought against the Company by the Director so removed. If a vacancy arises in the office of any Director, the Shareholder who appointed that person may appoint another person to fill the vacancy.

8. MEETINGS OF DIRECTORS

8.1 ~~QUORUM~~

The quorum necessary for the transaction of the business of the Directors shall ~~be two (2)~~ Directors (or their alternates) and must include at least ~~one (1)~~ Director appointed by each Shareholder.

8.2 Notice of Meetings

Notice of every meeting must be given to every Director in writing at least 5 days before the date of the proposed meeting.

8.3 Board Meetings by Simultaneous Communication

The Directors may meet by telephone conference call or other means of simultaneous conference telecommunication and a resolution passed by such a meeting shall be deemed to have been passed at a meeting of Directors held on the day on which and at the time at which the meeting was held and at the place where the chairman of the meeting was located during the course of that meeting.

8.4 Meetings by Circular Resolution

If all the Directors have signed a document - which for these purposes may be a facsimile transmission - containing a statement that they are in favour of a resolution of the Directors in the terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held at the date and at the time at which the document was last signed by a Director. For the purposes of this clause two or more separate documents containing statements in identical terms, each of which is signed by one or more Directors, shall together be 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.

8.5 Location and Travel Expenses

All meetings of Directors shall be held in Sydney, unless the Board unanimously resolves otherwise. The Company shall bear and pay such reasonable travel, accommodation and other expenses as may be incurred by the Directors for the purpose of travelling to and attending Board meetings.

8.6 Adjourned Meetings

If within half an hour after the time appointed for the holding of a meeting of the Board, a quorum is not present, the meeting shall be adjourned to the same time and place 14 days later. Each Director shall be notified immediately by facsimile message of such

adjournment. If at the adjourned meeting a quorum is not present within half an hour of its commencement, any two (2) Directors present shall constitute a quorum for purposes of the transaction of the business of that meeting.

8.7 Frequency of Meetings

Without limitation to a Director's right under the Constitution to convene a meeting at any time, the Directors shall meet at least 6 times each financial year at bi-monthly intervals and otherwise as may be mutually agreed from time to time.

8.8 Casting Vote of Chairman

In case of an equality of votes, the Chairman shall not have a casting vote in addition to his or her deliberative vote.

9. MANAGEMENT OF THE COMPANY

9.1 The Board

Management of the Company is vested in the Board who shall make such decisions in relation to funding and the hiring of staff, among other matters, as are necessary and convenient.

9.2 Business Plan and Budget

- (a) The Company must conduct the Business in accordance with the ~~Business Plan and Budget~~ ✓
- (b) The Directors must adopt an initial Business Plan and Budget within 2 months after the Commencement Date;
- (c) The Directors must ~~adopt a Business Plan and Budget for each financial year in accordance with this clause~~
- (d) At least 2 months before the commencement of each subsequent financial year the Company must prepare and distribute to the Directors a draft Business Plan and Budget for the next financial year;
- (e) The Directors must consider the draft Business Plan and Budget and adopt a Business Plan and Budget for the next financial year before commencement of the relevant financial year;
- (f) The Business Plan and Budget must:
 - (i) give Directors a true and fair view of the current and anticipated future financial position of the Company;
 - (ii) set out in detail particulars of proposed business activities;
 - (iii) provide details of expected revenue and expenditure;
 - (iv) contain a forecast profit and loss account, balance sheet and statement of cash flows; and
 - (v) specify the amount of additional capital (if any) required in the forecast period for the proper conduct of the Business and the Company.

(g) If the Directors do not adopt a Business Plan and Budget before the commencement of a financial year then:

- (i) each Shareholder must ensure that its appointed Directors continue to use their best efforts to adopt a Business Plan and Budget for that financial year; and
- (ii) the Business Plan and Budget for that financial year will consist of :
 - (A) that part of the Business Plan and Budget for the previous financial year that applies to the current financial year; and
 - (B) a continuation of the Business and the business activities proposed in the Business Plan and Budget for the previous financial year.

9.3 Management Reports

The Board must ensure the General Manager provides the Company and the Board with enough management and financial information and reports to allow them to know and understand the financial affairs of the Company and to control the efficient operation of the Company including, but not limited to, the information set out in clause 11.3.

9.4 Audit

- (a) On the Commencement Date the Shareholders must ensure that the Board resolves to appoint KPMG as the Company's auditors.
- (b) The Shareholders must ensure that the Company's auditors audit the accounts of the Company each financial year.

9.5 Committees

The Board may delegate any of its powers to a committee of Directors.

9.6 Insurance

The Board must obtain and maintain at all relevant times the following insurances:

- (a) directors' and officers' liability and indemnity insurance for at least \$10,000,000 per occurrence and in the aggregate per annum; and
- (b) such other appropriate general risk insurances, as a prudent person in the position of the Company would take out, having regard to the nature of the Business and in recognition of legal compliance subject to applicable law.

10. SHAREHOLDERS MEETINGS

10.1 Quorum

The quorum necessary for the transaction of the business of the Shareholders shall be two (2) Shareholders or their representatives.

10.2 Adjourned Meetings

If within half an hour after the time appointed for the holding of a meeting of Shareholders, a quorum is not present, the meeting shall be adjourned to the same time and at the same place 21 days later and each of the Shareholders shall be notified immediately by facsimile

message of such adjournment. If at such adjourned meeting a quorum is not present within half an hour of its commencement any Shareholder present at such meeting shall constitute a quorum for purposes of the transaction of business.

11. ACCOUNTS AND FINANCIAL INFORMATION

11.1 Maintenance of Accounting Records

The Company shall prepare and maintain accounts and records of its financial transactions in accordance with the Accounting Standards.

11.2 Right of Inspection

Each of the Directors and the Shareholders they represent (together with their authorised representatives) shall have a right to inspect all the financial and corporate books and records of the Company at any time and from time to time upon providing the secretary of the Company with reasonable notice.

11.3 Monthly Reporting

Within 30 days of the end of each month, the Company shall provide the Directors and Shareholders with management accounts for the month and year ended on the last day of that month comprising:

- (a) a balance sheet;
- (b) a profit and loss account;
- (c) a cash flow statement;
- (d) a report providing a description and analysis of the actual performance for that month and year to date against Budget and a forecast of future performance;
- (e) an activity report by the General Manager in a form and content acceptable to the Shareholders; and
- (f) any other agreed reports.

These management accounts shall, in addition, show comparisons against the Company's Business Plan and Budgets for that month and the year to date.

11.4 Yearly Reporting

Once a year, the Company shall provide each of the following to each Director and each Shareholder in respect of the Company:

- (a) at least 30 days prior to the end of each financial year, a Business Plan for the next financial year prepared in accordance with clause 9.2; and
- (b) within 90 days of the end of each financial year, audited annual financial statements and an audit report prepared in accordance with the Accounting Standards.

11.5 Other Reports

From time to time, the Company shall provide to the Directors and the Shareholders the following:

- (a) complete and accurate minutes of each meeting of the Shareholders and Directors, on the earlier of 14 days after the relevant meeting or the day on which such minutes are provided to the other Directors;
- (b) complete and accurate details of any negotiations or offers in relation to the sale of any Shares in the Company or any subsidiary, or the sale of the Business or the business of any subsidiary, immediately after such negotiations occur or an offer is made.

12. INSPECTION OF RECORDS

12.1 Inspection

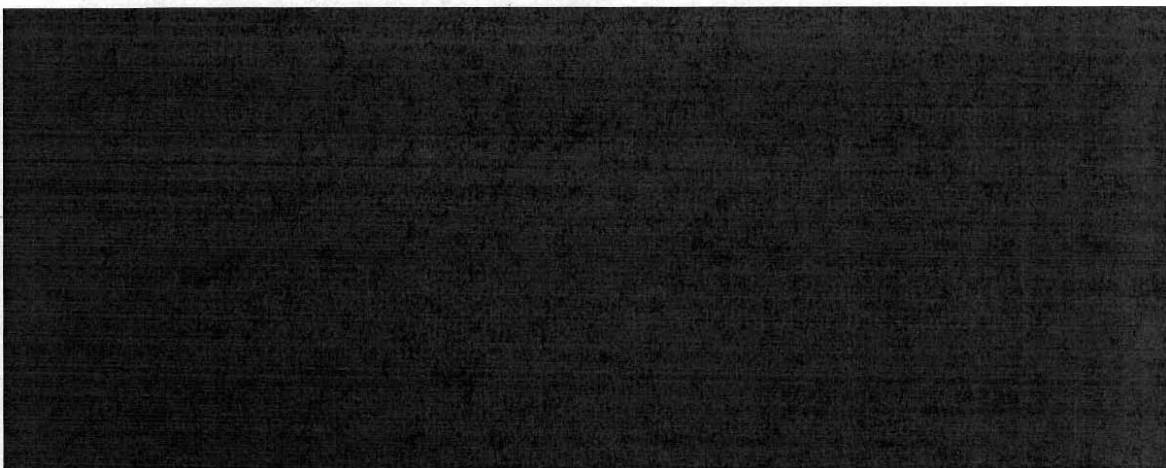
The Shareholders at their own cost and by their employees or agents shall be entitled upon giving reasonable notice and during business hours to inspect and take copies of any records of the Company subject to any confidentiality agreement binding on them.

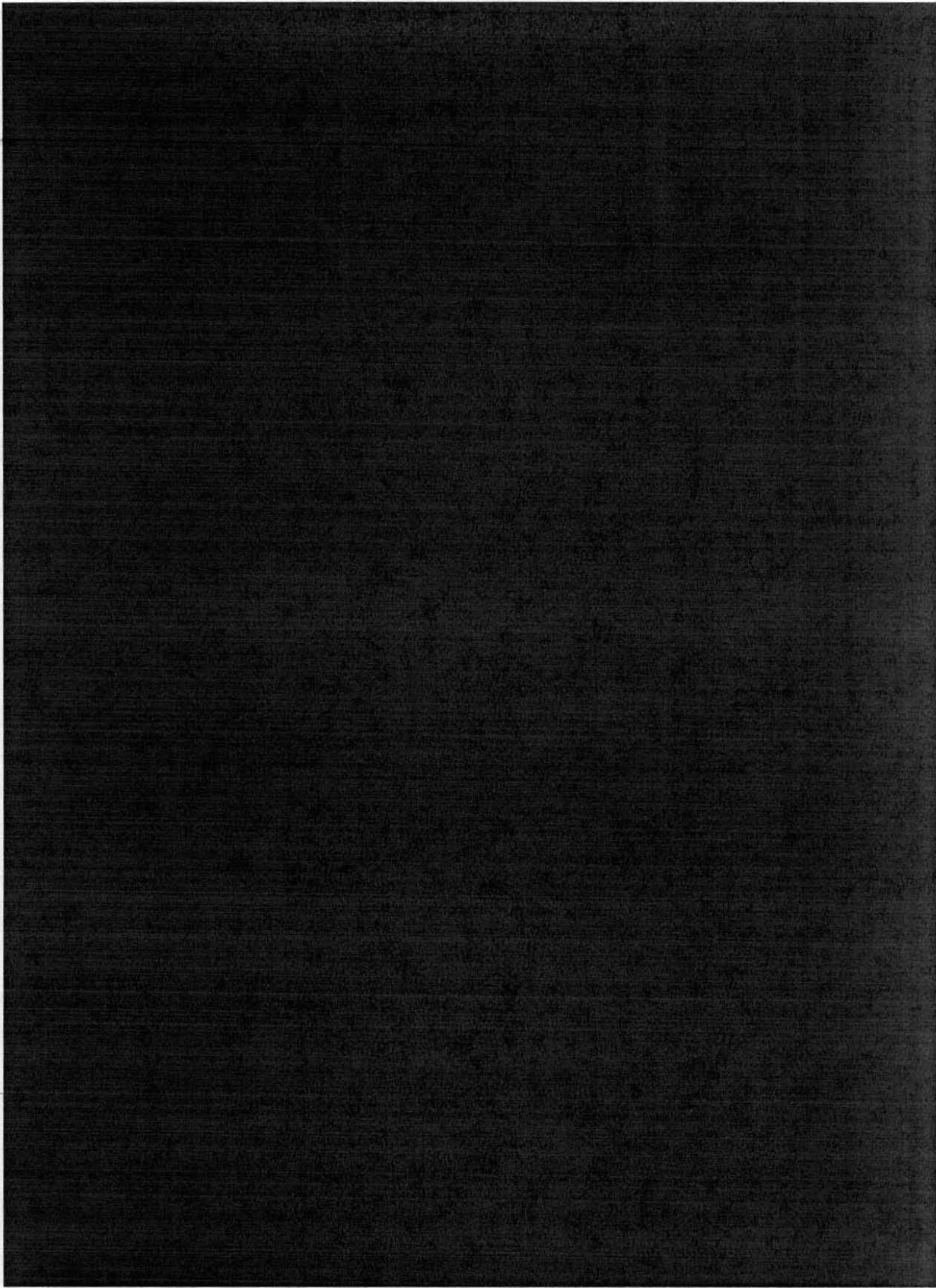
12.2 Confidentiality

The Shareholders, in receiving disclosures pursuant to clause 11 or authorising inspection under clause 12.1, shall be acting in a fiduciary capacity. All information so obtained by the Shareholders or their employees or agents shall be held confidential to them and their employees, agents and professional advisers and shall not be disclosed to any other person except:

- (a) if the information is, no later than on the day immediately preceding the day of inspection, lawfully in the possession of the recipient of the information through sources other than the Company;
- (b) if disclosure is required by law, stock exchange or governing contracts;
- (c) to its own shareholders in accordance with its own reporting obligations provided that such disclosure shall not involve the provision of documents and shall be limited to summary financial information and abbreviated commentary only;
- (d) if the information is in the public domain; or
- (e) with the prior written consent of the Company.

