



Babcock & Brown Infrastructure Limited · ABN 61 100 364 234
Babcock & Brown Investor Services Limited · ABN 67 099 717 638 · AFSL 219 673
as responsible entity for Babcock & Brown Infrastructure Trust · ARSN 100 375 479
Level 10 The Chifley Tower · 2 Chifley Square · Sydney NSW 2000 Australia
T +61 2 9229 1800 · F +61 2 9235 3496 · www.bbinfrastructure.com

ASX Release

19 November 2009

AMENDED CONSTITUTIONS AND NAME CHANGES

Babcock & Brown Infrastructure (**ASX:BBI**) announces amendments to the constitutions of Babcock & Brown Infrastructure Limited and Babcock & Brown Infrastructure Trust in connection with the Recapitalisation.

As required by Listing Rule 15.4.2, the amended constitutions are attached to this announcement.

In addition, the following name changes are now effective:

- Prime Infrastructure Holdings Limited (formerly known as Babcock & Brown Infrastructure Limited);
- Prime Infrastructure Trust (formerly known as Babcock & Brown Infrastructure Trust);
and
- Prime Infrastructure Trust 2 (formerly known as Prime SPARCS Trust).

ENDS

Further Enquiries

David Akers
Acting Investor Relations Manager
Babcock & Brown Infrastructure
+61 2 9229 1800

ABOUT BABCOCK & BROWN INFRASTRUCTURE

Babcock & Brown Infrastructure (ASX: BBI) is a specialist infrastructure entity which provides investors access to a diversified portfolio of quality infrastructure assets. BBI's investment strategy focuses on owning, managing and operating quality infrastructure assets in Australia and internationally.

For further information please visit our website: www.bbinfrastructure.com

**Babcock & Brown
Infrastructure Limited
A company limited by shares
Constitution**

**(consolidated to include
amendments made by
resolution of members on 5
November 2008 and 16
November 2009)**

Freehills

MLC Centre Martin Place Sydney New South Wales
2000 Australia
Telephone +61 2 9225 5000 Facsimile +61 2 9322
4000
www.freehills.com DX 361 Sydney

Table of contents

<i>Rule</i>	<i>Page</i>
1 Preliminary	1
1.1 Definitions	1
1.2 Interpretation	3
1.3 Application of the Corporations Act, Listing Rules and SCH Business Rules	5
1.4 Additional Listing Rule requirements	6
1.5 Exercise of powers	7
1.6 Currency	8
2 Share capital	9
2.1 Shares	9
2.2 Preference shares	9
2.3 Power to pay brokerage, commission and interest on share capital	11
2.4 Variation of Class Rights	11
2.5 Joint holders of shares	11
2.6 Equitable and other claims	12
2.7 Restricted securities	12
3 Stapling	18
3.1 Power to Staple Securities	18
3.2 Applications, transfers and distributions in specie	18
3.3 Operation of Stapling provisions	18
3.4 Shares to be Stapled	19
3.5 Unstapling Date	19
3.6 Transfer of Stapled Securities	20
3.7 Stapled Security Register	20
3.8 Variation of Stapling provisions	21
3.9 Restricted issue of shares of different class	21
4 Calls, forfeiture, indemnities, lien and surrender	21
4.1 Calls	21
4.2 Proceedings for recovery of calls	22
4.3 Payments in advance of calls	22
4.4 Forfeiture of shares	23
4.5 Cancellation of Forfeiture	24
4.6 Indemnity for payments by the company	24
4.7 Lien on shares	25
4.8 Surrender of shares	26
4.9 General provisions applicable to a disposal of shares under this constitution	26
4.10 Interest payable by member	27
4.11 Deemed full payment	27

5	Distribution of profits	28
5.1	Dividends	28
5.2	Capitalisation of profits	29
5.3	Ancillary powers	30
5.4	Reserves	31
5.5	Carry forward of profits	31
5.6	Dividend reinvestment plans	31
5.7	Dividend selection plans	31
6	Transfer and transmission of shares	32
6.1	Transfer of shares	32
6.2	Power to decline registration of transfers	33
6.3	Power to suspend registration of transfers	33
6.4	Transmission of shares	34
6.5	Small holdings	34
7	General meetings	35
7.1	Calling general meetings	35
7.2	Notice of general meetings	36
7.3	Admission to general meetings	37
7.4	Quorum at general meetings	37
7.5	Chairperson of general meetings	38
7.6	Conduct of general meetings	38
7.7	Decisions at general meetings	39
7.8	Voting rights	40
7.9	Representation at general meetings	42
8	Directors	44
8.1	Appointment and removal of directors	44
8.2	Vacation of office	46
8.3	Remuneration of directors	46
8.4	Director need not be a member	47
8.5	Interested directors	47
8.6	Powers and duties of directors	49
8.7	Proceedings of directors	50
8.8	Convening of meetings of directors	50
8.9	Notice of meetings of directors	50
8.10	Quorum at meetings of directors	51
8.11	Chairperson and deputy chairperson of directors	52
8.12	Decisions of directors	53
8.13	Written resolutions	53
8.14	Alternate directors	54
8.15	Committees of directors	55
8.16	Delegation to individual directors	55
8.17	Validity of acts	55
9	Executive officers	56
9.1	Managing directors	56
9.2	Deputy managing directors	56

9.3	Executive directors	56
9.4	Associate directors	56
9.5	Secretaries	57
9.6	Provisions applicable to all executive officers	57
10	Indemnity and insurance	57
10.1	Persons to whom rules 10.2 and 10.3 apply	57
10.2	Indemnity	58
10.3	Limit on indemnity	58
10.4	Extent of indemnity	59
10.5	Insurance	59
10.6	Savings	59
11	Winding up	59
11.1	Distribution of surplus	59
11.2	Division of property	60
12	Minutes and records	61
12.1	Minutes of meetings	61
12.2	Minutes of resolutions passed without a meeting	61
12.3	Signing of minutes	61
12.4	Minutes as evidence	61
12.5	Inspection of records	61
13	Execution of documents	62
13.1	Manner of execution	62
13.2	Common seal	62
13.3	Safe custody of seal	62
13.4	Use of seal	62
13.5	Seal register	62
13.6	Duplicate seal	63
14	Notices	63
14.1	Notices by the company to members	63
14.2	Notices by the company to directors	64
14.3	Notices by members or directors to the company	64
14.4	Notices posted to addresses outside the Commonwealth	64
14.5	Time of service	64
14.6	Other communications and documents	65
14.7	Notices in writing	65
15	General	65
15.1	Submission to jurisdiction	65
15.2	Prohibition and enforceability	65

16	Power of the directors to require information	65
17	Enforcement of prohibition on Prohibited Interests	66
	Schedule 1 – ASX compliance checklist	71
1	Preliminary	1
1.1	Definitions	1
1.2	Interpretation	3
1.3	Application of the Corporations Act, Listing Rules and SCH Business Rules	5
1.4	Additional Listing Rule requirements	6
1.5	Exercise of powers	7
1.6	Currency	8
2	Share capital	9
2.1	Shares	9
2.2	Preference shares	9
2.3	Power to pay brokerage, commission and interest on share capital	11
2.4	Variation of Class Rights	11
2.5	Joint holders of shares	11
2.6	Equitable and other claims	12
2.7	Restricted securities	12
3	Stapling	18
3.1	Power to Staple Securities	18
3.2	Applications, transfers and distributions in specie	18
3.3	Operation of Stapling provisions	18
3.4	Shares to be Stapled	19
3.5	Unstapling Date	19
3.6	Transfer of Stapled Securities	20
3.7	Stapled Security Register	20
3.8	Variation of Stapling provisions	21
3.9	Restricted issue of shares of different class	21
4	Calls, forfeiture, indemnities, lien and surrender	21
4.1	Calls	21
4.2	Proceedings for recovery of calls	22
4.3	Payments in advance of calls	22
4.4	Forfeiture of shares	23
4.5	Cancellation of Forfeiture	24
4.6	Indemnity for payments by the company	24
4.7	Lien on shares	25
4.8	Surrender of shares	26
4.9	General provisions applicable to a disposal of shares under this constitution	26
4.10	Interest payable by member	27
4.11	Deemed full payment	27

5	Distribution of profits	28
5.1	Dividends	28
5.2	Capitalisation of profits	29
5.3	Ancillary powers	30
5.4	Reserves	31
5.5	Carry forward of profits	31
5.6	Dividend reinvestment plans	31
5.7	Dividend selection plans	31
6	Transfer and transmission of shares	32
6.1	Transfer of shares	32
6.2	Power to decline registration of transfers	33
6.3	Power to suspend registration of transfers	33
6.4	Transmission of shares	34
6.5	Small holdings	34
7	General meetings	35
7.1	Calling general meetings	35
7.2	Notice of general meetings	36
7.3	Admission to general meetings	37
7.4	Quorum at general meetings	37
7.5	Chairperson of general meetings	38
7.6	Conduct of general meetings	38
7.7	Decisions at general meetings	39
7.8	Voting rights	40
7.9	Representation at general meetings	42
8	Directors	44
8.1	Appointment and removal of directors	44
8.2	Vacation of office	46
8.3	Remuneration of directors	46
8.4	Director need not be a member	47
8.5	Interested directors	47
8.6	Powers and duties of directors	49
8.7	Proceedings of directors	50
8.8	Convening of meetings of directors	50
8.9	Notice of meetings of directors	50
8.10	Quorum at meetings of directors	51
8.11	Chairperson and deputy chairperson of directors	52
8.12	Decisions of directors	53
8.13	Written resolutions	53
8.14	Alternate directors	54
8.15	Committees of directors	55
8.16	Delegation to individual directors	55
8.17	Validity of acts	55
9	Executive officers	56
9.1	Managing directors	56
9.2	Deputy managing directors	56

9.3	Executive directors	56
9.4	Associate directors	56
9.5	Secretaries	57
9.6	Provisions applicable to all executive officers	57
10	Indemnity and insurance	57
10.1	Persons to whom rules 10.2 and 10.3 apply	57
10.2	Indemnity	58
10.3	Limit on indemnity	58
10.4	Extent of indemnity	59
10.5	Insurance	59
10.6	Savings	59
11	Winding up	59
11.1	Distribution of surplus	59
11.2	Division of property	60
12	Minutes and records	61
12.1	Minutes of meetings	61
12.2	Minutes of resolutions passed without a meeting	61
12.3	Signing of minutes	61
12.4	Minutes as evidence	61
12.5	Inspection of records	61
13	Execution of documents	62
13.1	Manner of execution	62
13.2	Common seal	62
13.3	Safe custody of seal	62
13.4	Use of seal	62
13.5	Seal register	62
13.6	Duplicate seal	63
14	Notices	63
14.1	Notices by the company to members	63
14.2	Notices by the company to directors	64
14.3	Notices by members or directors to the company	64
14.4	Notices posted to addresses outside the Commonwealth	64
14.5	Time of service	64
14.6	Other communications and documents	65
14.7	Notices in writing	65
15	General	65
15.1	Submission to jurisdiction	65
15.2	Prohibition and enforceability	65

16	Power of the directors to require information	65
17	Enforcement of prohibition on Prohibited Interests	66
	Schedule 1 – Prohibited Interest	67
1	Definitions	67
2	Prohibited Interest	70
	Schedule 2 – ASX compliance checklist	71

1 Preliminary

1.1 Definitions

In this constitution:

~~A Special Share~~ means the restricted voting and non-participating share in the capital of the company issuable by the directors pursuant to rule 2.11 and having the rights and being subject to the restrictions specified in this constitution.

~~A Special Shareholder~~ means the holder for the time being of the A Special Share.

ASX means Australian Stock Exchange Limited and any successor to the stock exchange operated by it;

Attached Security means a Security (including a unit in BBIT) which is from time to time Stapled or to be Stapled to an ordinary share;

~~B Special Share~~ means the restricted voting and non-participating share in the capital of the company issuable by the directors pursuant to rule 2.12 and having the rights and being subject to the restrictions specified in this constitution.

~~B Special Shareholder~~ means the holder for the time being of the B Special Share.

BBIT means the trust known as the Babcock & Brown Infrastructure Trust established by the BBIT Trust Deed;

BBIT Trust Deed means the trust deed made on or about 29 April 2002 by Babcock & Brown Investor Services Limited (ACN 099 717 638));

Business Day has the meaning given to that term in the Listing Rules;

CHESS Approved Securities means securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely, SCH) in accordance with the SCH Business Rules;

Commonwealth means the Commonwealth of Australia and its external territories;

Corporations Act means the Corporations Act 2001;

Corresponding Number in relation to an Attached Security, means at any time the number of those Attached Securities that are stapled to an ordinary share at that time;

Costs includes costs, charges, fees, expenses, commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments;

Defaulting Shareholder means:

(a) a member who has been served with an Information Notice and has not provided to the company the information in accordance with that Information Notice within 7 days of the date of the Information Notice;

~~(b) a member who, in response to an Information Notice, provides information to the effect that their holding of Units that are Stapled to ordinary shares results in the member or some other person having a Prohibited Interest (whether or not the member was a party to any transaction which resulted in the member becoming a Defaulting Shareholder); or~~

~~(c) a member whose holding of Units that are Stapled to ordinary shares results in that member or some other person having a Prohibited Interest (whether or not the member was a party to any transaction which resulted in that member becoming a Defaulting Shareholder);~~

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world;

Information Notice means a notice served under rule 15;

listed or listed company means admitted to the official list of ASX;

Listing Rules means the Listing Rules of ASX and any other rules of ASX which apply while the company is a listed company, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

Manager means Babcock & Brown Infrastructure Management Pty Ltd or any substitute person, appointed by the company to provide general management and investment services to the company from time to time.

Paid-up Proportion in relation to an ordinary share means the fraction determined by dividing the amount to which the ordinary share has been paid (excluding any amount paid in advance of a call or any other amount credited in respect of the ordinary share) by the issue price of the ordinary share;

Prohibited Interest has the meaning given in Schedule 1 the BBIT Trust Deed;

representative, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act or a corresponding previous law;

SCH means the ASX Settlement and Transfer Corporations Pty Limited ACN 008 504 532;

SCH Business Rules means the SCH Business Rules and any other rules of SCH which apply while the company is an issuer of CHES Approved Securities, each as amended or replaced from time to time;

Security has the meaning given to that term in section 92(1) of the Corporations Act;

seal means any common seal, duplicate seal, share seal or certificate seal of the company;

Stapled means, in relation to an ordinary share Unit and an Attached Security or Attached Securities ~~ordinary share~~, being linked together so that one may not be dealt with without the other;

Stapled Entity means any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to ordinary shares;

Stapled Security means one ordinary share and each Attached Security ~~one ordinary share and one Unit~~ that are Stapled together;

Stapled Security Register the register of Stapled Securities to be established and maintained by the directors or caused to be maintained by the directors in accordance with rule 2.93.7;

Stapling means the process that results in Units~~ordinary shares~~ and Attached Securities~~ordinary shares~~ being Stapled;

Stapling Date means the date ~~determined by the directors~~determined by the Trustee to be the first day on which ordinary shares~~all Units on issue in the Trust~~ will be Stapled to an Attached Security or Attached Securities~~equal number of ordinary shares to be issued by the company~~;

Tax means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Governmental Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above;

Tax Act means the Income Tax Assessment Act (Cth) 1936 and the Income Tax Assessment Act (Cth) 1997;

transmission event means:

- (a) in respect of a member who is an individual:
 - (1) the death of the member;
 - (2) the bankruptcy of the member; or
 - (3) 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;
- (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;

~~**Trust** means the trust known as the Babcock & Brown Infrastructure Trust established by the Trust Deed;~~

~~**Trust Deed** means the trust deed made on or about 29 April 2002 by Babcock & Brown Investor Services Limited (ACN 099 717 638) pursuant to which the Trust was established;~~

~~**Trustee** means the trustee of the Trust from time to time;~~

~~**Unit** has the meaning given to that term in the Trust Deed;~~

Unstapled means, in relation to an ordinary share, not being Stapled to an Attached Security~~Unit~~; and

Unstapling Date means the date determined by the directors to be the Unstapling Date pursuant to rule 3.5~~the earlier of the date that the Trust ceases to exist or commences to be wound up and the Unstapling Date within the meaning of the Trust Deed.~~

1.2 Interpretation

- (a) A reference in a rule to a partly paid share is a reference to a share on which there is an amount unpaid.

- (b) A reference in a rule relating to partly paid shares to a call or an amount called in respect of a share includes a reference to a sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date.
- (c) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or representative.
- (d) A director is to be taken to be present at a meeting of directors if the director is present in person or by alternate director or by telephone or other electronic means.
- (e) Where a rule establishes an office of chairperson, the chairperson may be referred to as chair or as chairman or chairwoman, as the case requires.
- (f) Where a rule establishes an office of deputy chairperson, the deputy chairperson may be referred to as deputy chair or as deputy chairman or deputy chairwoman, as the case requires.
- (g) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (h) Unless the contrary intention appears in this constitution,
 - (1) headings and underlinings are for convenience only and do not affect the interpretation of this constitution;
 - (2) words importing the singular include the plural and words importing the plural include the singular;
 - (3) words importing a gender include every other gender;
 - (4) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (5) a reference to a person includes that person's successors and legal personal representatives;
 - (6) a reference to a Part, rule or schedule is a reference to a Part and rule of, and a schedule to, this constitution and a reference to this constitution includes any schedule;
 - (7) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (8) a reference to the Listing Rules or the SCH Business Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the company from compliance with those rules;
 - (9) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

- (10) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (11) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (12) a reference to cash includes cheques and bank cheques;
- (13) references to sums of money are to amounts in Australian dollars; and
- (14) a reference to the proper performance of a duty is a reference to the proper performance of the duty after all available appeals from each judgment in respect of the matter have been exhausted.

1.3 Application of the Corporations Act, Listing Rules and SCH Business Rules

- (a) This constitution is to be interpreted subject to:
 - (1) the Corporations Act;
 - (2) the Listing Rules, while the company is a listed company; and
 - (3) the SCH Business Rules, while the company is an issuer of CHESSE Approved Securities.
- (b) The rules that apply as replaceable rules to companies under the Corporations Act do not apply to the company.
- (c) While the company is a listed company, the following provisions apply:
 - (1) despite anything contained in this constitution, if the Listing Rules prohibit an act being done, the act must not be done;
 - (2) nothing contained in this constitution prevents an act being done that the Listing Rules require to be done;
 - (3) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (4) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is deemed to contain that provision;
 - (5) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is taken not to contain that provision; and
 - (6) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is taken not to contain that provision to the extent of the inconsistency.
- (d) While the company is a listed company, the company and the directors must comply with the obligations respectively imposed on them under the Listing Rules and the SCH Business Rules. This obligation does not detract from or alter the power of the company and the directors to cause the company to cease to be a listed company.

- (e) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the SCH Business Rules has the same meaning as in that provision.
- (f) Subject to rule 1.3(e), unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Act has the same meaning as in that section.

1.4 Additional Listing Rule requirements

At all times that the company is listed:

- (a) the company must not remove or change the rights of a shareholder to vote or receive dividends in respect of an ordinary share except in any of the following cases:
 - (1) a call or instalment which is due and payable on that share under rule 43 has not been paid;
 - (2) in the case of the voting right, an instrument appointing a proxy in respect of that share has not been deposited in accordance with the rule 6.97.9;
 - (3) in the case of the voting right, the shareholder became the holder of that share after the time determined under the Corporations Act as the “specified time” for deciding who held the share for the purpose of the meeting;
 - (4) the right is removed or changed under Australian legislation or under a provision in this constitution that must be included to comply with Australian legislation;
 - (5) the right is removed or changed under a provision in this constitution that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
 - (6) the right is removed or changed under a court order;
- (b) a holder of an ordinary share must not be divested of that share except in any of the following cases:
 - (1) the divestment is under Australian legislation and the mechanism the company adopts for divesting the share is set out in the legislation or is approved by ASX as appropriate and equitable;
 - (2) the divestment is under a provision in this constitution that must be included to comply with Australian legislation;
 - (3) the divestment is under a provision in this constitution that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
 - (4) the divestment is under a court order; or
 - (5) the divestment is under ~~clause~~rule 4.73.7; and
- (c) the company must not divest a holder of ordinary shares or forfeit ordinary shares while those shares are CHES Approved Securities. Without

limitation to ~~clause~~rule 1.31.3, at all times that the company is listed, it must comply with SCH Business Rule 8.13.

1.5 Exercise of powers

- (a) The company may, in any manner permitted by the Corporations Act:
- (1) exercise any power;
 - (2) take any action; or
 - (3) engage in any conduct or procedure,
- which under the Corporations Act a company limited by shares may exercise, take or engage in if authorised by its constitution.
- (b) While the company is a listed company, the company and the directors must exercise their powers to ensure that the Listing Rules and the SCH Business Rules are complied with, unless to do so would be unlawful or a breach of duty. This obligation does not detract from or alter the power of the company and the directors to cause the company to cease to be a listed company.
- (c) Where this constitution provides that a person or body may do a particular act or thing and the word “may” is used, the act or thing may be done at the discretion of the person or body.
- (d) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (e) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- (f) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
- (1) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (2) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (g) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

- (h) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (i) Where this constitution confers power on a person or body to delegate a function or power:
 - (1) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (2) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (3) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
 - (4) the delegation may include the power to delegate;
 - (5) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
 - (6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

1.6 Currency

An amount payable to the holder of a share, whether by way of or on account of dividend, return of capital, participation in the property of the company on a winding up or otherwise, may be paid, with the agreement of the holder or pursuant to the terms of issue of the share, in the currency of a country other than Australia and the directors may fix a date up to 30 days before the payment date as the date on which any applicable exchange rate will be determined for that purpose.