13. RIGHTS OF PRE-EMPTION OVER SHARES

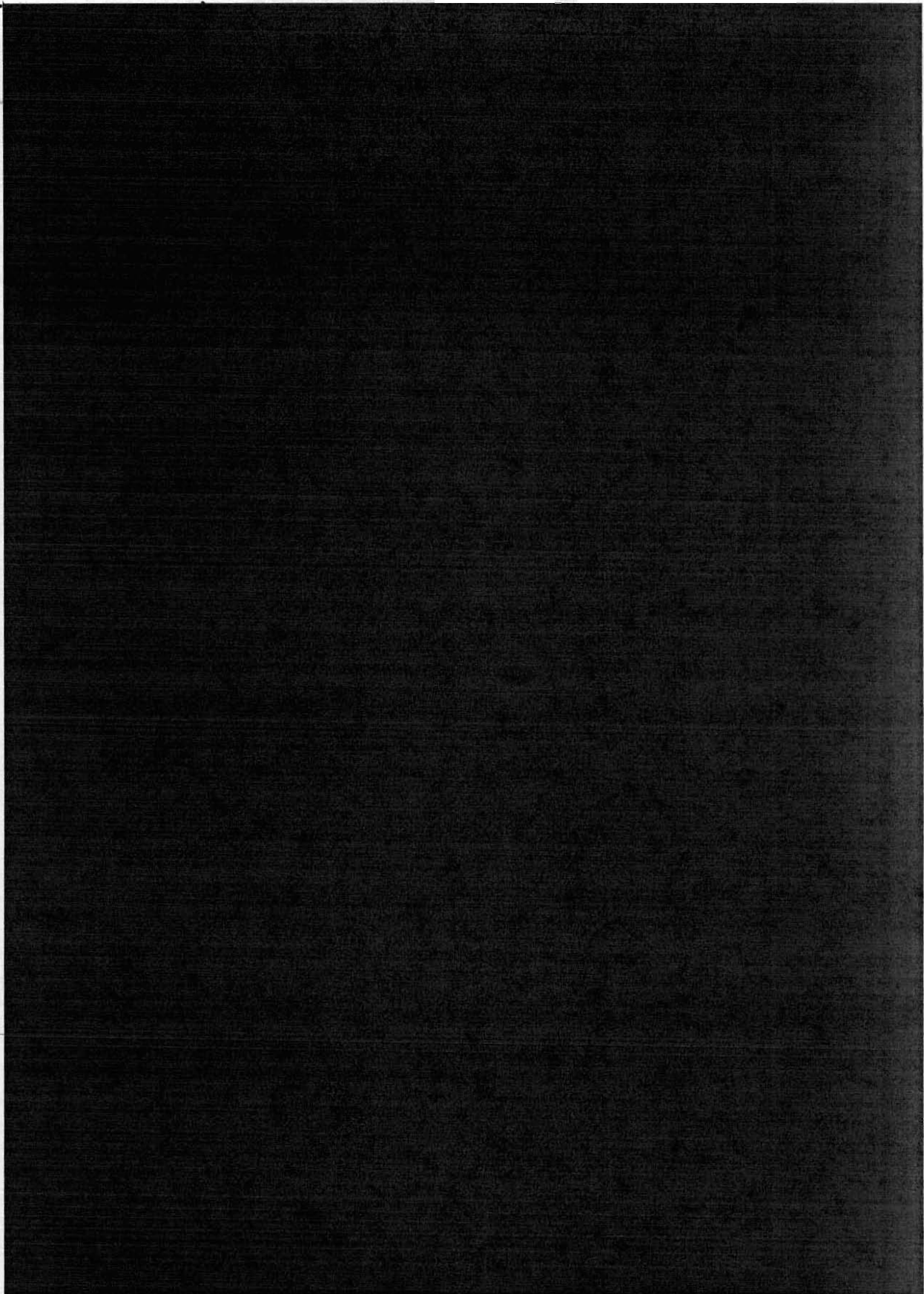




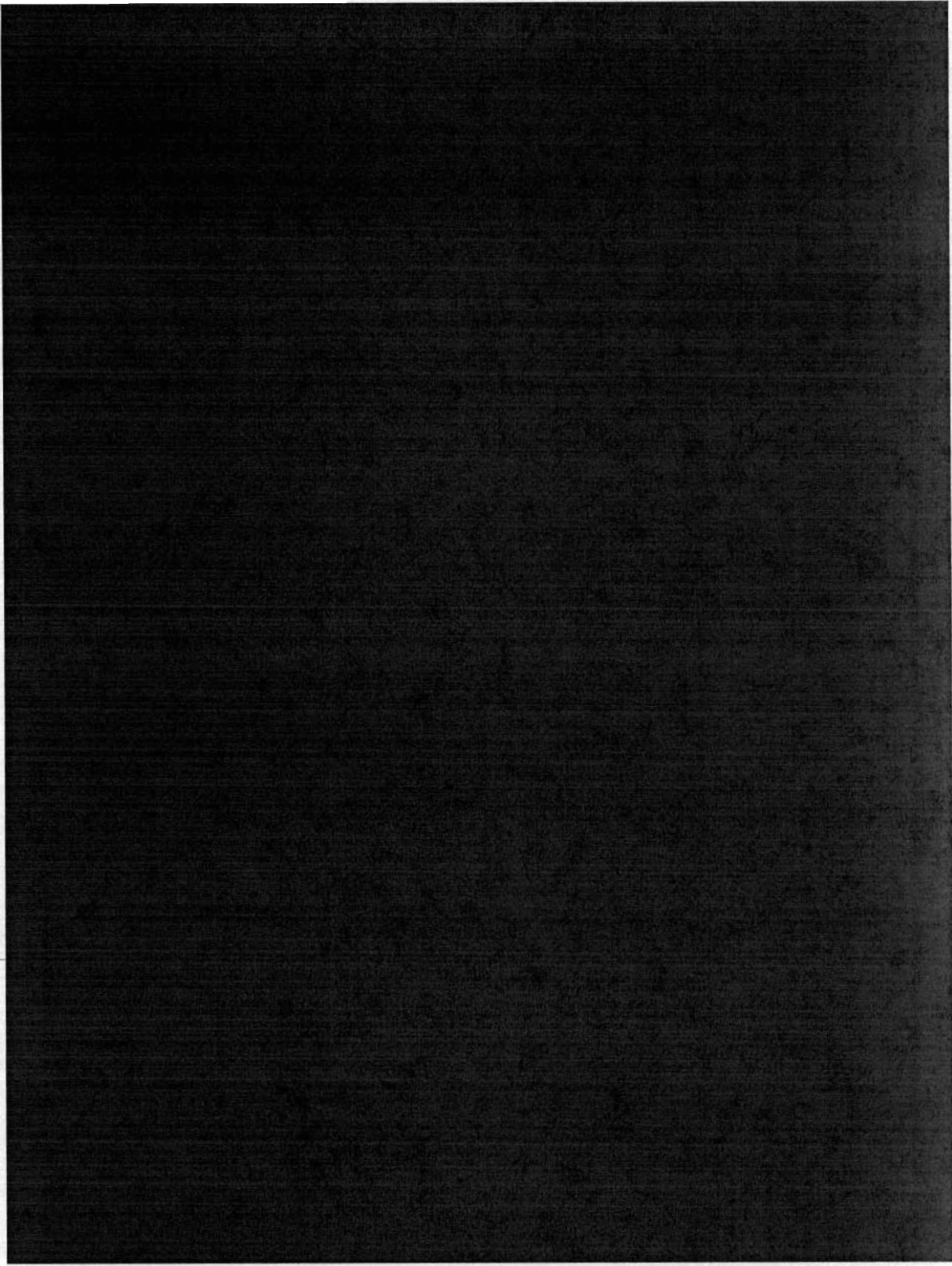


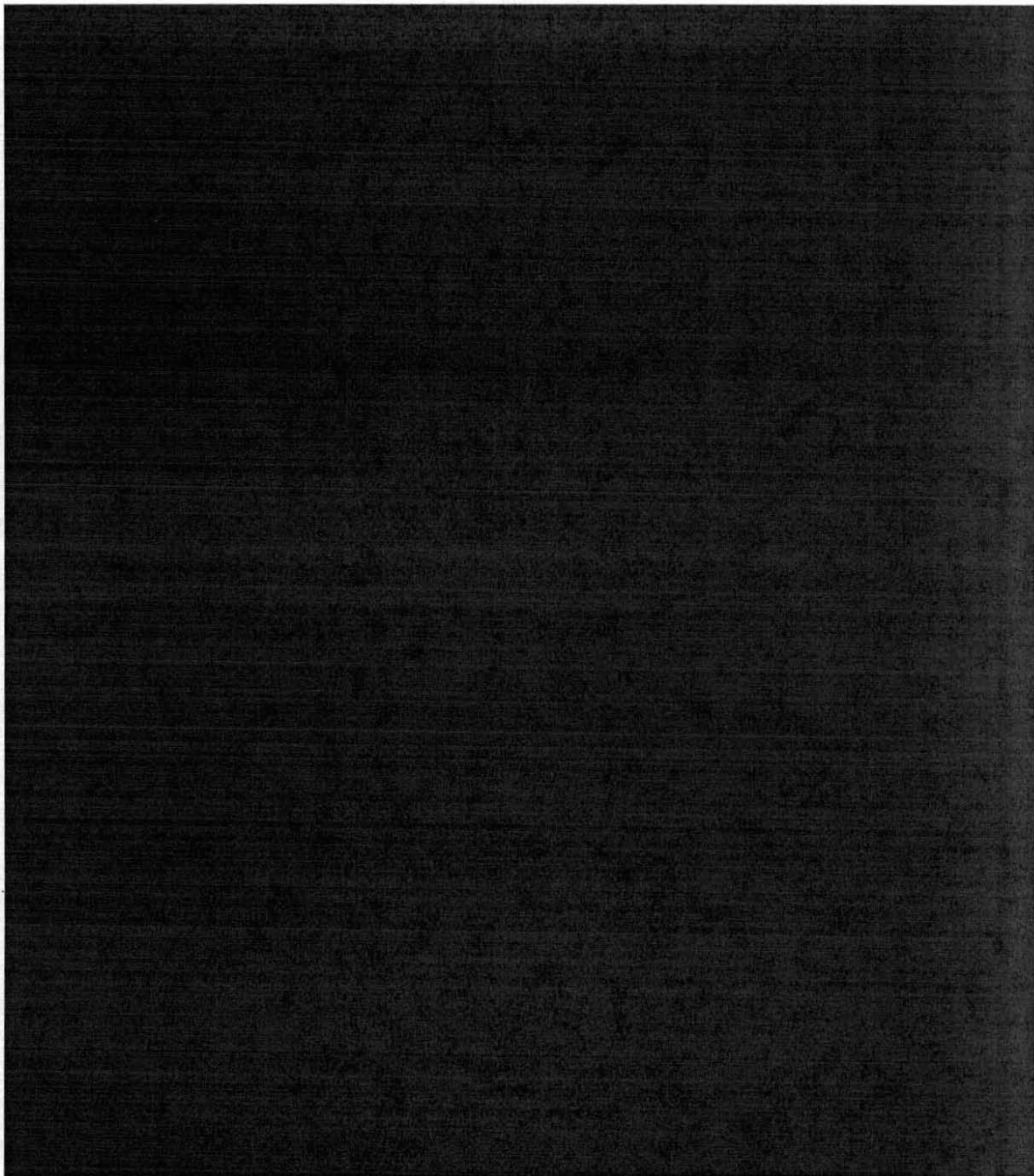
14. DEADLOCK





15. DEADLOCK BREAKING MECHANISM FOR MAJOR DISPUTES





16. SHAREHOLDER DEFAULT

If in respect of a Shareholder or a Related Body Corporate of a Shareholder (*Relevant Shareholder*):

- (a) an order is made or an effective resolution is passed for the winding up or dissolution without winding up (otherwise than for the purposes of solvent reconstruction or amalgamation) and that order or resolution remains in effect for a continuous period of 30 days;

- (b) a receiver, receiver and manager, liquidator, administrator or like official is appointed over the whole or a substantial part of the undertaking or property of the Relevant Shareholder and the appointment remains in effect for a continuous period of 30 days;
- (c) a holder of an Encumbrance takes possession of the whole or a substantial part of the undertaking and property of the Relevant Shareholder and remains in possession for a continuous period of 30 days; or
- (d) the Relevant Shareholder commits a material breach of any of its obligations under this Agreement which remains unremedied for 30 days after notice of the breach has been given by another party to the Relevant Shareholder,

the Relevant Shareholder will be deemed to have lodged a Transfer Notice in respect of its Shares at a price reflecting their Fair Market Value less an allowance for any loss or damage caused to the Company or the other parties by reason of such breach. The provisions of clause 13 shall then apply in respect of those Shares.