1.7 ~~Variation of Stapling provisions~~

~~Prior to the Unstapling Date, the consent of the Trustee must be obtained to any amendment to this constitution which:~~

- ~~(a) directly affects the terms on which ordinary shares are Stapled; or~~
- ~~(b) removes any restriction on the transfer of a Stapled ordinary share unless that restriction also exists for Stapled Units and is simultaneously removed for Stapled Units.~~

2 Share capital

2.1 Shares

- (a) Without prejudice to any special rights conferred on the holders of any shares or class of shares but subject to this constitution and, while the company is a listed company, the Listing Rules, the directors may issue or grant options in respect of, or otherwise dispose of, shares to such persons, for such price, on such conditions, at such times and with such preferred, deferred or other special rights or special restrictions, whether with regard to dividend, voting, return of capital, participation in the property of the company on a winding up or otherwise, as the directors think fit.
- (b) In particular, the directors may differentiate between the holders of partly paid shares as to the amount of calls to be paid and the time for payment.
- (c) Prior to the Unstapling Date, the directors must not issue ordinary shares unless satisfied that each of those ordinary shares will be Stapled to a ~~Unit~~ an Attached Security to form a Stapled Security within 2 Business Days of issue.

2.2 Preference shares

- (a) The company may issue preference shares including preference shares which are, or at the option of the company are, liable to be redeemed.
- (b) The terms of issue issued by the company for each preference share must specify or provide for the determination of:
 - (1) the rate of dividend applicable to the share and the times at which dividends are to be paid;
 - (2) the amount paid or payable on the issue of the share and, if that amount is not payable on issue, the amount unpaid on the share;
 - (3) the number of votes that may be exercised by the holder in respect of the share on a poll;
 - (4) in the case of a redeemable preference share, the time and place for redemption of the share; and
 - (5) any restrictions on the right to transfer the share.
- (c) The dividend payable in respect of a preference share:
 - (1) may be at a fixed or variable rate;
 - (2) unless otherwise stated in the terms of issue for the share, will be taken to accrue from day to day; and
 - (3) unless otherwise stated in the terms of issue for the share, is payable in respect of the amount for the time being paid on the preference share.
- (d) Each preference share confers on its holder:
 - (1) the right to payment out of the profits of the company of a cumulative preferential dividend at the rate and at the times specified in, or determined in accordance with, the terms of issue

- for the share in priority to the payment of any dividend on any other class of shares; and
- (2) the right in a winding up or reduction of capital and, in the case of a redeemable preference share, on redemption to payment in cash in priority to any other class of shares of:
 - (A) the amount of any dividend accrued but unpaid on the share at the date of winding up or reduction of capital or, in the case of a redeemable preference share, the date of redemption; and
 - (B) any amount paid on the share.
 - (e) A preference share does not confer on its holder any right to participate in the profits or property of the company, whether on a winding up, reduction of capital or otherwise, except as set out in rule 2.2(d).
 - (f) The holder of a preference share has the same right as the holder of an ordinary share to receive notice of and to attend a general meeting and to receive a copy of any documents to be laid before that meeting.
 - (g) A preference share does not entitle its holder to vote at any general meeting of the company except in the following circumstances:
 - (1) on a proposal:
 - (A) to reduce the share capital of the company;
 - (B) that affects rights attached to the share;
 - (C) to wind up the company; or
 - (D) for the disposal of the whole of the property, business and undertaking of the company;
 - (2) on a resolution to approve the terms of a buy back agreement;
 - (3) during a period in which a dividend or part of a dividend on the share is in arrears; or
 - (4) during the winding up of the company.
 - (h) The holder of a preference share who is entitled to vote in respect of that share under rule 2.2(g) is, on a poll, entitled to the number of votes specified in, or determined in accordance with, the terms of issue for the share.
 - (i) In the case of a redeemable preference share, the company must, at the time and place for redemption specified in, or determined in accordance with, the terms of issue for the share, redeem the share and, on receiving the terms of issue for the share, pay to or at the direction of the holder the amount payable on redemption of the share.
 - (j) A holder of a preference share must not transfer or purport to transfer, and the directors must not register a transfer of, the share if the transfer would contravene any restrictions on the right to transfer the share set out in the terms of issue for the share.

2.3 Power to pay brokerage, commission and interest on share capital

- (a) The company may make payments by way of brokerage or commission in the manner provided by the Corporations Act.
- (b) Payments by way of brokerage or commission may be satisfied by the payment of cash, by the issue of fully paid shares, by the issue of partly paid shares or by any combination of the above.
- (c) The company may pay interest on its share capital in the manner provided by the Corporations Act.

2.4 Variation of Class Rights

- (a) The rights attached to any class of shares may, unless their terms of issue state otherwise, be varied:
 - (1) with the written consent of the holders of 75% of the shares of the class; or
 - (2) with the sanction of a special resolution passed at a separate meeting of the holders of shares of the class.
- (b) The provisions of this constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings except that:
 - (1) a quorum is two persons holding or representing by proxy, attorney or representative, at least one-third of the issued shares of the class or, if there is one holder of shares in a class, that person; and
 - (2) any holder of shares of the class present in person or by proxy, attorney or representative, may demand a poll.
- (c) The rights conferred on the holders of shares which are not ordinary shares and which have preferential or other special rights will, unless otherwise expressly provided by their respective terms of issue, be taken to be varied or abrogated by:
 - (1) the issue of shares; or
 - (2) the conversion of securities into new shares,
which rank equally with or in priority to those shares.

2.5 Joint holders of shares

Where two or more persons are registered as the holders of a share (**joint holders**) they are, for the purposes of administration of the company and not otherwise, deemed to hold the share as joint tenants with rights of survivorship, on the following conditions:

- (a) the joint holders and their respective legal personal representatives are liable severally as well as jointly for all payments, including calls and payment of Tax, which ought to be made in respect of the share;
- (b) subject to rule 2.5(a), on the death of a joint holder, the survivor or survivors are the only person or persons the company will recognise as having any title to the share, but the company may require any evidence of death which it thinks fit;

- (c) any one of the joint holders may give an effectual receipt which will discharge the company for any dividend, interest or other distribution or payment in respect of the share;
- (d) except where otherwise required under the SCH Business Rules, the company is not bound to register more than three persons as joint holders of the share;
- (e) the company is not bound to issue more than one certificate in respect of the share;
- (f) delivery of a certificate for the share to any one of them is sufficient delivery to all of them; and
- (g) only the person whose name appears first in the register of shareholders as one of the joint holders is entitled to delivery of any notices, cheques, certificates or other communications from the company, and any notice, cheque, certificate or other communication given to that person is deemed to be given to all the joint holders.

2.6 Equitable and other claims

- (a) Except as otherwise required by law or provided by this constitution, the company is entitled to treat the registered holder of a share as the absolute owner of that share and is not:
 - (1) compelled in any way to recognise a person as holding a share upon any trust, even if the company has notice of that trust; or
 - (2) compelled in any way to recognise, or bound by, any equitable, contingent, future or partial claim to or interest in a share on the part of any other person except an absolute right of ownership in the registered holder, even if the company has notice of that claim or interest.
- (b) With the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.
- (c) Nothing in rule 2.6(b) limits the operation of rule 2.6(a).

2.7 Restricted securities

Despite any other provision of this constitution and whilst the company is listed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during any applicable escrow period referred to in the Listing Rules except as permitted by the Listing Rules or the ASX;
- (b) subject to the SCH Business Rules in respect of CHES Approved Securities, the company will refuse to acknowledge a disposal (including registering a transfer) of restricted securities during any applicable escrow period except as permitted by the Listing Rules or the ASX; and
- (c) during a breach of the Listing Rules relating to restricted securities, or a breach of a restriction agreement, the holder of restricted securities is not entitled to any dividend or distribution, or voting rights, in respect of the restricted securities.

2.8 Shares to be Stapled

- ~~(a) The directors may at any time staple an Unstapled ordinary share to a Unit that is not Stapled to form a Stapled Security.~~
- ~~(b) Details of all Stapled Securities sufficient to identify the securities which comprise the Stapled Security must be registered in the Stapled Security Register.~~
- ~~(c) On and from the Stapling Date and prior to the Unstapling Date, the members, directors and the company must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so, as the case may be, would result directly or indirectly in any ordinary share no longer being Stapled as a Stapled Security. In particular:~~
- ~~(1) the company must not offer any ordinary shares for subscription or sale unless an offer is made at the same time and to the same person for an identical number of Units for issue or sale;~~
 - ~~(2) any offer of ordinary shares for a subscription or sale must require each offeree to subscribe for or buy a number of Units equal to the number of ordinary shares subscribed for or bought;~~
 - ~~(3) the company must not issue or sell any ordinary shares to any person unless an identical number of Units are also issued or sold to the same person at the same time;~~
 - ~~(4) the directors and the company must not consolidate, sub-divide, cancel, or otherwise reorganise any ordinary shares unless at the same time there is a corresponding consolidation, sub-division, cancellation or reorganisation of Units; and~~
 - ~~(5) the directors and the company must not cause the transmission or transfer of ordinary shares pursuant to rule 5 unless there is a simultaneous transmission or transfer (as the case may be) of an equal number of Units.~~

~~but nothing in this rule 2.8(c) prohibits the Trustee from determining the Unstapling Date.~~

2.9 Stapled Security Register

- ~~(a) The directors must maintain or cause to be maintained a register of members which records the names of the members, the number of ordinary shares held, the number of Stapled Units held by the members to which each member's ordinary shares are Stapled and any additional information required by the Corporations Act or the Listing Rules (if applicable) or determined from time to time by the directors.~~
- ~~(b) The Stapled Security Register will for so long as Stapling applies be deemed to constitute part of the register of members of the company, and all other provisions of this constitution applicable to the register of members will apply only to that part of the register of members kept in addition to the Stapled Security Register.~~
- ~~(c) Until the company is a listed company, the Stapled Security Register and any other register of members must be set up and maintained in the State of Queensland.~~

2.10 Restricted issue of shares of different class

~~Notwithstanding any other provision of this constitution, the directors may not issue any shares which are of a different class from any shares already issued without the prior consent of the members in general meeting by ordinary resolution whilst and so long as there is a similar restriction on the issue of Units of any new class pursuant to the terms of the Trust Deed without the consent of the holders of Units.~~

2.11A Special Share

~~(a) Notwithstanding clause 2.1(c), the A Special Share may be issued to, held by and transferred only to the Manager, where the Manager is an associated company of Babcock & Brown Limited from time to time.~~

~~(b) The A Special Shareholder may from time to time by notice in writing to the company:~~

~~(1) appoint for so long as the A Special Share is on issue up to (but no more than) 50% of the maximum number of directors permitted under rule 7.1(a); and~~

~~(2) appoint any one such director to the post of managing director, provided that such persons have suitable experience and qualifications having regard to the experience and qualifications required of a non-executive or executive director as the case may be of a company admitted to the official list of the ASX.~~

~~Any person appointed to the post of managing director by the A Special Shareholder may at any time be removed from office by the A Special Shareholder by notice in writing to the company or by a resolution at a meeting of members at which only the A Special Shareholder may vote.~~

~~(c) The A Special Shareholder shall be entitled to receive notice of and attend any meeting of the company but shall not be entitled to vote except in relation to:~~