17. DISPUTE RESOLUTION

17.1 Amicable Negotiation

In the event of any dispute or difference arising between the parties in relation to this Agreement and to which clause 14 does not otherwise apply (*Dispute*) they shall, in the first instance, appoint their respective designated representatives to meet and negotiate in good faith to resolve the Dispute. The representatives so appointed must have authority to make decisions and take all other actions necessary to resolve the Dispute.

17.2 Commencement of Process

For the avoidance of doubt, a Dispute shall be taken to exist when one party, in good faith, serves upon the other a notice which accurately and comprehensively identifies the subject matter of the Dispute. The giving of such a notice shall be a condition precedent to the commencement of all the processes under this clause (whether by way of formal negotiation, mediation or litigation) for the resolution of the Dispute.

17.3 Reference to Mediation

- (a) If the parties are unable to successfully resolve the Dispute within 15 Business Days from the commencement of the first of the meetings referred to in clause 17.1, either party may, by written notice served upon the other, require the matter to be referred for resolution to an independent mediator of the parties' choice.
- (b) If the parties are unable to agree upon the identity of a mediator, the Dispute shall be referred to a mediator appointed by the President for the time being of the Australian Commercial Disputes Centre Limited and shall be conducted under the auspices of that organisation.
- (c) The parties shall co-operate to facilitate the conclusion of the mediation within a further 15 Business Days.

17.4 Costs of Mediation

The costs of mediation shall be borne equally by the parties.

17.5 Mediation Compulsory

The parties agree that if they are unable to successfully resolve the Dispute by way of negotiation in accordance with clause 17.1 they must resort to mediation as a means of resolution of the Dispute before any other process or proceeding may be taken in order to effect that resolution.

17.6 Failure of Mediation

If the parties comply with the steps set out in this clause and still fail to resolve the Dispute, then each party shall be free to pursue any lawful remedy against the other party including the bringing of formal legal proceedings.

17.7 Survival

The provisions of this clause 17 shall continue to bind the parties following the termination of this Agreement.

18. RELATED TRANSACTIONS WITH THE COMPANY

Any products or services provided or to be provided to the Company by any of the parties, including all fees and charges in respect of the provision of such products or services, shall be charged to the Company on an arms' length basis.

19. CONFIDENTIALITY

19.1 Confidential Information

The parties shall, both during the term of this Agreement and thereafter, treat as confidential and privileged, any information coming to any of them regarding the Company, the Business or each other and shall use such information only in connection with the Company and the conduct of the Business. For the purposes of this clause information shall include, without limitation, software, practices, techniques, trade secrets, technology, processes and know how.

19.2 Public Domain

The provisions of this clause shall not apply to information which has entered the public domain otherwise than as a result of the breach of these provisions.

19.3 Announcements

No public announcement of any kind shall be made by any of the parties in relation to the subject matter of this Agreement, the Company or the Business without the consent of every other party as to the form, content and timing of the announcement, subject to any overriding statutory or regulatory obligations of disclosure imposed by law or the rules of any stock exchange. In that event the announcing party must use its best endeavours to consult with the other parties before making any such announcement about its subject matter.

20. COSTS AND STAMP DUTY

20.1 Stamp Duty

The Company shall bear and pay all stamp duty assessable or payable in respect of this Agreement.

20.2 Other Costs

Each party will pay its own costs incurred in its entry into this Agreement.

21. NOTICES

21.1 Form and Mode Of Notice

A notice:

- (a) must be in writing; and
- (b) must be left at the address of the addressee or sent by prepaid ordinary post to the address of the addressee or by facsimile transmission to the facsimile number of the addressee (as follows):

(i) in the case of the **Company**:

Address: Sommerville Road, Rozelle, New South Wales, 2039
Facsimile No: 02 9352 3447
Attention: Dean Wells

(ii) in the case of **P&O**:

Address: Level 8, 160 Sussex Street, Sydney, New South Wales,
2000
Facsimile No: 02 9277 5151
Attention: Andrew Gibson

(iii) in the case of **Pizen**:

Address: Lot 3, Pier 8/9 Walsh Bay, 23 Hickson Road, Millers Point,
New South Wales, 2000
Facsimile No: 02 9250 1122
Attention: William Hara

and in the event of a change of such address or facsimile number, as last notified by the Shareholder affected by such change to the other(s).

21.2 Actual Receipt

Unless a later time is specified in a notice it shall take effect from the time it is taken to be received under clause 21.3 by the person to whom it is addressed, as noted thereon.

21.3 Deemed Receipt

A letter or facsimile is taken to be received:

- (a) in the case of a letter, on the 3rd Business Day after posting; and
- (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause. If such report indicates that the notice was received in its entirety after 5:00 pm it shall be deemed to have been received the following day.

21.4 Evidence of Authenticity

Any notice received by a Shareholder bearing a facsimile of the signature of an Authorised Officer of the other Shareholder shall be conclusive evidence for all purposes of the authenticity of the notice and the receiving party shall be entitled to rely upon that notice.

21.5 Change of Particulars

If a Shareholder changes its address or other relevant particulars in respect of its facsimile facilities it must, prior to the date of such change, notify the other Shareholder in writing. Thereafter such new address or particulars shall be the address or particulars, as the case may be, of that Shareholder for the purposes of this Agreement.

22. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

22.1 Governing Law

This Agreement shall in all respects be governed by and construed in accordance with the laws in force in New South Wales.

22.2 Jurisdiction

Each Shareholder submits to the non-exclusive jurisdiction of the courts of New South Wales and any other courts of competent jurisdiction.

23. GENERAL

23.1 Waiver and Modification

No waiver of any breach of these provisions will be effective unless such waiver is in writing and signed by each party to this Agreement against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any other or subsequent breach. No alteration or amendment to any such obligation will be effective or enforceable unless made in writing and signed by all parties to this Agreement.

23.2 Operation of this Document

- (a) This Agreement and the documents referred to in it contain the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by those documents and has no further effect;
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have; and
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

23.3 Counterparts

This Agreement may be signed in any number of counterparts with the same effect as if the separate signatures or executions were on the same agreement.

23.4 Further Assurance

Each party to this Agreement from time to time and at all times either before or after the date of this Agreement, at the cost and expense of that party, must make do and execute or cause to be made done or executed all such acts instruments assurances and writings as may be necessary or desirable to perfect or give effect to the provisions of this Agreement.

23.5 Severability

If any provision of this Agreement shall be or be determined to be illegal invalid void or voidable the legality or validity of the remainder of this Agreement shall not be affected and the remainder of this Agreement shall continue in full force and effect.

23.6 Strict Compliance

In the absence of express provision to the contrary, failure or omission by a party to this Agreement at any time to enforce or require strict or timely compliance with any provision of this Agreement or any related document shall not impair the ability of that party to exercise the rights and remedies it otherwise has in respect of a breach of any such provision.

23.7 No Merger

None of the provisions of this Agreement will merge in or upon the execution of this or any other agreement, document, act, matter or thing and will continue to remain in full force and effect for so long as is necessary to give effect to the provisions of this Agreement.

23.8 Legal Relationship

Nothing contained in this Agreement shall be construed so as to constitute any party to this Agreement a partner, agent or representative of the other or others or to create any trust or partnership with any person or company or commercial entity for any purpose whatsoever.

23.9 Assignment of Rights

No party may assign its rights under this Agreement without the prior consent in writing given by the other parties.

Executed as an Agreement on

2 December 2002

**EXECUTED BY AUSTRALIAN AUTOMOTIVE
TERMINALS PTY LIMITED (ACN 098 458 229)**
pursuant to section 127(1) of the Corporations
Act 2001



Signature of Authorised Person

DIRECTOR

Office Held

Arthur (Ang) Eisen

(Print) Name of Authorised Person



Signature of Authorised Person

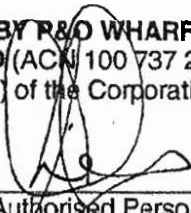
SECRETARY

Office Held

William HARA

(Print) Name of Authorised Person

**EXECUTED BY R&O WHARF MANAGEMENT
PTY LIMITED (ACN 100 737 264)** pursuant to
section 127(1) of the Corporations Act 2001.



Signature of Authorised Person

DIRECTOR

Office Held

Andrew Charles Walker

(Print) Name of Authorised Person



Signature of Authorised Person

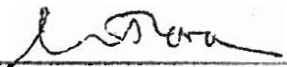
SECRETARY

Office Held

ANDREW CHARLES WALKER

(Print) Name of Authorised Person

EXECUTED BY PLZEN PTY LIMITED
(ACN 065 905 571) pursuant to section 127(1)
of the Corporations Act 2001



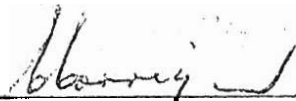
Signature of Authorised Person

SECRETARY

Office Held

William HARA

(Print) Name of Authorised Person



Signature of Authorised Person

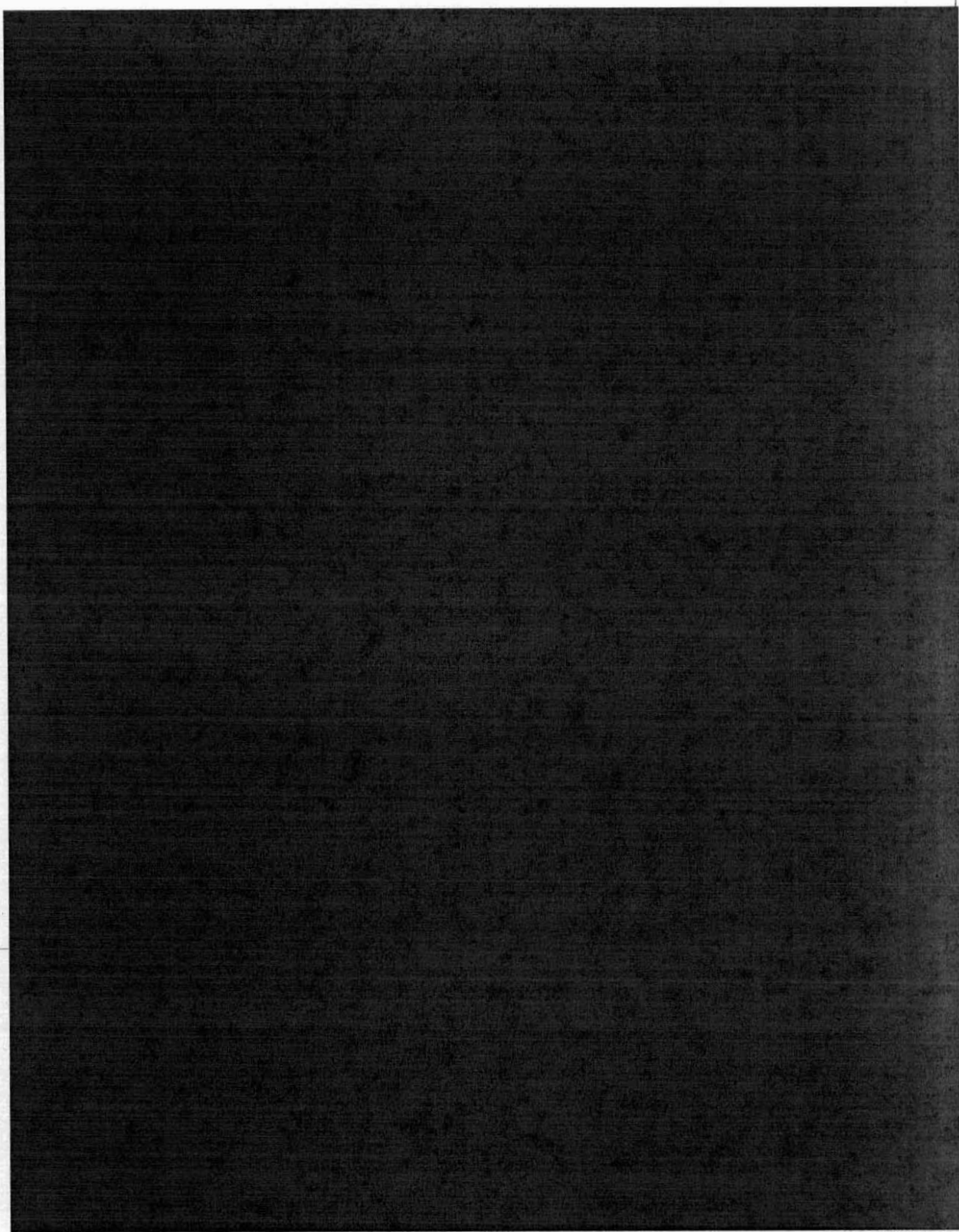
DIRECTOR

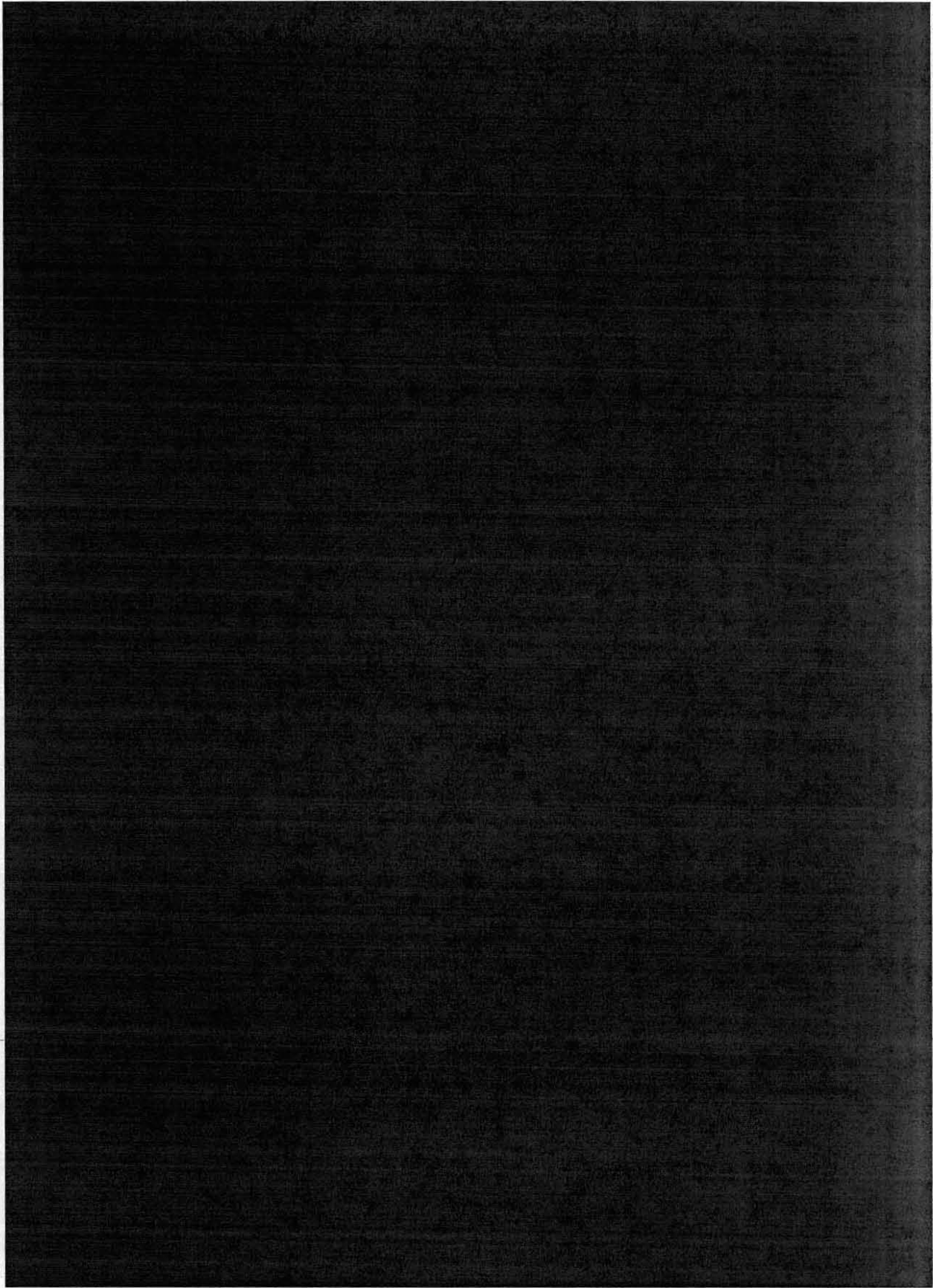
Office Held

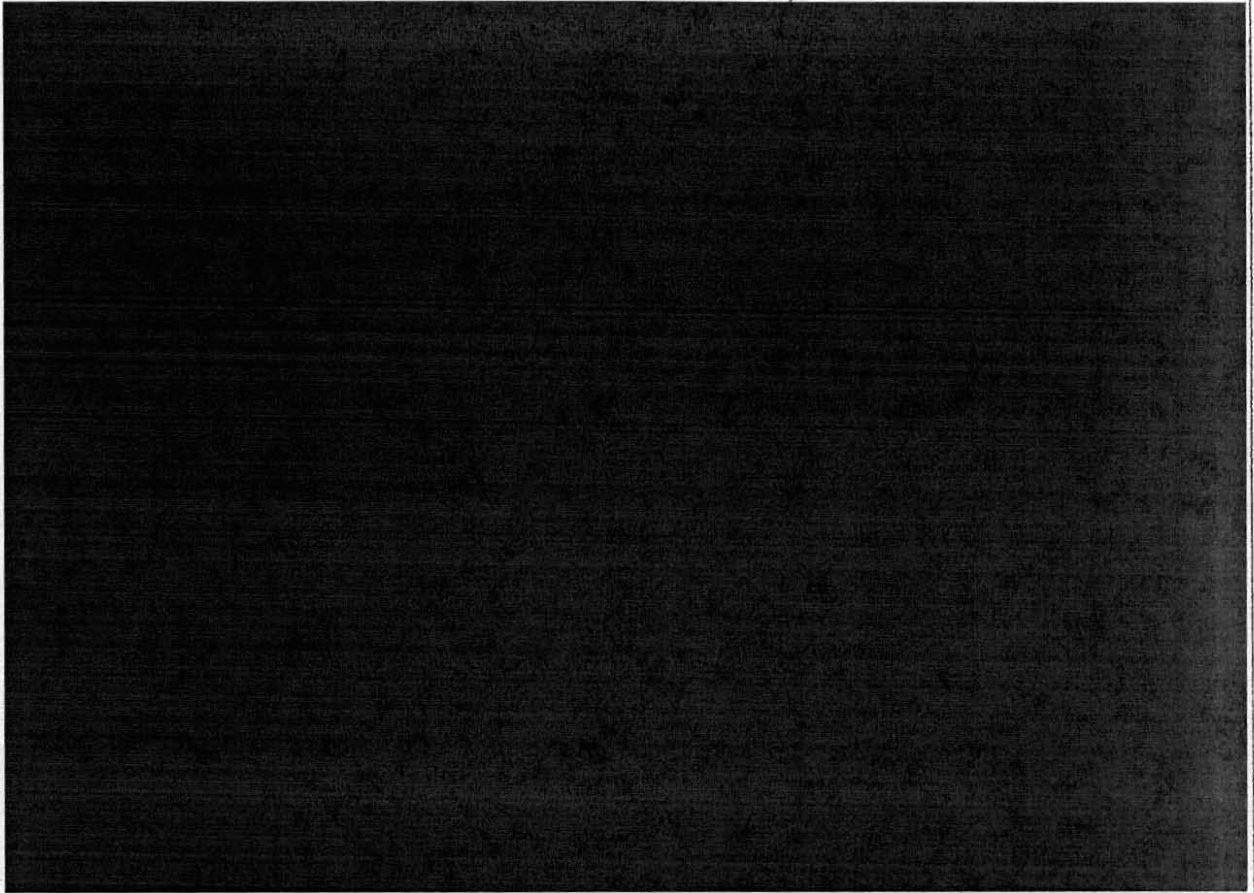
C. D. CORRIGAN

(Print) Name of Authorised Person

ANNEXURE A
Description of Business







ANNEXURE B
Deed of Accession

THIS DEED is made the _____ day of _____ 2002

BETWEEN _____ of _____ (*Covenantor*)
AND _____ of _____ (*Continuing Shareholder*)

IS SUPPLEMENTAL to a Shareholders' Agreement (the *Shareholders' Agreement*) made the
day of _____ 2002 between AUSTRALIAN AUTOMOTIVE
TERMINALS PTY LIMITED, P&O WHARF MANAGEMENT PTY LIMITED and PLZEN PTY
LIMITED.

AND WITNESSES:

The Covenantor confirms that it has been supplied with a copy of the Shareholders' Agreement and covenants with each of the parties to that agreement to observe, perform and be bound by all the terms of that agreement together with the provisions of the Constitution of the Company and that the Covenantor shall be deemed with effect from the date on which the Covenantor is registered as a Shareholder of the Company to be a party to the Shareholders' Agreement. The Covenantor shall also do all things reasonably necessary, including without limitation, to execute any documents as may reasonably be required to ensure the continuation of the Shareholders' Agreement.

EXECUTED AS A DEED.

[Execution clause of Covenantor]

[Execution clause of Continuing Shareholder]

ANNEXURE C

Protocol for Board Governance


All Board members expressly acknowledge the following:

1. All Board members are obliged to abide by the provisions of the Trade Practices Act.
2. Board meetings may not be used by any member for the purpose of:
 - (a) Contravening the *Trade Practices Act*;
 - (b) Attempting to contravene the *Trade Practices Act*; or
 - (c) Inducing a contravention of the *Trade Practices Act*.
3. In particular, the following must not be discussed at Board meetings insofar as it relates to activities conducted outside of the Company:
 - (a) The prevention, restriction or limitation of the supply of services to a particular customer or a particular class of customers, whether or not such prevention, restriction or limitation is only to occur in particular circumstances or on particular conditions;
 - (b) The prevention, restriction or limitation of the acquisition of services from a particular supplier or a particular class of suppliers, whether or not such prevention, restriction or limitation is only to occur in particular circumstances or on particular conditions;
 - (c) Any proposals that are intended to substantially lessen competition in markets in which P&O Ports Ltd or Patrick Corporation Ltd operate or that would substantially lessen competition in those markets;
 - (d) The fixing, controlling or maintaining of any prices, discounts, allowances, rebates or credits in relation to services to be supplied or acquired by P&O Ports Ltd or Patrick Corporation Ltd. This includes using a common formula to set any prices, discounts, allowances, rebates or credits;
 - (e) The hindrance or prevention of a person supplying services to another person.
4. If a member or members attempt to commence such a discussion, the Chairman will ask that member to stop immediately. If the member or members continue the discussion, they will be asked to leave the meeting. The meeting will stop until that member leaves, or those members leave, the meeting.

SCHEDULE 1

Transfer Assets

**ASSETS FOR TRANSFER FROM P&O TO
THE COMPANY**

Asset ID	Asset Description	Value at 31/10/02
6217	Inner Security Gate	
8366	Outer Security Gate	
678	Original Hall Net	
1890	Boom Gate	
71146	New Hall Net	
98	F/Aid Ute	
1913	Ramp runner 302	
2187	Forklift 7T-2	
6154	Terberg Tractor	
6768	Terberg Accessory	
73010	Unitrac Computer System	

"NC"
Marked for Identification

CONSTITUTION
OF
AUSTRALIAN AUTOMOTIVE TERMINAL PTY LIMITED
(ACN 098 458 229)

**CONSTITUTION
OF
AUSTRALIAN AUTOMOTIVE TERMINAL PTY LIMITED
(ACN 098 458 229)**

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Corporations Act 2001
A Company Limited by Shares

CONSTITUTION
OF
AUSTRALIAN AUTOMOTIVE TERMINAL PTY LIMITED
(ACN 098 458 229)

PART 1: PRELIMINARY

1. Definitions and Interpretation

1.1 In this Constitution:

ASIC means the Australian Securities and Investments Commission and includes any successor;

Associate has the same meaning given to that term in the Corporations Act;

ASX means the Australian Stock Exchange;

Business Day means a day on which trading banks are open for business in Sydney;

Call includes an instalment of a call and any sum that becomes payable on allotment or at a fixed date in respect of a Share;

Chairman of the Board means the chairman of the Board appointed under clause 80;

Commonwealth means the Commonwealth of Australia and its external territories;

Company means the company referred to by name at the commencement of this Constitution;

Constitution means this constitution as amended from time to time;

Corporations Act means the *Corporations Act 2001* (Cth) as amended from time to time;

Directors or Board means the whole or any number of Directors comprising a meeting held in any manner (including by electronic means, by resolutions signed by the Directors or any other means permitted by law) authorised by this Constitution;

Dividend includes a bonus or interim dividend;

Listed describes the Company at any time at which the Company is included in the Official List;

Member means a person for the time being entered in the Register as a Member of the Company;

Official List means the official list of ASX;

Register means the register of Members to be kept pursuant to the Corporations Act and includes both the principal register and every branch register;

Representative, in relation to a body corporate, means a representative of the body corporate authorised under the Corporations Act or a corresponding previous law;

Seal means any common seal of the Company and includes any official seal, share seal or certificate seal of the Company;

Secretary means a person appointed by the Directors to perform the duties of a secretary of the Company;

Share means a share in the capital of the Company;

Shareholders' Agreement means the agreement entered into between the Company, P&O Wharf Management Pty Limited (ACN 100 737 264) and Plizen Pty Limited (ACN 065 905 571) dated [];

Subscriber Share means the preference Share, named as such, if issued on the registration of the Company;

Transmission Event means:

- (a) in respect of a Member who is an individual:
 - (i) the death of the Member;
 - (ii) the bankruptcy of the Member; or
 - (iii) the Member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and
- (b) In respect of a Member who is a body corporate, the dissolution of the Member or the succession by another body corporate to the assets and liabilities of the Member.