~~(1) a proposal by the A Special Shareholder to appoint a director or managing director pursuant to its powers under rule 2.11(b) or remove a director or managing director appointed by the A Special Shareholder (and in respect of such a resolution, shares held by members other than the A Special Shareholder shall carry no votes); and~~

~~(2) as provided in rule 2.4(a), any variation to the rights attached to the A Special Share; and~~

~~(3) any other matter in respect of which the Corporations Act prevents the right to vote being excluded or restricted.~~

~~(d) If any director appointed by the A Special Shareholder pursuant to rule 2.11(b) resigns, retires or is removed by the company while the A Special Shareholder continues to have the right to appoint a director pursuant to rule 2.11(b), then, notwithstanding anything in this constitution, the A Special Shareholder shall be entitled to appoint a replacement director in the same manner as the appointment of such director.~~

- ~~(e) On a distribution of capital on a winding up of the company, the A Special Shareholder shall be entitled to repayment of the capital paid up or treated for the purposes of the Corporations Act as paid up on the A Special Share in priority to any repayment of capital to any other shareholder (other than the holder of preference shares, in any are on issue). The A Special Share shall confer no other right to participate in the capital or profits of the company.~~
- ~~(f) The A Special Share shall not be repurchased by the company other than in accordance with the buy back provisions of the Corporations Act and as provided for below:~~
- ~~(1) The A Special Shareholder may, after consulting with the company, request the company to repurchase the A Special Share at its issue price, by giving notice to the company and delivering the relevant share certificate to the company and subject to, and if authorised in compliance with the requirements of, the Corporations Act, the company shall repurchase the A Special Share;~~
- ~~(2) The company may repurchase the A Special Share at its issue price subject to, and if authorised in compliance with the requirements of, the Corporations Act:~~
- ~~(A) with the consent of the A Special Shareholder, following notice to the A Special Shareholder;~~
- ~~(B) without consent of the A Special Shareholder, following notice to the A Special Shareholder on the Unstapling Date, or upon termination of the management services agreement to be entered into between the company and the Manager,~~
- ~~and the A Special Shareholder shall deliver the relevant share certificate to the company prior to the date given in the notice;~~
- ~~(3) The company shall, subject to, and if authorised in compliance with the requirements of, the Corporations Act, repurchase the A Special Share at its issue price as soon as practicable if the Trustee is not an associated company of Babcock & Brown Limited and the A Special Shareholder shall deliver the relevant share certificate to the company within 7 days of receipt of a written request from the company for delivery of such share certificate.~~
- ~~(g) (1) On the repurchase of the A Special Share under rule 2.11(f)(2)(B) following a termination of the management services agreement to be entered into between the company and the Manager, the company shall issue a new A Special Share in accordance with rule 2.11(a) to a new Manager appointed by the company to provide general management and investment services only where the new Manager is an associated company of Babcock & Brown Limited.~~
- ~~(2) On the repurchase of the A Special Share other than where a new A Special Share is issued under rule 2.11(g)(1), this rule 2.11 and other provisions of this constitution to the extent that they relate to the A Special Share shall cease to have effect.~~

- ~~(3) On any repurchase by the company of the A Special Share, the certificate in respect thereof shall be deemed to have been cancelled on the date on which the A Special Share is bought back.~~
- ~~(h) If, at any time, the A Special Shareholder ceases to be the Manager, the A Special Share ceases to confer any rights on the A Special Shareholder, whether as to dividends on a winding up or as to voting until the A Special Share is transferred to a new Manager associated with Babcock & Brown Limited.~~
- ~~(i) Notwithstanding rule 2.4(a), a variation of rights attaching to the A Special Share shall be effective only with the express prior consent in writing of the A Special Shareholder and without such consent shall not be done or caused to be done.~~

2.12B Special Share

- ~~(a) The B Special Share may be issued to, held by and transferred only to the Trustee where the Trustee is an associated company of Babcock & Brown Limited, from time to time.~~
- ~~(b) The B Special Shareholder may from time to time by notice in writing to the company appoint for so long as the B Special Share is on issue up to (but no more than) 25% of the maximum number of directors permitted under rule 7.1(a) provided that such persons have suitable experience and qualifications having regard to the experience and qualifications required of a non-executive of a company admitted to the official list of the ASX.~~
- ~~(c) The B Special Shareholder shall be entitled to receive notice of and attend any meeting of the company but shall not be entitled to vote except in relation to:~~
- ~~(1) a proposal by the B Special Shareholder to appoint a director pursuant to its powers under rule 2.12(b) or remove a director appointed by the B Special Shareholder (and in respect of such a resolution, shares held by members other than the B Special Shareholder shall carry no votes); and~~
 - ~~(2) as provided in rule 2.4(a), any variation to the rights attached to the B Special Share; and~~
 - ~~(3) any other matter in respect of which the Corporations Act prevents the right to vote being excluded or restricted.~~
- ~~(d) If any director appointed by the B Special Shareholder pursuant to rule 2.12(b) resigns, retires or is removed by the company while the B Special Shareholder continues to have the right to appoint a director pursuant to rule 2.12(b), then, notwithstanding anything in this constitution, the B Special Shareholder shall be entitled to appoint a replacement director in the same manner as the appointment of such director.~~
- ~~(e) On a distribution of capital on a winding up of the company, the B Special Shareholder shall be entitled to repayment of the capital paid up or treated for the purposes of the Corporations Act as paid up on the B Special Share in priority to any repayment of capital to any other shareholder (other than the holder of preference shares, in any are on issue). The B Special Share~~

~~shall confer no other right to participate in the capital or profits of the company.~~

~~(f)The B Special Share shall not be repurchased by the company other than in accordance with the buy back provisions of the Corporations Act and as provided for below:~~

~~(1)The B Special Shareholder may, after consulting with the company, request the company to repurchase the B Special Share at its issue price, by giving notice to the company and delivering the relevant share certificate to the company and subject to, and if authorised in compliance with the requirements of, the Corporations Act, the company shall repurchase the B Special Share;~~

~~(2)The company may repurchase the B Special Share at its issue price subject to, and if authorised in compliance with the requirements of, the Corporations Act:~~

~~(A)with the consent of the B Special Shareholder, following notice to the B Special Shareholder;~~

~~(B)without consent of the B Special Shareholder, following notice to the B Special Shareholder on the Unstapling Date, or where the B Special Shareholder ceases to be Trustee,~~

~~and the B Special Shareholder shall deliver the relevant share certificate to the company prior to the date given in the notice;~~

~~(g)(1) On the repurchase of the B Special Share under rule 2.12(f)(2)(B) following the B Special Shareholder ceasing to be Trustee, the company shall issue a new B Special Share in accordance with rule 2.12(a) to a new Trustee only where the new Trustee is an associated company of Babcock & Brown Limited.~~

~~(2)On the repurchase of the B Special Share other than where a new B Special Share is issued under rule 2.12(g)(1), this rule 2.12 and other provisions of this constitution to the extent that they relate to the B Special Share shall cease to have effect.~~

~~(3)On any repurchase by the company of the B Special Share, the certificate in respect thereof shall be deemed to have been cancelled on the date on which the B Special Share is bought back.~~

~~(h)If, at any time, the B Special Shareholder ceases to be either the Trustee or an associated company of Babcock & Brown Limited, the B Special Share ceases to confer any rights on the B Special Shareholder, whether as to dividends on a winding up or as to voting.~~

~~(i)Notwithstanding rule 2.4(a), a variation of rights attaching to the B Special Share shall be effective only with the express prior consent in writing of the B Special Shareholder and without such consent shall not be done or caused to be done.~~

3 Stapling

3.1 Power to Staple Securities

(a) In addition to any power the company has under this constitution, the company may, subject to the Corporations Act and, if the company is a listed company, the Listing Rules:

- (1) cause the Stapling of any Security to any ordinary share; and
- (2) cause the Stapling of further Securities to ordinary shares,

whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, the Corresponding Number of Attached Securities of every kind is Stapled to each ordinary share.

3.2 Applications, transfers and distributions in specie

(a) For the purposes of Stapling, the company may:

- (1) apply for Securities in the name of an ordinary shareholder;
- (2) make a transfer of Securities to all ordinary shareholders; or
- (3) make a transfer of Securities by way of an in specie distribution of Securities to all ordinary shareholders.

(b) If the company applies for Securities in accordance with rule 3.2(a)(1), it must apply for Securities for all ordinary shareholders in the same way and the Securities applied for must be of the same type, have the same rights and be fully paid upon issue.

(c) If the company effects a transfer made in accordance with rule 3.2(a)(2) it must effect the transfer to all ordinary shareholders in the same way and the Securities transferred to each ordinary shareholder must be of the same type, have the same rights and be fully paid.

(d) Notwithstanding rule 3.4, if the company makes an in specie distribution under rule 3.2(a)(3) the company must effect the distribution to all ordinary shareholders in the same way and the Securities transferred to each shareholder must be of the same type, have the same rights and be fully paid.

(e) Where Securities are to be applied for or transferred by the company in accordance with rule 3.2(a), each ordinary shareholder authorises the company to act as the shareholder's agent to:

- (1) apply for Securities in the name of that shareholder;
- (2) accept a transfer of Securities for that shareholder; and
- (3) agree to become a member of the relevant Stapled Entity.

3.3 Operation of Stapling provisions

Rules 3.4 to 3.9 apply only, and for so long as, a share is a component of a Stapled Security.

3.4 Shares to be Stapled

- (a) Details of all Stapled Securities sufficient to identify the securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) On and from the Stapling Date and prior to the Unstapling Date, the directors must not issue ordinary shares unless satisfied that each of those shares will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.
- (c) On and from the Stapling Date and prior to the Unstapling Date, the ordinary shareholders, directors and the company must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so, as the case may be, would result directly or indirectly in any ordinary share no longer being Stapled as a component of a Stapled Security. In particular:

 - (1) the company must not offer any ordinary shares for subscription or sale unless an offer is made at the same time and to the same person for a Corresponding Number of Attached Securities for issue or sale;
 - (2) any offer of ordinary shares for subscription or sale must require each offeree to subscribe for or buy the Corresponding Number of each Attached Security;
 - (3) the company must not issue or sell any ordinary shares to any person unless a Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
 - (4) the directors and the company must not consolidate, sub-divide, cancel, or otherwise reorganise any ordinary shares unless at the same time there is a corresponding consolidation, sub-division, cancellation or reorganisation of all Attached Securities; and
 - (5) the directors and the company must not cause the transmission or transfer of ordinary shares pursuant to rule 6 unless there is a simultaneous transmission or transfer (as the case may be) of a Corresponding Number of Attached Securities.

but nothing in this rule 3.4(c) prohibits the directors from determining the Unstapling Date.

3.5 Unstapling Date

- (a) Subject to approval by a special resolution of the company and the members of each Stapled Entity respectively, the directors may determine that the Stapling provisions of this constitution will cease to apply and that a particular date is to be the Unstapling Date.
- (b) On and from the Unstapling Date, each ordinary share ceases to be Stapled to the Attached Securities and the directors must do all things reasonably necessary to procure that each ordinary share is Unstapled.
- (c) If the directors determine to Unstaple the Stapled Securities pursuant to this rule 3.5, this does not prevent the directors from:

- (1) subsequently determining that the Stapling provisions should recommence; and
- (2) stapling an Unstapled ordinary share to Attached Securities which are not Stapled.