1.2 Headings do not affect the interpretation of this Constitution.

1.3 Words importing any gender include the other genders.

1.4 A reference in any clause to any statute, regulation or other law includes all statutes, regulations or other laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute, unless the contrary intention appears in this Constitution.

1.5 A reference to a person includes to a corporation, trust, partnership, unincorporated body or other entity.

2. Application to the Corporations Act

Unless the contrary intention appears in this Constitution:

- (a) Part 1.2 Division 8 of the Corporations Act applies, so far as it can with such

changes as are necessary, to this Constitution as if this Constitution was a provision of the Corporations Act; and

- (b) an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act has the same meaning as in that provision of the Corporations Act.

3. Exercise of Powers

The Company may exercise, by resolution or special resolution as the Corporations Act requires, any power which under the Corporations Act a company limited by shares may exercise if authorised by its constitution.

4. Replaceable Rules not to Apply

Each of the provisions of the sections or sub-sections of the Corporations Act which would but for this clause apply to the Company as a replaceable rule are displaced and do not apply to the Company.

5. Shareholders' Agreement

This Constitution must in all respects reflect and be consistent with the provisions of the Shareholders' Agreement. If there is any inconsistency between the provisions of the Shareholders' Agreement and this Constitution, the provisions of the Shareholders' Agreement will prevail, and the Members must act promptly to eliminate any such inconsistency by amending this Constitution.

PART 2: SHARES

6. Shares

Without prejudice to any special rights previously conferred on the holders of existing Shares but subject to the Corporations Act, Shares may be issued by the Directors and any such Share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors may from time to time by resolution determine.

7. Proprietary Company

The Company is a proprietary company and therefore:

- (a) the number of Members for the time being of the Company (exclusive of persons who are in the employment of the Company or of any subsidiary of the Company and of persons who having been formerly in the employment of the Company or of any subsidiary of the Company were while in that employment and have continued after that employment to be Members of the Company) is not to exceed 50 but where 2 or more persons hold one or more Shares in the Company jointly they shall for the purposes of this Constitution be treated as a single Member;
- (b) any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any Shares in, or debentures or debenture stock of, the Company is prohibited; and
- (c) any invitations to the public to deposit money with, and any offer to the public to accept deposits of money with, the Company for fixed periods or payable at call, whether bearing or not bearing interest is prohibited.

8. Ownership of Shares

A Member shall be taken to own a Share if, and only if, that Member has a relevant interest in the Share for the purposes of Part 6.1 of the Corporations Act.

9. Joint Holders of Shares

Where two or more persons are registered as the holders of a Share, they hold it as joint tenants with rights of survivorship subject to the following provisions:

- (a) they and their respective legal personal representatives are liable severally as well as jointly for all payments, including Calls, which have been made or ought to be made in respect of the Share;
- (b) on the death of any one of them, the survivor is or survivors are, the only person or persons the Company will recognise as having any title to the Share;
- (c) it will be sufficient discharge of the Company's obligations to the joint holders in respect of any notice or payment or otherwise if the Company sends the notice or payment or otherwise discharges the obligation in relation to the joint holder first named in the Register but any one of them may give effectual receipts for any dividend, interest or other distribution or payment in respect of the Share; and
- (d) except in the case of persons jointly entitled to be registered as the holders of a Share, the Company is not bound to register more than 3 persons as joint holders of the Share.

10. Equitable and Other Claims

- 10.1 Except as required by law, the Company shall not recognise a person as holding a Share upon trust.
- 10.2 The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any Share or (except as otherwise provided by this Constitution or by law) any other right in respect of a Share except an absolute right of ownership in the registered holder.

11. Preference Shares

11.1 A holder of preference Shares shall be entitled to the following:

- (a) to a preference to capital in the event of a winding up of the Company;
- (b) to cumulative or non-cumulative dividends as determined by the Directors at the time of issue of such Shares; and
- (c) to participate in the surplus assets and profits of the Company.

11.2 A preference Share entitles its holder to vote at any general meeting of the Company in the following circumstances:

- (a) on a proposal:
 - (i) to reduce the share capital of the Company;

- (ii) that directly affects rights and privileges attached to the Share;
 - (iii) to wind up the Company; or
 - (iv) for the disposal of the whole of the Company's property, business and undertaking;
- (b) during a period during which a dividend or part of a dividend on the Share is in arrears;
- (c) on a resolution to approve the terms of a buy-back agreement;
- (d) during the winding up of the Company; and
- (e) in any additional circumstances specified in the terms of issue of such preference Shares by the Company relating to the Share upon its allotment and issue.

11.3 A preference shareholder is entitled to receive notice of and to attend all general meetings of the Company and to receive copies of all financial reports, Directors' reports, auditors' reports together with all other notices, reports and circulars provided to Members.

11.4 Subject to the Corporations Act, any preference Share may be issued on the terms that it is, or at the option of the Company is liable, to be redeemed.

12. Variation of Class Rights

Unless otherwise provided by the terms of issue of a class of Shares:

- (a) all or any of the rights or privileges attached to the class may be varied or abrogated, whether or not the Company is being wound up, only with the consent in writing of the holders of three-quarters of the issued Shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the issued Shares of that class;
- (b) the provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the holders of the issued Shares of that class; and
- (c) the rights conferred upon the holders of the Shares of the class are to be taken as having been varied by the creation or issue of further Shares ranking equally with them.

13. Power to Buy Back Shares

The Company may buy back its own Shares on the terms and at the time determined by the Directors provided that:

- (a) the buy-back does not materially prejudice the Company's ability to pay its creditors; and
- (b) the Company follows the procedures laid down in the Corporations Act.

14. Power to Convert Shares into Larger and Smaller Amounts

The Company may by special resolution passed in a general meeting convert all or any of its Shares into a larger or smaller number of Shares.

15. Power to Reduce the Number of Issued Shares

The Company may reduce the number of issued Shares in any manner permitted by the Corporations Act provided that such reduction:

- (a) is fair and reasonable to the Company's Members as a whole;
 - (b) does not materially prejudice the Company's ability to pay its creditors; and
-
- (c) is approved by the Members in accordance with the Corporations Act.

PART 3: CALLS, FORFEITURE, INDEMNITIES AND LIEN**16. Directors' Power to make Calls**

16.1 Subject to this Constitution and the terms upon which any Shares may be issued, the Directors may make Calls upon the Members in respect of any money unpaid on their Shares which is not by the terms of issue of those Shares made payable at fixed times.

16.2 Upon receiving at least 10 Business Days notice specifying the time and place of payment each Member must pay to the Company by the time and at the place so specified the amount called on the Member's Shares.

17. When a Call is made and Payment by Instalments

17.1 A Call is to be taken as having been made when the resolution of the Directors authorising the Call was passed.

17.2 A Call may be required by the Directors to be paid by installments.

17.3 The Directors may revoke or postpone a Call or extend the time for payment.

18. Costs on Unpaid Amounts

If a sum called in respect of a Share is not paid in full by the day appointed for payment of the sum, the person from whom the sum is due must pay:

- (a) interest on so much of the sum as is unpaid from time to time, from the date appointed for payment of the sum to the date of actual payment, at a rate determined under clause 20.3; and
- (b) any costs or expenses incurred by the Company in relation to the non-payment or late payment of the sum.

19. Fixed Sums Taken to be Called

Any sum unpaid on a Share that, but for the terms of issue of the Share, becomes payable on allotment or at a fixed date:

- (a) is to be treated for the purposes of this Constitution as if that sum was payable

pursuant to a Call duly made and notified; and

- (b) must be paid on the date on which it is payable under the terms of issue of the Share.

20. Payments in Advance of Calls

- 20.1 The Directors may accept from a Member the whole or a part of the amount unpaid on a Share although no part of that amount has been called. A payment under this clause does not confer a right to participate in profits in respect of such payment
- 20.2 The Directors may authorise payment by the Company of interest upon the whole or any part of an amount accepted under clause 20.1, until the amount becomes payable, at a rate, not exceeding the prescribed rate, agreed between the Directors and the Member paying the amount.
- 20.3 For the purposes of clause 20.2, the prescribed rate of interest is:
 - (a) if the Directors have fixed a rate, the rate so fixed; or
 - (b) in any other case, ten percent (10%) per annum.
- 20.4 The Directors may repay to a Member all or any of the amount accepted under clause 20.1.

21. Liability to Forfeiture

If a Member fails to pay the whole of a Call or instalment of a Call by the day appointed for payment of the Call or instalment, the Directors may serve a notice on that Member:

- (a) requiring payment of so much of the Call or instalment as is unpaid, together with any interest that has accrued and all costs or expenses that may have been incurred by the Company by reason of the non-payment or late payment of the Call or instalment;
- (b) naming a further day (not earlier than the end of 14 days from the date of service of the notice) by which, and a place at which, the amount payable under clause 21(a) is to be paid; and
- (c) stating that, in the event of non-payment of the whole of the amount payable under clause 21(a) by the time and at the place named, the Shares in respect of which the Call was made will be liable to be forfeited.

22. Power to Forfeit

- 22.1 If the requirements of a notice served under clause 21 are not complied with, the Directors may by resolution forfeit any Share in respect of which the notice was given at any time after the day named in the notice and before the payment required by the notice is made.
- 22.2 A forfeiture under clause 22.1 will include all dividends, interest and other money payable by the Company in respect of the forfeited Share and not actually paid before the forfeiture.

23. Notice of Forfeiture

23.1 Where a Share has been forfeited:

- (a) notice of the resolution must be given to the Member in whose name the Share stood immediately before the forfeiture; and
- (b) an entry of the forfeiture, with the date, must be made in the Register.

23.2 Failure to give the notice or to make the entry required under clause 23.1 does not invalidate the forfeiture.

23.3 A forfeited Share becomes the property of the Company and:

- (a) the Directors may sell or re-allot the Share in such manner as they think fit and, in the case of re-allotment, with or without any money paid on the Share by any former holder being credited as paid up; or
- (b) the Share may be cancelled in accordance with its terms of issue, by a resolution at a general meeting of Members.

24. Consequences of Forfeiture

24.1 A person whose Shares have been forfeited ceases to be a Member in respect of the forfeited Shares, but remains liable to pay, and must immediately pay, to the Company:

- (a) all Calls, instalments, interest, costs and expenses owing in respect of the Shares at the time of the forfeiture; and
- (b) interest on so much of the amount payable under this clause as is unpaid from time to time, from the date of the forfeiture to the date of actual payment, at a rate determined under clause 20.3.

24.2 Except as otherwise provided by this Constitution, the forfeiture of a Share extinguishes all interest in, and all claims and demands against the Company in respect of, the forfeited Share and all other rights incidental to the Share.

25. Evidence of Forfeiture

25.1 A statement in writing declaring that the person making the statement is a Director or a Secretary and that a Share has been duly forfeited on a date stated in the statement is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the Share.

25.2 The Directors may:

- (a) exempt a Share from all or any part of this clause; and
- (b) before a forfeited Share has been sold, re-allotted or cancelled by the Members by a resolution at a general meeting, annul the forfeiture upon such conditions as they think fit.

26. Lien on Shares

26.1 The Company has a first and paramount lien on each partly paid Share for:

- (a) all instalments and Calls due and unpaid in respect of that Share; and
- (b) any amount which the Company may be called upon by law to pay in respect of such Share (including where the Share is of a deceased former holder).

26.2 The Company's lien on a Share extends to all dividends and bonuses payable in respect of the Share and to the proceeds of sale of the Share and includes any reasonable interest and expenses incurred because the amount is not paid.

26.3 The Directors may:

- (a) exempt a Share from all or any part of this clause; and
- (b) waive all or any part of any payment due to the Company under this clause.

27. Exercise of Lien

27.1 The Directors may sell any Share on which the Company has a lien in such manner as they think fit where:

- (a) an amount in respect of which a lien exists under this clause is presently payable; and
- (b) the Company has, not less than 14 days before the date of the sale, given to the registered holder of the Share a notice in writing setting out, and demanding payment of, such amount in respect of which the lien exists as is presently payable.

27.2 Registration by the Company of a transfer of Shares on which the Company has a lien without giving to the transferee notice of its claim releases the Company's lien in so far as it relates to sums owing by the transferor or any predecessor in title.

28. Dealing with Forfeited Shares and Sale of Shares on which the Company has a Lien

28.1 The Directors may appoint a person to execute an instrument of transfer or allotment of the Shares for the purpose of giving effect to any sale or re-allotment.

28.2 The Company shall register the purchaser or allottee as the holder of the Shares sold or re-allotted and that person is not bound to see to the application of the purchase money.

28.3 The title of the purchaser or allottee to the Shares is not affected by any irregularity or invalidity in the proceedings.

28.4 The Company may, by resolution passed by the Members at a general meeting, cancel Shares that have been forfeited under the terms on which the Shares are on issue.

29. Remedies Limited to Damages

The remedy of any person aggrieved by a sale, re-allotment or cancellation under clause 23.3 or a sale under clause 27 or cancellation under clause 28.4 is limited to damages only and is against the Company exclusively.

30. Application of Proceeds of Sale

The proceeds of a sale or re-allotment under clause 23.3 or a sale under clause 27 must be applied in the payment of the expenses of the sale or re-allotment, all money presently payable by the former holder whose Shares have been sold or reallocated, and the balance

(if any) must be paid (subject to any lien that exists under clause 26 in respect of money not presently payable) to the former holder on the former holder delivering to the Company the certificate for the Shares that have been sold or reallocated.

PART 4: TRANSFER OF SHARES

31. Transfer of Shares

31.1 Subject to this Constitution, the Shareholders' Agreement and the Corporations Act, a Member may transfer all or any of the Member's Shares by transfer documents in any usual or common form or in any other form that the Directors approve. No fee shall be charged on the transfer of any Shares.

~~31.2 A transfer referred to in clause 31.1 shall be executed by or on behalf of the transferor and shall be executed by or on behalf of the transferee or may be executed, effected or validated otherwise in accordance with the Corporations Act.~~

31.3 A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.

32. Registration of Transfer

The instrument of transfer must be left for registration at the registered office of the Company or at the address where the Register is kept on which the Shares to which such transfer relates are registered, together with the certificate, if any, for the Shares to which it relates and such other information as the Directors properly require to show the right of the transferor to make the transfer, and the Company shall, subject to the powers vested in the Directors by this Constitution, register the transferee as a Member.

33. Where Registration may be Declined

Where permitted to do so by the Corporations Act the Company may decline to register any transfer of Shares.

34. Notice of Non-Registration

If the Company refuses to register any transfer of Shares, it shall give to the transferee written notice within 5 Business Days after the transfer was lodged with the Company, stating that the Company has so refused and the reason for the refusal.

PART 5: TRANSMISSION OF SHARES

35. Entitlement to Shares on Death

In the case of the death of a Member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where the deceased was a sole holder, shall be the only persons recognised by the Company as having any title to the deceased holder's interest in the Shares, but this clause does not release the estate of a deceased joint holder from any liability in respect of a Share that had been jointly held by the deceased with any person.

36. Registration of Persons Entitled

- 36.1 Subject to the *Bankruptcy Act 1966* (Cth) a person becoming entitled to a Share in consequence of the death or bankruptcy of a Member may, upon such information being produced as is properly required by the Directors, elect either to be registered as holder of the Share or to nominate some other person to be registered as the transferee of the Share.
- 36.2 A person becoming so entitled who elects to be registered shall deliver or send to the Company a notice in writing signed by that person advising of the election.
- 36.3 A person who elects to have another person registered, shall execute or effect a transfer of the Share to that other person.
- 36.4 All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of a transfer of, Shares are applicable to any such notice or transfer as if the death or bankruptcy of the Member had not occurred and the notice or transfer were a transfer signed by that Member.

37. Entitlement to Shares on Mental Incapacity

- 37.1 If a person entitled to a Share because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the Share:
- (a) the person may:
 - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the Share; or
 - (ii) by giving a completed transfer form to the Company, transfer the Share to another person; and
 - (b) the person is entitled, whether or not registered as the holder of the Share, to the same rights as the Member.
- 37.2 On receiving an election under clause 37.1(a)(i), the Company must register the person as the holder of the Share.
- 37.3 A transfer under clause 37.1(a)(ii) is subject to the same rules as apply to transfers generally.

38. Dividends and Other Rights

- 38.1 Where a Member dies or becomes bankrupt, the Member's personal representative or the trustee of his estate, as the case may be, is, upon the production of such information as is properly required by the Directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting or otherwise), as the Member would have been entitled to if the Member had not died or become bankrupt.
- 38.2 Where 2 or more persons are jointly entitled to any Share in consequence of the death of a Member, they shall, for the purpose of this Constitution, be taken to be joint holders of the Share.

39. Omission to Give Notice

The omission to give notice to a person entitled to be registered as a Member under this Part shall not affect the validity of a notice given to the deceased Member in respect of a Share owned by the deceased Member.

PART 6: SHARE CERTIFICATES

40. Share Certificates

40.1 The Directors may determine the number of Shares to be issued in any one certificate

40.2 Every certificate for Shares must be issued in accordance with the Corporations Act.

40.3 Where the Company is required by the Corporations Act to issue share certificates, a Member is entitled without payment to receive a certificate in respect of the Shares registered in the Member's name but, in respect of a Share or Shares held jointly by several persons, the Company is not bound to issue more than one certificate. Likewise, the Company must issue certificates to the holders of options.

40.4 Delivery of a certificate for a Share to one of several joint holders is sufficient delivery to all of them.

41. Lost or Damaged Share Certificates

41.1 Where a certificate is stolen, lost or destroyed, upon application to the Company by the holder of the Shares to which the certificate relates, the Directors may issue a replacement certificate on payment of any fee the Directors may require. The procedure for issuing replacement certificates and the amount of the fee must be in accordance with the Corporations Act.

41.2 Where a certificate for Shares previously issued has been worn out or defaced and has been surrendered to the Company for cancellation, and such fee as the Directors require has been paid, the Company must cancel the certificate and issue a replacement certificate.

PART 7: GENERAL MEETINGS

42. Convening of General Meetings

42.1 The Directors may, whenever they think fit, convene a general meeting.

42.2 Subject to the Corporations Act, the Directors must call, and arrange to hold, a general meeting on the request of:

- (a) Members with at least 5% of the votes that may be cast at a general meeting; or
- (b) at least 100 Members who are entitled to vote at the general meeting,

21 days after the request is given to the Company, provided that the Members' request is made in accordance with the Corporations Act.

43. Business of Annual General Meeting

The business of an annual general meeting may include any of the following, even if not

referred to in the notice of meeting:

- (a) the consideration of the annual financial report, Directors' reports and auditors' reports;
- (b) the election of Directors;
- (c) if required, to consider and if thought fit, to appoint auditors;
- (d) if required, to consider and if thought fit, to fix the auditors' remuneration; and
- (e) the transaction of any other business which ought to be transacted at an annual general meeting.

44. Notice of General Meetings

44.1 A notice of a general meeting must:

- (a) set out the place, date and time of the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the business to be transacted at the meeting;
- (c) if a special resolution is to be proposed at the meeting - set out an intention to propose the special resolution and state the resolution;
- (d) contain a statement setting out the following information:
 - (i) that the Member has a right to appoint a proxy;
 - (ii) that the proxy may, but need not be a Member;
 - (iii) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise; and
- (e) include in the notice for the purposes of receipt of proxy appointments an address and a facsimile number. The notice may also specify an electronic address.

44.2 Notice must be given to:

- (a) a Member;
- (b) any person entitled to be registered as the holder of, or to transfer, any Shares and who has satisfied the Directors of his right to be registered as the holder of, or to transfer, the Shares;
- (c) a Director; and
- (d) an auditor of the Company.

44.3 Subject to the Corporations Act, no other person is entitled to receive notice of general meetings.

44.4 Subject to the Corporations Act, unless the Members of the Company consent to shorter notice, 21 days written notice must be given of a meeting of the Company's Members.

Shorter notice is not allowed if the business of the meeting is to:

- (a) remove a Director;
- (b) remove an auditor;
- (c) appoint a Director in place of a removed Director; or
- (d) appoint or reappoint as a Director a person who has attained the age of 72 years

44.5 The Directors may call a meeting on shorter notice:

- (a) in the case of an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree by notice in writing to the Company prior to the meeting; or
- (b) in the case of any other general meeting, if Members with at least 95% of the votes that may be cast at the general meeting agree by notice in writing to the Company prior to the meeting.

44.6 Accidental failure to give notice of a general meeting or a proxy form to any person entitled to receive notice of a general meeting under this clause does not invalidate any act, matter or thing done or resolution passed at the general meeting.

45. Technology

The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

46. Quorum at General Meetings

46.1 No business may be transacted at any general meeting, except the election of a chairman and the adjournment of the meeting, unless a quorum of Members is present when the meeting proceeds to business.

46.2 A quorum consists of two Members entitled to vote and be present at the meeting.

46.3 If within half an hour after the time appointed for the holding of a meeting of Members, a quorum is not present, the meeting shall be adjourned to the same time and at the same place 21 days later and each of the Members shall be notified immediately by facsimile message of such adjournment. If at such adjourned meeting a quorum is not present within half an hour of its commencement any Member present at such meeting shall constitute a quorum for purposes of the transaction of business.

47. Chairman of General Meetings

47.1 The Chairman the Board must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairman at each general meeting.

47.2 If at a general meeting:

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

- (c) the Chairman of the Board is present within that time but is not willing to act as chairman of the meeting,

the Members present must elect as chairman of the meeting:

- (d) another Director who is present and willing to act; or
- (e) if no other Director willing to act is present at the meeting, a Member who is present and willing to act.

47.3 Any questions arising at a meeting relating to the order, business, procedure or conduct of the meeting shall be referred to the chairman of the meeting, whose decision is final.

48. Adjournment of General Meetings

48.1 The chairman of a general meeting may with the consent of the meeting, 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.

48.2 Notice of an adjourned meeting shall be given in accordance with clause 46.3.

49. Chairman holds no Casting Vote

In the case of an equality of votes upon any proposed resolution:

- (a) the chairman of the meeting will not have a second or casting vote; and
- (b) the proposed resolution is to be taken as having been lost.

50. Voting at General Meetings

50.1 A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

50.2 A poll may be demanded by:

- (a) the chairman of the meeting;
- (b) not less than 5 Members having the right to vote at the meeting; or
- (c) a Member or Members representing not less than five percent (5%) of the votes that may be cast on the resolution on a poll.

50.3 A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.

50.4 Unless a poll is duly demanded, a declaration by the chairman of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of

the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

50.5 The demand for a poll may be withdrawn.

51. Procedure for Polls

51.1 A poll may be demanded on any resolution.

51.2 If a poll is duly demanded at a general meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

51.3 A poll demanded at a general meeting on the election of a chairman of the meeting or on a question of adjournment must be taken immediately.

52. Members' Voting Rights

Subject to this Constitution and to any rights or restrictions attached to any Shares or class of Shares, at a general meeting a holder of Shares shall be entitled to be present (whether personally, by proxy, attorney or Representative) and to vote in respect of any Share or Shares upon which all Calls due to the Company have been paid:

- (a) on a show of hands every Member present and entitled to vote has one vote;
- (b) on a poll every Member present has one vote for each fully paid Share held by the Member;
- (c) on a poll every Member holding a partly-paid Share has, if the Member is entitled to vote on such Share, that fraction of a vote for each such Share as equals the fraction generated by dividing the total amount paid (not credited) on the Share by the total amounts paid and payable (excluding amounts credited);
- (d) on a poll every Member voting who is entitled to 2 or more votes:
 - (i) need not cast all their votes;
 - (ii) may cast their votes in different ways.

53. Voting Rights of Proxies

53.1 A proxy appointed to attend and vote for a Member has the same rights as the Member:

- (a) to speak at the meeting;
- (b) to vote (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll

53.2 Where a Member appoints two proxies to vote in respect of Shares held by the Member and both are in attendance:

- (a) on a show of hands, if the appointments specify different ways to vote on a resolution, the proxies must not vote;

(b) on a poll:

- (i) each proxy may exercise votes in respect of those Shares for which the proxy has been validly appointed; or
- (ii) if the appointments do not specify the proportion or number of the Member's votes each proxy may exercise, then each proxy may exercise half of the votes,

any fractions of votes resulting from the application of paragraphs (i) or (ii) shall be disregarded.

54. Voting Rights of Body Corporate Representatives

- 54.1 A Representative appointed to attend and vote for a Member who is a body corporate has the same rights as the Member.
- 54.2 Unless otherwise specified in the appointment, the Representative may exercise, on the body corporate's behalf, all of the powers that the body corporate could exercise at a meeting or in voting on a resolution.
- 54.3 A body corporate may appoint more than one Representative but only one Representative may exercise the body corporate's powers at any one time.

55. Votes of Joint Holders

In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, attorney or Representative, must be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority is to be determined by the order in which the names stand in the Register (the Member whose name appears first in the Register being taken to be the senior to the other or others of them).