3.6 Transfer of Stapled Securities

(a) Until the Unstapling Date:

- (1) a transfer of a share forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of rule 6, the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security to which the share is Stapled in favour of the same transferee;
- (2) a transfer of an ordinary share which is not accompanied by a transfer of the Corresponding Number of each Attached Security to which the share is Stapled will be taken to authorise the company as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security to which the share is Stapled to the same transferee; and
- (3) a transfer of any Attached Security to which a share is Stapled (other than a transfer of the Attached Security to the company) which is not accompanied by a transfer of the share will be taken to authorise the company as agent for the transferor to effect a transfer of the share and any other Attached Securities to which the applicable Attached Security is Stapled to the same transferee.

- (b) Each ordinary shareholder irrevocably appoints the company as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the company the transfer to the company or to a person nominated by the company of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

3.7 Stapled Security Register

- (a) The directors must maintain or cause to be maintained a register of members which records the names of the members, the number of ordinary shares held, the number of Attached Securities held by the members to which each member's ordinary shares are Stapled and any additional information required by the Corporations Act or the Listing Rules (if applicable) or determined from time to time by the directors.
- (b) The Stapled Security Register will for so long as Stapling applies be deemed to constitute part of the register of members of the company, and all other provisions of this constitution applicable to the register of members will apply only to that part of the register of members kept in addition to the Stapled Security Register.
- (c) Until the company is a listed company, the Stapled Security Register and any other register of members must be set up and maintained in the State of Queensland.

3.8 Variation of Stapling provisions

Prior to the Unstapling Date, the consent of each other Stapled Entity must be obtained to any amendment to this constitution which:

- (a) directly affects the terms on which ordinary shares are Stapled; or
- (b) removes any restriction on the transfer of a Stapled ordinary share unless that restriction also exists for all other Attached Securities and is simultaneously removed for all Attached Securities.

3.9 Restricted issue of shares of different class

Notwithstanding any other provision of this constitution, the directors may not issue any shares which are of a different class from any shares already issued without the prior consent of the members in general meeting by ordinary resolution whilst and so long as there is a similar restriction on the issue of Attached Securities of any new class pursuant to the terms of the constitutions of the Stapled Entities without the consent of the holders of Attached Securities.

34 Calls, forfeiture, indemnities, lien and surrender

3.14.1 Calls

- (a) Subject to this constitution and to 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.
- (b) While the company is a listed company, calls must be made in accordance with the Listing Rules and the timetables set out in the Listing Rules.
- (c) A call may be required by the directors to be paid by instalments.
- (d) Upon receiving at least 30 Business Days' notice (or 4 Business Days' notice in the case of new members and members whose holdings have changed since the first notices were sent) 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.
- (e) A call is to be taken as being made when the resolution of the directors authorising the call was passed.
- (f) The directors may revoke or postpone a call or extend the time for payment of a call.
- (g) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any member does not invalidate the call.
- (h) 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:
 - (1) so much of the instalment or sum called in respect of the share that has not been paid;

- (2) 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 rule 4.10; and
 - (3) any costs, expenses or damages incurred by the company in relation to the non-payment or late payment of the sum.
- (i) Any sum unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date:
 - (1) 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
 - (2) must be paid on the date on which it is payable under the terms of issue of the share.
 - (j) The directors may, to the extent permitted by law and, if the company is listed, by the Listing Rules, waive or compromise all or any part of any payment due to the company under the terms of issue of a share or under this rule 4.1.
 - (k) The directors must endeavour to ensure that for all Stapled Securities at all times, the Paid-up Proportion of the ordinary share is the same as the Paid-up Proportion of the UnitAttached Security.

3.24.2 Proceedings for recovery of calls

- (a) In an action or other proceedings for the recovery of a call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a call, proof that:
 - (1) the name of the defendant is entered in the register as the holder or one of the holders of the share in respect of which the call is claimed;
 - (2) the resolution making the call is recorded in the minute book; and
 - (3) notice of the call was given to the defendant in accordance with this constitution,

is conclusive evidence of the debt and it is not necessary to prove the appointment of the directors who made the call or any other matter.
- (b) In rule 4.2(a)~~3.2(a)~~, “defendant” includes a person against whom a set-off or counter-claim is alleged by the company and “action or other proceedings for the recovery of a call” is to be construed accordingly.

3.34.3 Payments in advance of calls

- (a) 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.
- (b) The directors may authorise payment by the company of interest upon the whole or any part of an amount accepted under rule 4.3(a)~~3.3(a)~~, until the amount becomes payable, at a rate agreed between the directors and the member paying the amount.
- (c) The directors may repay to a member all or any of the amount accepted under rule 4.3(a)~~3.3(a)~~.

3.44.4 Forfeiture of shares

- (a) If a member fails to pay the whole of a call or instalment of a call by the time appointed for payment of the call or instalment, the directors may serve a notice on that member:
 - (1) requiring payment of the amount payable pursuant to rule 4.1(h);
 - (2) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under rule 4.1(h) is to be paid; and
 - (3) stating that, in the event of non-payment of the whole of the amount payable under rule 4.1(h) by the time and at the place named, the shares in respect of which the call was made will be liable to be forfeited.
- (b) If the requirements of a notice served under rule ~~34.4(a)~~4.4(a) 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.
- (c) The directors may by resolution forfeit a share which is Stapled to a partly paid Unit-Attached Security at any time after that partly paid Unit-Attached Security is forfeited under the Trust Deed constitution of any Stapled Entity because of non-payment of an instalment on that partly paid Unit-Attached Security or for any other reason.
- (d) A forfeiture under rule 4.4(b) or ~~3.4(e)~~4.4(c) 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.
- (e) Where a share has been forfeited:
 - (1) notice of the resolution must be given to the member in whose name the share stood immediately before the forfeiture; and
 - (2) an entry of the forfeiture, with the date, must be made in the register of members.
- (f) Failure to give the notice or to make the entry required under rule 4.4(e) does not invalidate the forfeiture.
- (g) A forfeited share becomes the property of the company and the directors may sell, reissue or otherwise dispose of the share in such manner as they think fit and, in the case of reissue or other disposal, with or without any money paid on the share by any former holder being credited as paid up. The directors must ensure that any sale, reissue or other disposal of shares is held in consultation with ~~the Trustee~~ each other Stapled Entity and contemporaneously with any sale, reissue or other disposal of the associated ~~Stapled Units~~ Attached Securities.
- (h) 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:
 - (1) all calls, instalments, costs, expenses and damages owing in respect of the shares at the time of the forfeiture; and

- (2) interest on so much of the amount payable under rule 4.4(h)(1) as is unpaid from time to time, from the date of the forfeiture to the date of actual payment, at a rate determined under rule 4.10.
- (i) Except as otherwise provided by this constitution or, while the company is a listed company, the Listing Rules, 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.
- (j) Where permitted by the Listing Rules (while the company is listed), the directors may:
 - (1) exempt a share from all or any part of this rule 4.4;
 - (2) waive or compromise all or any part of any payment due to the company under this rule 4.4; and
 - (3) before a forfeited share has been sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as they think fit.

3.54.5 Cancellation of Forfeiture

- (a) The company must cancel the forfeiture of a share if forfeited under rule 4.4(b)~~3.4(b)~~ before a sale if the member pays the full amount payable pursuant to rule 4.1(h) and any other amount payable in respect of the forfeiture.
- (b) The company must cancel the forfeiture of a share if forfeited under rule 4.4(c)~~3.4(e)~~ if the forfeiture of the Unit-Attached Security to which the share is Stapled is cancelled.
- (c) If a share is forfeited under both rule 4.4(b)~~3.4(b)~~ and rule 4.4(c)~~3.4(e)~~, both rule 4.5(a)~~3.5(a)~~ and rule 4.5(b)~~3.5(b)~~ must be satisfied before the Trustee Stapled Entity is obliged to cancel the forfeiture of the share.

3.64.6 Indemnity for payments by the company

If the company becomes liable under any law to make any payment:

- (a) in respect of shares held solely or jointly by a member;
 - (b) in respect of a transfer or transmission of shares by a member;
 - (c) in respect of dividends, bonuses or other money due or payable or which may become due and payable to a member; or
 - (d) otherwise for or on account of or in respect of a member,
- whether as a consequence of:
- (e) the death of that member;
 - (f) the non-payment of any income tax, capital gains tax, wealth tax or other tax by that member or the legal personal representative of that member;
 - (g) the non-payment of any estate, probate, succession, death, stamp or other duty by that member or the legal personal representative of that member; or
 - (h) any other act or thing,

then, in addition to any right or remedy that law may confer on the company:

- (i) the member or, if the member is dead, the member's legal personal representative must:
 - (1) fully indemnify the company against that liability;
 - (2) reimburse the company for any payment made under or as a consequence of that law immediately on demand by the company; and
 - (3) pay interest on so much of the amount payable to the company under rule 4.6(i)(2) as is unpaid from time to time, from the date the company makes a payment under that law until the date the company is reimbursed in full for that payment under rule 4.6(i)(2), at a rate determined under rule 4.10; and
- (j) the directors may:
 - (1) exempt a share from all or any part of this rule 4.6; and
 - (2) waive or compromise all or any part of any payment due to the company under this rule 4.6.

3.74.7 Lien on shares

- (a) The company has a first and paramount lien on:
 - (1) each partly paid share for all calls and instalments which are due but unpaid in respect of that share;
 - (2) each share acquired under an employee incentive scheme, where an amount is owed to the company for its acquisition; and
 - (3) each share for all amounts that the company is required by law to pay, and has paid, in respect of that share.

In each case the lien extends to reasonable interest and expenses incurred because the amount is not paid.

- (b) The company's lien on a share extends to all dividends payable in respect of the share and to the proceeds of sale of the share.
- (c) The directors may sell any share on which the company has a lien in such manner as they think fit where:
 - (1) an amount in respect of which a lien exists under this rule 4.7 is presently payable; and
 - (2) 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.
- (d) The directors may do all things necessary or desirable to protect any lien, charge or other right to which the company may be entitled under any law or under this constitution.
- (e) 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.

- (f) To the extent permitted by the Listing Rules if the company is listed, the directors may:
 - (1) exempt a share from all or any part of this rule 4.7; and
 - (2) waive or compromise all or any part of any payment due to the company under this rule 4.7.

3.84.8 Surrender of shares

- (a) The directors may accept a surrender of a share by way of compromise of any claim as to whether or not that share has been validly issued or in any other case where the surrender is within the powers of the company.
- (b) Any share so surrendered may be sold, reissued or otherwise disposed in accordance with rule 4.4(g).