56. Votes of Certain Members

- 56.1 The parent or guardian of an infant Member may vote at any general meeting upon such evidence being produced of the relationship or of the appointment of the guardian as the Directors may require and any vote tendered by a parent or guardian of an infant Member in accordance with this clause must be accepted to the exclusion of the vote of the infant Member.
- 56.2 If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the committee or trustee or such other person as properly has the management of the Member's estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.
- 56.3 A person entitled to be registered as the holder of, or to transfer, any Shares may vote at any general meeting in respect of those Shares in the same manner as if that person were the registered holder of those Shares if, before the meeting, the Directors have:
 - (a) admitted that person's right to vote at that meeting in respect of those Shares; or
 - (b) been satisfied of that person's right to be registered as the holder of, or to transfer, those Shares,

and any vote tendered by such a person in accordance with this clause must be accepted

to the exclusion of the vote of the registered holder of those Shares.

57. Restrictions on Voting Rights

A Member is not entitled to vote at a general meeting in respect of Shares in the Company unless all Calls and other sums presently payable by that Member in respect of those Shares in the Company have been paid.

58. Objections to Qualification to Vote

58.1 An objection to the qualification of a person to vote at a general meeting:

(a) must be raised before or at the meeting at which the vote objected to is given or tendered; and

(b) must be referred:

(i) if it is raised before the meeting, to the Directors; or

(ii) if it is raised at the meeting, to the chairman of the meeting,

whose decision is final.

58.2 A vote not disallowed by the Directors or the chairman of a meeting under clause 58.1 is valid for all purposes.

59. Representation at General Meetings

Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:

(a) in person;

(b) by not more than 2 proxies;

(c) by not more than 2 attorneys; or

(d) where the Member is a body corporate, by its Representative.

60. Circular Resolution

60.1 If a document containing a statement that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document has been signed by all the Members entitled to receive notice of and attend and vote at general meetings, a resolution in those terms shall be taken to have been passed at a meeting of the Members held on the day on which and at the time at which the last Member signs the document.

60.2 Identical copies of the document and accompanying information may be distributed for signing by different Members. The resolution is passed when the last Member signs the document. The passage of the resolution satisfies any requirement of the Corporations Act that the resolution be passed when the last Member signs the document. The passage of the resolution satisfies any requirement of the Corporations Act that the resolution be passed at a general meeting.

60.3 Notwithstanding clauses 60.1 and 60.2, if the Company has only one Member and the Member records and signs the Member's decision to a particular effect, the recording and

signing of that decision counts as the passing by the Member of a resolution to that effect and has effect as minutes of the passing of the resolution.

PART 8: PROXIES

61. Power to Appoint Proxies

61.1 A Member who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

61.2 The appointment may specify the proportion or number of votes that the proxy may exercise.

61.3 Each Member may appoint a proxy. If the Member is entitled to cast two or more votes at the meeting, they may appoint a maximum of two proxies.

62. Appointment of Proxies

62.1 An appointment of a proxy is valid if it is signed by the Member making the appointment.

62.2 No instrument appointing a proxy shall be treated as invalid merely because it does not:

- (a) contain the name or address of the Member;
- (b) contain the name of the Company;
- (c) contain the name or position of the proxy; or
- (d) specify the meetings at which the appointment may be used.

In these cases, the proxy shall be deemed to have been validly given.

62.3 An undated appointment is taken to have been dated on the day it is given to the Company.

62.4 Where the instrument appointing the proxy does not contain the name of a proxy it shall be deemed to be given in favour of the person nominated by the Company as proxy on the proxy form.

62.5 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (b) if the proxy has two or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;
- (c) if the proxy is the chair - the proxy must vote on a poll, and must vote that way; and
- (d) if the proxy is not the chair - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

62.6 If a proxy is also a Member, this subsection does not affect the way that the person can cast any votes they hold as a Member.

62.7 An appointment does not have to be witnessed.

62.8 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

63. Form of Proxy

An instrument appointing a proxy may be in any usual form or any other form that the Directors approve.

64. Lodgment of Proxy

64.1 An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a copy of that power or authority, is or are deposited, not less than 48 hours (or such lesser period as the Directors may permit) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and, in the case of a poll, not less than 48 hours (or such lesser period as the Directors may permit) before the time appointed for the taking of the poll, at the registered office of the Company or at such other place within Australia as is specified for that purpose in the notice convening the meeting.

64.2 A legible facsimile copy of an instrument, power of attorney or other authority may be provided in substitution for the original and a facsimile copy shall be taken to be deposited at that place at the time when the facsimile is received upon the machine.

64.3 A notice of meeting may specify an electronic mail address for the deposit of the instrument of proxy. An intelligible message appointing a proxy shall be taken to be deposited at that place at that time which the message is received upon the machine specified in the notice of meeting.

65. Validity of Proxies

65.1 A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:

- (a) the previous death, lunacy or bankruptcy of the Member making the appointment; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed,

if no notice in writing of the death, lunacy, bankruptcy or revocation has been received by the Company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under clause 64.

65.2 A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the transfer of the Share in respect of which the instrument was given if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under clause 64.

65.3 The appointment of a proxy or attorney is not revoked by the Member attending and taking part in the general meeting but, if the Member votes on any resolution, the person or persons acting as proxy or attorney for the Member are not entitled to vote, and must not vote, as the Member's proxy or attorney on the resolution.

PART 9: APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**66. Number and Appointment of Directors**

- 66.1 (a) Each Member is entitled to appoint two (2) Directors to the Board of the Company.
- (b) The Board will comprise a maximum of four (4) Directors.
- (c) The initial Directors will be:
- (i) William Hara;
 - (ii) Robert Gregory Mills;
 - (iii) Arthur David Owen; and
 - (iv) Andrew Gibson.
- (d) Other Directors may only be appointed with the consent of the Members.

66.2 Removal of Directors

Each Member (but only that Member) may remove any Director appointed by it and appoint another Director in place of the Director so removed. The appointor must indemnify the Company in respect of any claim for compensation for loss of office which may be brought against the Company by the Director so removed. If a vacancy arises in the office of any Director, the Member who appointed that person may appoint another person to fill the vacancy.

67. Share Qualification

Neither a Director nor an alternate Director is required to hold any Share qualification.

68. Vacation of Office

The office of a Director becomes vacant:

- (a) in the circumstances prescribed by the Corporations Act;
- (b) if the Director dies or becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
- (c) if the Director resigns by notice in writing to the Company.

69. Remuneration of Directors

- 69.1 The Directors are entitled to be paid such remuneration as is determined by the Company in general meeting.
- 69.2 The Directors are entitled to be paid all travelling, accommodation and other expenses properly incurred by them in connection with the affairs of the Company, including attending and returning from general meetings of the Company or meetings of the Directors or of committees of the Directors.
- 69.3 If a Director renders or is called upon to perform extra services or to make any special

exertions in connection with the affairs of the Company, the Directors may arrange for a special remuneration to be paid to that Director, either in addition to or in substitution for that Director's remuneration.

- 69.4 If a Director is also an officer of the Company or of a related body corporate in a capacity other than Director, any remuneration that Director may receive for acting as that officer may be either in addition to or in substitution for that Director's remuneration.
- 69.5 The Member who appoints an alternate Director will be solely responsible for any remuneration agreed between them to be paid to the alternate Director. An alternate Director will be entitled to receive payments by the Company or any related body corporate in any of the circumstances described in clauses 69.3 and 69.4.

70. Interested Directors

- 70.1 A Director may hold any other office or place of profit in the Company (other than auditor) in conjunction with his Directorship and may be appointed to that office or place upon such terms as to remuneration, tenure of office and otherwise as the Directors think fit.
- 70.2 A Director of the Company may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.
- 70.3 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 70.4 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a Director or of the fiduciary obligations arising out of that office.
- 70.5 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a Director or of the fiduciary obligations arising out of that office.
- 70.6 A Director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, subject to the Corporations Act, despite that interest:
- (a) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (b) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
 - (c) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement.
- 70.7 For the purposes of this clause, a Director does not have any direct or indirect material interest in a contract or arrangement or proposed contract or arrangement where the contract or arrangement or the proposed contract or arrangement is:
- (a) with another corporation in which the Director's only interest is as a director or other

officer of that other corporation;

- (b) with another corporation in which the Director holds shares, where the corporation is listed on ASX or on a public stock exchange of another country or the Director holds shares acquired as an employee of the corporation or a related body corporate;
- (c) with another corporation which is the trustee or manager of a unit trust in which the Director holds units where the trust is constituted under an approved deed and is listed on ASX or on a public stock exchange of another country;
- (d) a transfer or allotment of Shares; or
- (e) subject to the approval of a resolution of the Company in general meeting on which Directors or their Associates cast no votes.

70.8 Nothing in this clause affects the duty of a Director:

- (a) who has a direct or indirect interest in a contract or arrangement or proposed contract or arrangement with the Company to declare the nature of the Director's interest at a meeting of the Directors; or
- (b) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as Director, to declare at a meeting of the Directors the fact and the nature, character and extent of the conflict,

but a general notice to the Directors that a Director is an officer or member of a corporation or a member of a firm and is to be regarded as interested in any contract or arrangement with that firm or corporation and stating the nature and extent of the Director's interest in the corporation or firm will be sufficient disclosure under this clause.

70.9 The provisions of this clause apply to alternate Directors, but an alternate Director does not have a material interest in a contract or arrangement or a proposed contract or arrangement by reason only that the Director for whom he is an alternate has such an interest.

71. Alternate Directors

71.1 Each of the Members may from time to time appoint a person to be an alternate for the Director they appoint to the Board to sit in that Director's place on the Board for a period determined by the Member and at their discretion may remove the alternate Director.

71.2 An alternate Director is entitled to notice of and to attend all meetings of Directors and (in the absence of the Director) to vote at such a meeting, to sign resolutions effecting decisions of the Directors (instead of the Director) and to exercise all powers authorities and discretions vested in or exercisable by the Director.

71.3 Where any alternate Director is also a Director in his/her own right, that Director will have a separate vote on behalf of the Director he/she is representing in addition to his/her own vote.

71.4 An alternate Director is liable for his own acts or defaults in performing the duties and responsibilities of an alternate Director and is not for any purpose to be taken to be the agent of, or required to act in accordance with the instructions of, the Director for whom the alternate Director acts as alternate.

- 71.5 The office of an alternate Director is vacated if the appointment is terminated at any time by the appointing Member even though the period of the appointment of the alternate Director has not expired or if the Director for whom the alternate Director acts as an alternate, ceases to be a Director.
- 71.6 An appointment, or the termination of an appointment, of an alternate Director by the appointing Member must be in writing signed by the appointing Member and does not take effect unless and until the Company has received notice in writing of the appointment or termination.

72. Powers and Duties of Directors

The Directors are responsible for managing the business of the Company and may exercise, to the exclusion of the Company in general meeting, all the powers of the Company which are not required, by the Corporations Act, the Shareholders' Agreement or by this Constitution, to be exercised by the Company in general meeting.

73. Wholly Owned Subsidiaries – Directors

- 73.1 This clause only applies in the case where the Company is a wholly owned subsidiary of a body corporate.
- 73.2 This clause expressly authorises a Director of the Company to be taken to act in the best interests of the Company if:
- (a) the Director acts in good faith in the best interests of the holding company of the Company;
 - (b) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act; and
 - (c) the Director complies with any other requirements prescribed by the Corporations Act.

74. Negotiable Instruments

Directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.

75. Appointment of Officers, Agents or Attorneys

- 75.1 The Directors may appoint or employ any person to be an officer, agent or attorney of the Company for such purposes with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Directors), for such period and upon such conditions as they think fit.
- 75.2 Subject to any agreement entered into with the relevant officer, agent or attorney, the Directors may remove or dismiss any officer, agent or attorney of the Company at any time with or without cause.

76. Proceedings of Directors

- 76.1 The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit, subject to the requirements imposed by the

Protocol for Board Governance contained in Annexure C of the Shareholders' Agreement.

- 76.2 The contemporaneous linking together by telephone or other method of audio or audio visual communication of a number of the Directors sufficient to constitute a quorum, constitutes a meeting of the Directors and all the provisions in this Constitution relating to meetings of the Directors apply, so far as they can and with such changes as are necessary, to meetings of the Directors by telephone or audio or audio visual communication and for the avoidance of doubt, a resolution passed by such a meeting shall be deemed to have been passed at a meeting of Directors held on the day on which and at the time at which the meeting was held and at the place where the chairman of the meeting was located during the course of that meeting.
- 76.3 A Director will be taken to leave a meeting by telephone or audio or audio visual communication if the Director's telephone or audio or audio visual communication device is disconnected in such a manner that all Directors participating are, or should be, aware that the Director has ceased to participate in the meeting. Unless the Directors participating in the meeting become aware that communications have been disrupted, it will be conclusively presumed that all Directors known to have been participating in the meeting at its commencement have been present and to have formed part of the quorum at all times during the meeting.
- 76.4 The disruption of communications during a meeting by telephone, audio or audio visual communication will not invalidate proceedings at that meeting.