3.84.9 General provisions applicable to a disposal of shares under this constitution

- (a) A reference in this rule 4.9 to a disposal of shares under this constitution is a reference to:
 - (1) any sale, reissue or other disposal of a forfeited share under rule 4.4(g) or a surrendered share under rule 4.8; and
 - (2) any sale of a share on which the company has a lien under rule 4.7(c).
- (b) Where any shares are disposed of under this constitution, the directors may:
 - (1) receive the purchase money or consideration given for the shares on the disposal;
 - (2) effect a transfer of the shares and execute, or appoint a person to execute, on behalf of the former holder an instrument of transfer of the shares or any other instrument for the purpose of giving effect to the disposal; and
 - (3) register as the holder of the shares the person to whom the shares have been disposed of.
- (c) A person to whom shares are disposed of under this constitution is not bound to see to the regularity or validity of, or to the application of the purchase money or consideration on, the disposal and the title of that person to the shares is not affected by any irregularity or invalidity in the forfeiture or surrender of the shares or the exercise of the company's lien on the shares (as the case may be).
- (d) The remedy of any person aggrieved by a disposal of shares under this constitution is limited to damages only and is against the company exclusively.
- (e) The proceeds of a disposal of shares under this constitution must be applied in the following order and manner:

- (1) by paying any Costs incurred by the company in relation to the sale or disposal of the shares including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
 - (2) by paying any Costs incurred by the company in relation to the forfeiture or any proceedings brought against the former member;
 - (3) by paying all money presently payable by the former member whose shares have been disposed of; and
 - (4) by paying any balance (subject to any lien that exists under rule 4.7~~3.7~~ in respect of money not presently payable) to the former holder whose shares have been disposed of.
- (f) If there is a sale of more than one share being disposed of, the expenses listed in rules 4.9(e)(1)~~3.9(e)(1)~~ and (2)~~(2)~~ must be paid pro rata to the number of shares being disposed of.
- (g) A statement in writing signed by a director or secretary of the company to the effect that a share in the company has been:
- (1) duly forfeited under rule 4.4(b) or 4.4(c)~~3.4(e)~~;
 - (2) duly sold, reissued or otherwise disposed of under rule 4.4(g) or rule 4.8; or
 - (3) duly sold under rule 4.7(c),

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 and of the right of the company to forfeit, sell, reissue or otherwise dispose of the share.

3.104.10 Interest payable by member

- (a) For the purposes of rules 4.1(h)(2), 4.4(h)(2) and 4.6(i)(3), the rate of interest payable to the company is:
- (1) if the directors have fixed a rate, the rate so fixed; or
 - (2) in any other case, the rate prescribed in respect of unpaid judgments in the Supreme Court of the state or territory in which the company is registered.
- (b) Interest payable under rules 4.1(h)(2), 4.4(h)(2) and 4.6(i)(3) accrues daily and may be capitalised monthly or at such other intervals as the directors think fit.

3.114.11 Deemed full payment

An ordinary share which forms part of a Stapled Security will not be credited or deemed to be fully paid until ~~the Trustee~~ each other Stapled Entity has also received any amounts outstanding in relation to any ~~Units~~ Attached Securities held by the member and forming part of the Stapled Securities.

45 Distribution of profits

4.15.1 Dividends

- (a) The directors may pay any interim and final dividends as, in their judgment, the financial position of the company justifies.
- (b) The directors may pay any dividend required to be paid under the terms of issue of a share.
- (c) The payment of a dividend does not require any confirmation by a general meeting.
- (d) Subject to rule 5.1(1)4.1(1) and any rights or restrictions attached to any shares or class of shares:
 - (1) all dividends in respect of shares must be paid to the members in proportion to the number of shares held by a member but where shares are partly paid all dividends must be apportioned and paid according to the proportion that the amount paid (not credited) on the shares is of the total amounts paid and payable (excluding amounts credited);
 - (2) all dividends must be apportioned and paid according to the proportion that the amount so paid (not credited) is of the total amount paid and payable (excluding amounts credited) during any portion or portions of the period in respect of which the dividend is paid;
 - (3) for the purposes of rules 5.1(d)(1) and (2), an amount paid or credited as paid on a share in advance of a call is to be ignored; and
 - (4) interest is not payable by the company in respect of any dividend.
- (e) The directors may fix a record date in respect of a dividend, with or without suspending the registration of transfers from that date under rule 6.3.
- (f) A dividend in respect of a share must be paid to the person who is registered, or entitled under rule 6.1(e) to be registered, as the holder of the share:
 - (1) where the directors have fixed a record date in respect of the dividend, on that date; or
 - (2) where the directors have not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend,and a transfer of a share that is not registered, or left with the company for registration in accordance with rules 6.1(d) and (e), on or before that date is not effective, as against the company, to pass any right to the dividend.
- (g) The directors when determining a dividend is payable may:
 - (1) direct payment of the dividend wholly or partly by the distribution of specific assets, including paid-up shares or other securities of the company or of another body corporate, either generally or to specific shareholders; and

- (2) direct that the dividend be paid to particular shareholders wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining shareholders wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.
- (h) The company may deduct from any dividend payable to a member all sums of money presently payable by the member to the company for calls due and payable which have not been paid and apply the amount deducted in or towards satisfaction of the money owing.
- (i) Where a person is entitled to a share as a result of a transmission event, the directors may, but are not obliged to, retain any dividends payable in respect of that share until that person becomes registered as the holder of the share or transfers it.
- (j) 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 and sent by post:
 - (1) to the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register; or
 - (2) to such other address as the holder or joint holders in writing directs or direct.
- (k) A cheque sent under rule 5.1(j) may be made payable to bearer or to the order of the member to whom it is sent or such other person as the member may direct and is sent at the member's risk.
- (l) Notwithstanding any other provision of these rules, a member does not have any right to be paid dividends in respect of any Unstapled ordinary shares held by that member.

4.25.2 Capitalisation of profits

- (a) Subject to any rights or restrictions attached to any shares or class of shares, the directors may capitalise and distribute among such of the members as would be entitled to receive dividends and in the same proportions, any amount:
 - (1) forming part of the undivided profits of the company;
 - (2) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the company;
 - (3) arising from the realisation of any assets of the company; or
 - (4) otherwise available for distribution as a dividend.
- (b) The directors may resolve that all or any part of the capitalised amount is to be applied:
 - (1) in paying up in full shares in or other securities of the company to be issued to members;

- (2) in paying up any amounts unpaid on shares in or other securities of the company held by the members; or
- (3) partly as specified in rule 5.2(b)(1) and partly as specified in rule 5.2(b)(2),

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.

- (c) Rules 5.1(d), (e), (f) and (g) apply, so far as they can and with such changes as are necessary, to a capitalisation of an amount under this rule 5.2 as if references in those rules to a dividend and to the date a dividend is fixed for payment were references to a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this rule 5.2 respectively.

4.35.3 Ancillary powers

- (a) For the purpose of giving effect to any resolution for the satisfaction of a dividend in the manner set out in rule 5.1(g)(1) or by the capitalisation of any amount under rule 5.2, the directors may:
 - (1) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation;
 - (2) fix the value for distribution of any specific assets;
 - (3) pay cash or issue shares or other securities to any members in order to adjust the rights of all parties;
 - (4) vest any such specific assets, cash, shares or other securities in any trustee upon such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the directors; and
 - (5) 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:
 - (A) for the issue to them of such further shares or other securities credited as fully paid up; or
 - (B) for the payment by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by the application of their respective proportions of the sum resolved to be capitalised,and any agreement made under an authority referred to in this rule 5.3(a)(5) is effective and binding on all members concerned.
- (b) If the company distributes to members (either generally or to specific members) securities in the company or in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those members appoints the company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate or trust.

4.45.4 Reserves

- (a) Subject to this constitution, the directors may set aside out of the profits of the company such reserves or provisions for such purposes as they think fit.
- (b) The directors may appropriate to the profits of the company any amount previously set aside as a reserve or provision.
- (c) 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 or being invested in such investments as the directors think fit.

4.55.5 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.

4.65.6 Dividend reinvestment plans

The directors may:

- (a) implement a dividend reinvestment plan on such terms as they think fit under which the whole or any part of any dividend due to members who participate in the plan on their shares or any class of shares may be applied in subscribing for securities of the company or of a related body corporate or Stapled Securities; and
- (b) amend, suspend or terminate any dividend reinvestment plan implemented by them.

4.75.7 Dividend selection plans

The directors may:

- (a) implement a dividend selection plan on such terms as they think fit under which participants may elect:
 - (1) to receive a dividend from the company paid wholly or partly out of any particular fund or reserve or out of profits derived from any particular source; or
 - (2) to forego a dividend from the company in place of some other form of distribution from the company or another body corporate or a trust; and
- (b) amend, suspend or terminate any dividend selection plan implemented by them.

56 Transfer and transmission of shares

5.16.1 Transfer of shares

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, a member may transfer all or any of the member's shares by:
 - (1) a proper SCH transfer; or
 - (2) an instrument in writing in any usual form or in any other form that the directors approve.
- (b) A transferor of shares remains the holder of the shares transferred until the transfer is:
 - (1) effected in accordance with the SCH Business Rules; or
 - (2) registered and the name of the transferee is entered in the register of members in respect of the shares.
- (c) The company must not charge a fee for the registration of a transfer of shares.
- (d) An instrument of transfer referred to in rule 6.1(a) must:
 - (1) be signed by or on behalf of both the transferor and the transferee unless:
 - (A) the instrument of transfer relates only to fully paid shares and signature by the transferee has been dispensed with by the directors; or
 - (B) the transfer of the shares is effected by a document which is, or documents which together are, a proper transfer of those shares under the Corporations Act;
 - (2) if required by law to be stamped, be duly stamped; and
 - (3) be left for registration at the registered office of the company, or at such other place as the directors determine, accompanied by such evidence as the directors may require to prove the title of the transferor or the transferor's right to the shares (including, in the case of a certificated holding, the certificate for the shares) and to prove the right of the transferee to be registered as the owner of the shares.
- (e) Subject to the powers vested in the directors under rules 6.2 and 6.3, and subject to rule 2.83, where the company receives an instrument of transfer under rule 6.1(d), the company must register the transferee named in the instrument as the holder of the shares to which it relates.
- (f) The company may retain any registered instrument of transfer received by the company under rule 6.1(d) for such period as the directors think fit.
- (g) Except in the case of fraud, the company must return any instrument of transfer received under rule 6.1(d) which the directors decline to register to the person who deposited it with the company.

- (h) The directors may do anything that is necessary or desirable for the company to participate in any computerised, electronic or other system for facilitating the transfer of shares that may be owned, operated or sponsored by the ASX or SCH or a related body corporate of the ASX or SCH.
- (i) The directors may, to the extent permitted by law, waive all or any of the requirements of this rule 6.1, whether for the purpose of giving effect to rule 6.1(h) or otherwise.

5-26.2 Power to decline registration of transfers

- (a) In relation to securities which are not CHESSE Approved Securities, the directors may decline to register an instrument of transfer received under rule ~~5-2(d)~~3.6(a)(3) where the transfer is not in registrable form or the refusal to register the transfer is permitted under the Listing Rules (where the company is then a listed company).
- (b) If the directors decline to register a transfer under rule 6.2(a)~~5-2(a)~~, the company must give to the party lodging the transfer written notice of the refusal and the precise reasons therefor within 5 Business Days after the date on which the transfer was lodged with the company, but failure to do so will not invalidate the decision of the directors to decline to register the transfer.
- ~~(c) A transfer of ordinary shares forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of this rule 5, the transfer relates to, or is accompanied by a transfer of the Unit to which the share is Stapled in favour of the same transferee.~~
- ~~(d) A transfer of an ordinary share which is not accompanied by a transfer of the Unit to which the ordinary share is Stapled will be taken to authorise the company as agent for the transferor to effect a transfer of the Unit to which the ordinary share is Stapled to the same transferee.~~
- (e)(c) In relation to securities of the company which are CHESSE Approved Securities:
 - (1) subject to rules ~~5~~6.2(c)(2)-~~2(e)(2)~~ and 6.2(c)(3)~~5-2(e)(3)~~, the company must not prevent, delay or in any way interfere with the registration of a proper SCH transfer;
 - (2) the company may apply a holding lock to specified CHESSE Approved Securities where permitted to do so by the Listing Rules; and
 - (3) the company may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

5-36.3 Power to suspend registration of transfers

Subject to the Listing Rules and the SCH Business Rules whilst the company is a listed company, the directors may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as they think fit.

5.46.4 Transmission of shares

- (a) In the case of a transmission event in relation to a member, the only persons the company will recognise as having any title to the member's shares or any benefits accruing in respect of those shares are:
 - (1) where the member is a joint holder, the survivor or survivors of the member;
 - (2) where the member is an individual, the legal personal representative of the member or the person entitled to the shares as a result of bankruptcy; or
 - (3) where the member is a body corporate, the person entitled to the shares as a result of the dissolution or succession.
- (b) Nothing contained in rule 6.4(a) releases the member or estate of a deceased member from any liability in respect of a share, whether that share was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a share as a result of a transmission event may, upon producing such evidence as the directors may require to prove that person's entitlement to the share (including, in the case of a certificated holding, the certificate for the share), elect:
 - (1) to be registered as the holder of the share by signing and serving on the company a notice in writing stating that election; or
 - (2) to have some other person nominated by that person registered as the transferee of the share by executing a transfer of the share to that other person.
- (d) The provisions of this constitution relating to the right to transfer and the registration of transfers of shares apply, so far as they can and with such changes as are necessary, to any transfer under rule 6.4(c) as if the relevant transmission event had not occurred and the transfer were signed by the registered holder of the share.
- (e) For the purpose of this constitution, where 2 or more persons are jointly entitled to any share in consequence of a transmission event they will, upon being registered as the holders of the share, be taken to hold the share as joint tenants and rule ~~2.52.5~~ will apply to them.
- (f) Despite rule 6.4(a), the directors may register a transfer of shares signed by a member before a transmission event even though the company has notice of the transmission event.

5.56.5 Small holdings¹

- (a) This rule ~~6.55.5~~ applies whilst the shares are listed.
- (b) Subject to the provisions of this rule ~~56.5.5~~, the directors may in their discretion from time to time sell or redeem the shares held by a member without the request by the member where the shares held by the member comprise less than a marketable parcel as provided in the Listing Rules.

¹ Amended by a resolution of members on 5 November 2008.

The directors may only sell or redeem shares on one occasion in any 12 month period.

- (c) The company must notify the member in writing of its intention to sell or redeem shares under this rule 6.55.5, and give the member at least six weeks from the date of the notice in which to tell the company that it wishes to retain the shares.
- (d) The directors will not sell or redeem the relevant shares before the expiry of six weeks from the date of the notice given under rule 6.5(c)5.5(e), or if, within the six weeks allowed by rule 56.5(c).5(e):
 - (1) the member advises the company that the member wishes to retain the shares; or
 - (2) the market value of the shares held by the member increases to at least a marketable parcel as provided in the Listing Rules.
- (e) The authorisation to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of offers made under the takeover.
- (f) The company or the purchaser of the shares must pay the costs of the sale or redemption as the company decides.
- (g) The proceeds of the sale or redemption will not be sent to the member until the company has received any certificate (or other evidence of title) relating to the shares which it considers necessary, or is satisfied that the certificate (or other evidence of title) has been lost or destroyed.
- (h) The company is entitled to execute on behalf of a member any transfer of shares under this rule 56.5.5.
- (i) Where a share forms part of a Stapled Security:
 - (1) the references to shares in rule 6.5(a)5.5(a) to 6.5(h)5.5(h) inclusive are to be read as references to Stapled Securities; and
 - (2) the company may only redeem under this rule 6.55.5 if the Units Attached Securities to which those shares are Stapled are the subject of a contemporaneous redemption and may only sell shares under this rule 6.55.5 if the Attached Securities Units to which those shares are Stapled are the subject of a contemporaneous sale.

67 General meetings

6.17.1 Calling general meetings

- (a) The directors may, whenever they think fit, call and arrange to hold a general meeting.
- (b) A general meeting may be called and arranged to be held only as provided by this rule 7.1 or as provided by sections 249D, 249E, 249F and 249G of the Corporations Act.
- (c) The directors may, by notice to the ASX, while the company is a listed company, change the venue for, postpone or cancel a general meeting

unless the meeting is called and arranged to be held by the members or the court under the Corporations Act. If a general meeting is called and arranged to be held under section 249D of the Corporations Act the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member or members.

6.27.2 Notice of general meetings

(a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given within the time limits prescribed by the Corporations Act and in the manner authorised by rule 14.1 to each person who is at the date of the notice:

- (1) a member;
- (2) a director; or
- (3) an auditor of the company.

and, while the company is a listed company, to the ASX.

(b) A notice of a general meeting must;

- (1) specify the date, time and place of the meeting;
- (2) state the general nature of the business to be transacted at the meeting and any other matter that the Listing Rules require particular notice of; and
- (3) specify a place and fax number for the receipt of proxy appointments.

(c) It is not necessary for a notice of an AGM to state that the business to be transacted at the meeting includes the consideration of the annual financial report, directors' report and auditor's report, the election of directors, the appointment of the auditor or the fixing of the auditor's remuneration.

(d) A person may waive notice of any general meeting by notice in writing to the company.

(e) The non-receipt of notice of a general meeting or proxy form by, or a 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 rule 7.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:

- (1) the non-receipt or failure occurred by accident or error; or
- (2) before or after the meeting, the person:

- (A) has waived or waives notice of that meeting under rule 7.2(d); or
- (B) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.

(f) A person's attendance at a general meeting:

- (1) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
- (2) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in rule 7.2(c), unless the person objects to considering the matter when it is presented.

6.37.3 Admission to general meetings

The chairperson of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not:
 - (1) a member or a proxy, attorney or representative of a member;
 - (2) a director; or
 - (3) an auditor of the company.

6.47.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum consists of:
 - (1) if the number of members entitled to vote is 2 or more - 2 of those members; or
 - (2) if only 1 member is entitled to vote - that member,
present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (1) where the meeting was convened upon the requisition of members, the meeting must be dissolved; or
 - (2) in any other case:
 - (A) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination

is made by the directors, to the same day in the next week at the same time and place; and

- (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.57.5 Chairperson of general meetings

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.

- (b) If at a general meeting:

- (1) there is no chairperson of directors;
- (2) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
- (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

then if the directors have elected a deputy chairperson of directors, the deputy chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at the meeting.

- (c) Subject to rule 7.5(a) and 7.5(b), if at a general meeting:

- (1) there is no deputy chairperson of directors;
- (2) the deputy chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
- (3) the deputy chairperson of directors is present within that time but is not willing to act as chairperson of the meeting;

the members present must elect as chairperson of the meeting:

- (4) another director who is present and willing to act; or
- (5) if no other director willing to act is present at the meeting, a member who is present and willing to act.

6.67.6 Conduct of general meetings

- (a) The chairperson of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:

- (1) proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the meeting; and
- (2) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.

- (b) The chairperson of a general meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting:
 - (1) terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present; or
 - (2) allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue.
- (c) Subject to sections 250S and 250T of the Corporations Act, the chairperson of a general meeting may:
 - (1) refuse to allow debate or discussion on any business, question, motion or resolution which is not within the business referred to in the notice of meeting or rule 7.2(c); and
 - (2) refuse to allow any amendment to be moved to a resolution of which notice has been given under rule 7.2(b).
- (d) A decision by a chairperson under rule 7.6(a), (b) or (c) is final.
- (e) The chairperson of a general meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.
- (f) If the chairperson exercises his or her right under rule 7.6(e), it is in the chairperson's sole discretion whether to seek the approval of the members present to the adjournment.
- (g) The chairperson's rights under rule 7.6(e) are exclusive and, unless otherwise required by the chairperson, no vote may be taken or demanded by the members present in respect of any adjournment.
- (h) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (i) Where a meeting is adjourned, notice of the adjourned meeting must be given to the ASX while the company is a listed company, but need not be given to any other person. It is not necessary to give notice of the business to be transacted at an adjourned meeting.
- (j) Where a meeting is adjourned, the directors may, by notice to the ASX while the company is a listed company, change the venue of, postpone or cancel the adjourned meeting unless the meeting was called and arranged to be held by the members or the court under the Corporations Act. If a meeting is called and arranged to be held under section 249D of the Corporations Act the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member or members.

6.77.7 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting are to be decided

by a majority of votes cast by the members present at the meeting and any such decision is for all purposes a decision of the members.

- (b) In the case of an equality of votes upon any proposed resolution the chairperson of the meeting, in addition to his or her deliberative vote, has a casting vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before the vote is taken or before or immediately after the declaration of the result of the show of hands:
 - (1) by the chairperson of the meeting;
 - (2) by at least 5 members present and having the right to vote on the resolution; or
 - (3) by a member or members present at the meeting and representing at least 5% of the total voting rights of all the members having the right to vote on the resolution on a poll.
- (d) 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.
- (e) Unless a poll is duly demanded, a declaration by the chairperson 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.
- (f) 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 chairperson of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (g) A poll cannot be demanded at a general meeting on the election of a chairperson of the meeting or the adjournment of a meeting.
- (h) The demand for a poll may be withdrawn.