77. Convening of Meetings of Directors

A Director may, whenever the Director thinks fit, and a Secretary shall, on the requisition of a Director, convene a meeting of the Directors. Without limiting the foregoing, the Directors shall meet at least six (6) times each financial year at bi-monthly intervals and otherwise as may be mutually agreed from time to time.

78. Notice of Meetings of Directors

- 78.1 Subject to this Constitution, notice of a meeting of Directors must be given to each person who is at the time of giving the notice:
- (a) a Director; or
 - (b) an alternate Director appointed under this Constitution.
- 78.2 A notice of a meeting of Directors:
- (a) must specify the time and place of the meeting;
 - (b) need not state the nature of the business to be transacted at the meeting;
 - (c) must be given at least 5 days (or such shorter period as all the Directors from time to time may agree) before the proposed meeting; and
 - (d) may be given in person or by post, facsimile transmission, telephone or other method of written, audio or audio visual communication.
- 78.3 A Director or alternate Director may waive notice of any meeting of Directors by notifying the Company to that effect in person, by post, facsimile transmission, telephone or other method of written, audio or audio visual communication.

78.4 Failure to give notice of a meeting of Directors to a Director or an alternate Director does not invalidate any act, matter or thing done or resolution passed at the meeting.

79. Quorum at Meetings of Directors

79.1 No business may be transacted at a meeting of Directors unless a quorum of Directors is present at the time the meeting proceeds to business.

79.2 A quorum consists of two (2) Directors (or their alternates) and must include at least one (1) Director appointed by each Member present at the meeting of Directors.

79.3 If within half an hour after the time appointed for the holding of a meeting of the Board, a quorum is not present, the meeting shall be adjourned to the same time and place 14 days later. ~~Each Director shall be notified immediately by facsimile message of such~~ adjournment. If at the adjourned meeting a quorum is not present within half an hour of its commencement, any two (2) Directors present shall constitute a quorum for purposes of the transaction of the business of that meeting.

80. Chairman of the Board

80.1 Appointment of Chairman

The chairmanship of the Board shall rotate on an annual basis. A Director shall be appointed as the Chairman of the Board for a period of one year. The first Chairman will be Andrew Gibson, appointed by P&O Wharf Management Pty Limited. Thereafter, each Member (commencing with Plzen Pty Limited) shall appoint the Chairman on an annual basis.

80.2 The Chairman of the Board must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairman at each meeting of Directors.

80.3 If at a meeting of Directors:

- (a) there is no Chairman of the Board;
- (b) the Chairman of the Board is not present within 10 minutes after the time appointed for the holding of the meeting; or
- (c) the Chairman of the Board is present within that time but is not willing to act as chairman of the meeting,

the Directors present must elect one of themselves to be chairman of the meeting.

81. Decisions of Directors

81.1 Questions arising at a meeting of Directors are to be decided by a majority of votes cast by the Directors present and any such decision is for all purposes a determination of the Directors.

81.2 In the case of an equality of votes upon any proposed resolution:

- (a) the chairman of the meeting will not have a second or casting vote; and
- (b) the proposed resolution is to be taken as having been lost.

82. Circular Resolutions

82.1 If a document containing a statement that the signatories to it are in favour of a resolution in the terms set out or otherwise identified in the document has been signed by all the Directors (excluding each Director, if any, who would not be entitled to vote on that resolution at a meeting of the Directors) a resolution in those terms shall be taken to have been passed at a meeting of the Directors held on the day on which and at the time at which the document was last signed by a Director. For the purposes of this clause two or more separate documents containing statements in identical terms, each of which is signed by one or more Directors, shall together be 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.

82.2 For the purpose of clause 82.1:

- (a) two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be taken 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;
- (b) a reference to all the Directors does not include a reference to an alternate Director whose Appointor has signed the document, but an alternate Director may sign the document in the place of his Appointor; and
- (c) a facsimile message which is received by the Company and is expressed to have been sent by a Director or alternate Director shall be taken to be signed by that Director or alternate Director at the time of receipt of the facsimile message by the Company.

82.3 Where a committee consists of one Director only, a document signed by that Director and recording a determination of that committee shall be treated as valid and effectual as a determination made under clause 83.3 at a meeting of that committee and that document shall constitute, for the purpose of clause 83.3, a minute of that determination.

83. Committees of Directors

83.1 The Directors may delegate any of their powers to a committee or committees consisting of such number of Directors as they think fit.

83.2 A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors.

83.3 The provisions of this Constitution applying to meetings of Directors apply, so far as they can and with such changes as are necessary, to meetings of a committee of Directors.

84. Validity of Acts

84.1 All acts done by any person acting as a Director are, even if it is discovered afterwards that there was a defect in the person's appointment as a Director or that the person was disqualified from being a Director, as valid as if the person had been duly appointed as, and was qualified to be, a Director.

84.2 All acts done by a meeting of Directors or a committee of Directors are, even if it is discovered afterwards that there was a defect in the appointment of a person as a Director or that a person appointed as a Director was disqualified from being a Director, as valid as if the person had been duly appointed as, and was qualified to be, a Director.

PART 10: EXECUTIVE OFFICERS

85. General Manager

The Directors may appoint at any time or from time to time a General Manager. The appointment may be either for a fixed term or without fixing a term.

86. Remuneration of General Manager

Subject to the remuneration provisions of this Constitution, a General Manager shall, 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.

87. Secretaries

87.1 The Directors may appoint a Secretary, and may appoint additional secretaries.

87.2 The Secretary must record in the minutes of a Director's Meeting any declaration of interest by a Director.

88. Provisions Applicable to all Executive Officers

88.1 A reference in this clause to an executive officer is a reference to a General Manager or Secretary appointed under this Part.

88.2 The appointment of an executive officer may be for such period at such remuneration and upon such conditions as the Directors think fit.

88.3 Subject to the terms of any agreement entered into between the Company and the relevant executive officer, any executive officer of the Company may be removed or dismissed by the Directors at any time, with or without cause.

88.4 The Directors may:

- (a) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the Directors) as they think fit;
- (b) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
- (c) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.

88.5 An executive officer is not required to hold any Shares to qualify for appointment

88.6 All acts done by any person acting as an executive officer are, even if it is discovered afterwards that there was a defect in the person's appointment as an executive officer or that the person was disqualified from being an executive officer, as valid as if the person had been duly appointed as, and was qualified to be, an executive officer.

PART 11: SEAL**89. Safe Custody of Seal**

The Directors must provide for obtaining and safe custody of the Seal, if any.

90. Execution of Documents Without Seal

The Company may execute a document without using a common Seal if the document is signed by:

(a) 2 Directors;

(b) a Director and a Secretary; or

(c) a sole Director who is also the sole Secretary.

91. Use of Common Seal

91.1 The common Seal must 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.

91.2 The authority to use the common Seal may be given before or after the Seal is used.

91.3 Every document to which the common Seal is affixed must be signed by a Director and 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, or by a sole Director where the Company has only one Director who is also the sole Secretary.

92. Official Seal

92.1 The Company may have for use in place of its common Seal outside the jurisdiction where its common Seal is kept one or more official Seals, each of which must be a facsimile of the common Seal of the Company with the addition on its face of the name of the place where it is to be used.

92.2 A document sealed with an official Seal is to be taken as having been sealed with the common Seal of the Company.

93. Sealing by Official Seal

93.1 Any official Seal must be used only in the manner prescribed by this clause in relation to the common Seal or in accordance with any regulations which the Directors may from time to time by resolution prescribe and those regulations may:

(a) specify the person or persons who may affix and attest the affixing of the Seal; and

(b) provide that any impression of any Seal or the signature(s) attesting the affixing of it may be a facsimile impression or signature which is printed by some mechanical means.

- 93.2 A certificate signed by any Director or by a Secretary which sets out the terms of any regulation prescribed by the Directors under this clause will be, as against the Company, conclusive evidence of that regulation.
- 93.3 Any official Seal will be deemed duly affixed if it is affixed and attested by any of the manners referred to in this clause.

PART 12: DISTRIBUTION OF PROFITS

94. Dividends

- 94.1 Subject to the Corporations Act and to any rights or restrictions attached to any Shares or class of Shares:
- (a) the Directors may:
- (i) recommend such final dividends as, in their judgment, the financial position of the Company justifies;
 - (ii) declare a final dividend which, in their judgment, the financial position of the Company justifies; and
 - (iii) pay such interim dividends as, in their judgment, the financial position of the Company justifies;
- (b) all dividends must be declared and paid in the proportion to which the amounts paid on the Shares (not credited) are a proportion of the total amounts paid and payable (excluding amounts credited) during the period in respect of which the dividend is paid except in the case of contributing Shares where it is a term of the issue of such Shares that each such Share shall be entitled to participate in dividends on the same basis as fully paid Shares and such contributing Shares were issued to Members on a pro rata basis;
- (c) for the purposes of this clause, an amount credited as paid on a Share in advance of a Call is to be taken as not having been credited as paid on the Share; and
- (d) interest is not payable by the Company in respect of any dividend.
- 94.2 A transfer of Shares does not pass the right to any dividend declared on the Shares unless the transfer is registered or left with the Company for registration on or before the day fixed by the Directors as the closing date in respect of that dividend.
- 94.3 Any dividend declared by the Company in general meeting under this clause may, if the resolution of the Directors or the Company by which the dividend is, respectively, recommended and declared so directs, and any interim dividend authorised by the Directors may, if the Directors so direct:
- (a) be paid wholly or partly by the distribution of specific assets, including paid-up Shares or other securities of the Company or of another body corporate; and
 - (b) be paid to particular Members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining Members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.

- 94.4 The Directors may deduct from any dividend payable to a Member in respect of Shares, all sums of money (if any) presently payable by the Member to the Company in relation to those Shares, whether on account of Calls or otherwise.
- 94.5 Where a person is entitled to be registered as the holder of, or to transfer, Shares, the Directors may, but are not obliged to, retain any dividends payable in respect of those Shares until that person becomes registered as the holder of those Shares or transfers them.
- 94.6 Without prejudice to any other method of payment the Directors may adopt, any dividend, interest or other money payable in cash in respect of Shares may be paid by cheque sent by post directed to:
- (a) the address of the holder as shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the joint holder first named that Register; or
 - (b) such other address as the holder or joint holders in writing directs or direct.
- 94.7 A cheque sent under clause 94.6 may be made payable to bearer or to the order of the Member to whom it is sent or such person as the Member may direct.

95. Capitalisation of Profits

- 95.1 Subject to any rights or restrictions attached to any Shares or class of Shares, the Directors, or if the resolution has been recommended by Directors, the Company in general meeting, may resolve to capitalise and distribute such sums among such of the Members as would be entitled to receive dividends in accordance with clause 95.2.
- 95.2 A sum may be applied:
- (a) for the benefit of Members under this clause:
 - (i) in paying up in full any Shares in or other securities of the Company;
 - (ii) in paying up any amounts unpaid on Shares held by the Members;
 - (iii) partly as specified in paragraphs (i) and (ii) above, or
 - (iv) by issuing Shares to Members,
 and such an application must be accepted by the Members entitled to Share in the distribution in full satisfaction of their interests in the capitalised amount; or
 - (b) for any other purpose approved by the Company in a general meeting.
- 95.3 Clause 94 applies, so far as it can and with such changes as are necessary, to a capitalisation of an amount under this clause as if references in clause 94 to a dividend and to the date a dividend is declared was a reference to a capitalisation of an amount and to the date the Directors or the Company in general meeting resolve to capitalise the amount under this clause respectively.

96. Ancillary Powers

For the purposes of giving effect to any resolution for the satisfaction of a dividend by the distribution of specific assets or the capitalisation of any amount, the Directors may:

- (a) fix the value for distribution of any specific assets;
- (b) pay cash or issue debentures to any Members in order to adjust the rights of all parties;
- (c) vest any such specific assets or cash or debentures in trustees upon such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the Directors; and
- (d) authorise any person to make, on behalf of all the Members entitled to any further Shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another body corporate providing, as appropriate:
 - (i) for the issue to them of such further Shares or other securities; or
 - (ii) for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares by the application of their respective proportions of the sum resolved to be capitalised.

97. Reserves

- 97.1 The Directors may set aside out of the profits of the Company such reserves or provisions for such purposes as they think fit.
- 97.2 The Directors may appropriate to the profits of the Company any amount previously set aside as a reserve or provision.
- 97.3 The setting aside of any amount as a reserve or provision does not require the Directors to keep the amount separate from the other assets of the Company or prevent the amount being used in the business of the Company.

98. Carry Forward of Profits

The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends or capitalised without transferring those profits to a reserve or provision.

PART 13: WINDING UP**99. Deficiency**

If the Company is wound up and the assets of the Company are not sufficient to meet the claims of the creditors and other liabilities of the Company in the winding up, the deficiency (or that part of it for which a Member may be liable at all) shall be borne by the holders of Shares in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the Shares held by them respectively.