6.87.8 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
 - (1) on a show of hands, every member holding Stapled ordinary shares (or, where relevant, preference shares) present in person or by proxy, attorney or representative has 1 vote; and
 - (2) on a poll, every member present has:
 - (A) 1 vote for each fully paid Stapled ordinary share (or, where relevant, preference share) held by the member and in respect of which the member is entitled to vote; and
 - (B) a fraction of a vote for each partly paid Stapled ordinary share (or, where relevant, preference share) held by the

member and in respect of which the member is entitled to vote, equivalent to the Paid-up Proportion of the Stapled ordinary share (or, where relevant, preference share); and

- (3) a member does not have any right to vote in respect of any Unstapled ordinary shares held by that member.
- (b) Where a person present at a general meeting represents personally or by proxy, attorney or representative more than 1 member:
- (1) on a show of hands the person is entitled to 1 vote only despite the number of members the person represents;
 - (2) that vote will be taken as having been cast for all the members the person represents; and
 - (3) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with rule 7.9(g) in any instrument appointing the person as a proxy or attorney.
- (c) A joint holder may vote at any meeting in person or by proxy, attorney or representative as if that person was the sole holder. If more than 1 joint holder tenders a vote, the vote of the holder named first in the register must be accepted to the exclusion of the other or others.
- (d) 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 so tendered by a parent or guardian of an infant member must be accepted to the exclusion of the vote of the infant member.
- (e) A person entitled to a share as a result of a transmission event may vote at any general meeting in respect of that share in the same manner as if that person were the registered holder of the share if, not less than 48 hours before the meeting (or such shorter time as the directors determine), the directors have:
- (1) admitted that person's right to vote at that meeting in respect of the share; or
 - (2) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under rule 6.4(c),
- and any vote so tendered by such a person must be accepted to the exclusion of the vote of the registered holder of the share.
- (f) Where a member holds any share upon which any call or other sum of money payable to the company has not been duly paid:
- (1) that member is only entitled to be present at a general meeting and vote if other shares are held by that member upon which no money is then due and payable; and
 - (2) upon a poll, that member is not entitled to vote in respect of that share but may vote in respect of any other shares held upon which no money is then due and payable.

- (g) A member's vote on a resolution must be disregarded where that is required by the Listing Rules or the Corporations Act.
- (h) An objection to the qualification of a person to vote at a general meeting:
 - (1) must be raised before or at the meeting at which the vote objected to is given or tendered; and
 - (2) must be referred to the chairperson of the meeting, whose decision is final.
- (i) A vote not disallowed by the chairperson of a meeting under rule 7.8(h) is valid for all purposes.

6.97.9 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may attend and vote:
 - (1) in person or, where a member is a body corporate, by its representative;
 - (2) by proxy; or
 - (3) by attorney.

If the member may cast 2 or more votes at a meeting the member may vote by 2 proxies or 2 attorneys.
- (b) A proxy, attorney or representative may, but need not, be a member of the company.
- (c) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Unless otherwise provided in the appointment of a proxy, attorney or representative or in the Corporations Act, an appointment will be taken to confer authority:
 - (1) to agree to a meeting being called by shorter notice than is required by the Corporations Act or by this constitution;
 - (2) to speak to any proposed resolution on which the proxy, attorney or representative may vote;
 - (3) to demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote;
 - (4) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and

- (5) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) The chairperson of a meeting may:
 - (1) permit a person claiming to be a representative to exercise his or her powers, even if the person is unable to establish to the chairperson's satisfaction that he or she has been validly appointed; or
 - (2) permit the person to exercise his or her powers on the condition that, if required by the company, he or she can produce evidence of the appointment within the time set by the chairperson.
- (f) Where a member appoints 2 proxies or attorneys, the following rules apply:
 - (1) each proxy or attorney, as the case may be, may exercise half of the member's voting rights if the appointment does not specify a proportion or number of the member's voting rights the proxy or attorney may exercise;
 - (2) on a show of hands, neither proxy or attorney may vote; and
 - (3) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents.
- (g) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (h) An instrument appointing a proxy or attorney need not be in any particular form provided it is in writing, legally valid and signed by the appointer or the appointer's attorney.
- (i) A proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the authority under which the instrument is signed or a certified copy of the authority, are received at the place and fax number and before the time specified for that purpose in the notice calling the meeting.
- (j) The place specified for that purpose in the notice calling the meeting may be the company's registered office or other place specified in the notice and the fax number may be the fax number at the company's registered office or other fax number specified in the notice.
- (k) The time specified for that purpose in the notice calling the meeting may be a time before the time for holding the meeting and a time before the time for holding an adjourned meeting.
- (l) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
 - (1) a transmission event occurring in relation to the appointer; or

- (2) the revocation of the instrument or of the authority under which the instrument was executed,

if no notice in writing of the transmission event or revocation has been received by the company by the time and at 1 of the places at which the instrument appointing the proxy or attorney is required to be received under rule 7.9(i).

- (m) 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 received under rule 7.9(i).
- (n) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.
- (o) A proxy form issued by the company must provide for the appointer to appoint a proxy of the appointer's choice and may specify who is to be appointed as proxy if the appointer does not make a choice.

78 Directors

7.18.1 Appointment and removal of directors

- (a) The minimum number of directors is 3. The maximum number of directors is to be fixed by the directors, but must not be more than 12 unless the company in general meeting determines otherwise. The directors must not determine a maximum which is less than the number of directors in office at the time the determination takes effect.
- (b) The first directors are the persons who are specified with their consent as proposed directors in the application for registration of the company.
- (c) Subject to rules 8.1(a) and (l), the company may by resolution elect any natural person to be a director, either as an addition to the existing directors or as otherwise provided in this constitution.
- (d) Subject to rules 8.1(a) and (e), the directors may appoint any natural person to be a director, either as an addition to the existing directors or to fill a casual vacancy (including any casual vacancy arising where a director is removed from office under rule 8.1(j)(1) and no person is appointed in place of that director under rule 8.1(j)(2).
- (e) At each AGM of the company:
- (1) each director, other than a managing director, appointed under rule 8.1(d) since the last AGM; and
 - (2) excluding any director referred to in rule 8.1(e)(1) and any managing director (or the first appointed managing director if there is more than one):

- (A) one-third of the remaining directors (rounded down, if necessary, to the nearest whole number); and
 - (B) any other director who, if he does not retire, will at the conclusion of the meeting have been in office for 3 or more years and for 3 or more AGMs since he or she was last elected to office,
- must retire from office as directors; and
- (3) if no director is required to retire from office under rule 8.1(e)(2), at least 1 director, excluding a managing director (or the first appointed managing director if there is more than one) who is required to retire at that meeting under rule 8.1(e)(1), must retire from office as director.
- (f) The director or directors who must retire at an AGM in accordance with rules 8.1(e)(2)(A) or 8.1(e)(3) (as the case may be) are those who have been longest in office since their last election but, as between persons who were last elected as directors on the same day, those to retire must be determined by agreement among themselves or, in the absence of agreement, by lot.
 - (g) Subject to rule 8.1(l), the company may by resolution fill the office vacated by a director under rule 8.1(e) by electing a person to that office.
 - (h) A director retiring from office under rule 8.1(e) is eligible for re-election and if the office vacated by that director is not filled by a resolution of the company under rule 8.1(g), that director (if offering himself or herself for re-election) is to be taken as having been re-elected to that office unless:
 - (1) it is expressly resolved not to fill the vacated office; or
 - (2) a resolution for the re-election of that director is put and lost.
 - (i) The retirement of a director from office under rule 8.1(e) and the re-election of the director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
 - (j) The company may:
 - (1) by resolution in accordance with section 203D of the Corporations Act remove a director from office; and
 - (2) subject to rule 8.1(l), by resolution fill the office vacated by a director who is removed under rule 8.1(j)(1) by electing another person to that office.
 - (k) A person elected as a director under rule 8.1(j)(2) must retire under rule 8.1(e) on the same day that the director in whose place he or she was appointed would have had to retire under rule 8.1(e) if that director had not been removed from office under rule 8.1(j)(1).
 - (l) A person may only be elected to the office of a director at a general meeting if:
 - (1) he or she is a director retiring from office under rule 8.1(e) and standing for re-election at that meeting;

- (2) he or she has been nominated by the directors for election at that meeting;
- (3) if the person is a member, he or she has at least 30 days before the meeting served on the company a notice signed by him or her signifying his or her desire to be a candidate for election at that meeting; or
- (4) whether or not the person is a member, some member intending to nominate him or her for election at that meeting has at least 30 days before the meeting served on the company a notice signed by the member and signifying the member's intention to nominate the person for election, which is accompanied by a notice signed by the person and signifying his or her consent to the nomination.

7.28.2 Vacation of office

In addition to the circumstances prescribed by the Corporations Act, the office of a director becomes vacant if the director:

- (a) 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;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
- (c) is convicted on indictment of an offence and the directors do not within 1 month after that conviction resolve to confirm the director's appointment or election (as the case may be) to the office of director;
- (d) fails to attend meetings of the directors for more than 3 consecutive months without leave of absence from the directors; or
- (e) resigns by notice in writing to the company.

7.38.3 Remuneration of directors

- (a) Each director is entitled to such remuneration out of the funds of the company as the directors determine, but the remuneration of non-executive directors may not exceed in aggregate in any financial year the amount fixed by the company in general meeting for that purpose.
- (b) The remuneration of a director:
 - (1) may be a stated salary or a fixed sum for attendance at each meeting of directors or both; or
 - (2) may be a share of a fixed sum determined by the company in general meeting to be the remuneration payable to all directors, which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally,

and if it is a stated salary under rule 8.3(b)(1) or a share of a fixed sum under rule 8.3(b)(2), will be taken to accrue from day to day.
- (c) The remuneration payable by the company to a director (other than a managing director, deputy managing director or executive director) must not include a commission on, or percentage of, profits or operating revenue.

- (d) In addition to his or her remuneration under rule 8.3(a), a director is entitled to be paid all travelling and other expenses properly incurred by that director 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.
- (e) 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 under rule 8.3(a).
- (f) Nothing in rule 8.3(a) restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under rule 8.3(a).
- (g) The directors may:
 - (1) at any time after a director dies or otherwise ceases to hold office as a director, pay to the director or a legal personal representative, spouse, relative or dependant of the director, in addition to the remuneration of that director under rule 8.3(a), a pension or lump sum payment in respect of past services rendered by that director; and
 - (2) cause the company to enter into a contract with the director for the purpose of providing for or giving effect to such a payment.
- (h) The directors may establish or support, or assist in the establishment or support of, funds and trusts to provide pension, retirement, superannuation or similar payments or benefits to or in respect of the directors or former directors.
- (i) For the purposes of this constitution the amount fixed by the company as remuneration for a director will not include any amount paid by the company or related body corporate:
 - (1) to a superannuation, retirement or pension fund for a director so that the company is not liable to pay the superannuation guarantee charge or similar statutory charge; or
 - (2) for any insurance premium paid or agreed to be paid for a director under rule 10.5.

7.48.4 Director need not be a member

- (a) A director is not required to hold any shares in the company to qualify for appointment.
- (b) A director is entitled to attend and speak at general meetings even though that director is not a member of the company.

7.58.5 Interested directors

- (a) A director may hold any other office or place of profit (other than auditor) in the company or any related body corporate in conjunction with his or her 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.

- (b) 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.
- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officers of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (d) A director is not disqualified merely because of being a director from contracting with the company in any respect including, without limitation:
 - (1) selling any property to, or purchasing any property from, the company;
 - (2) lending any money to, or borrowing any money from, the company with or without interest and with or without security;
 - (3) guaranteeing the repayment of any money borrowed by the company for a commission or profit;
 - (4) underwriting or guaranteeing the subscription for securities in the company or 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, for a commission or profit; or
 - (5) being employed by the company or acting in any professional capacity (other than auditor) on behalf of the company.
- (e) 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 because of the fiduciary obligations arising out of that office.
- (f) 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 because of the fiduciary obligations arising out of that office.
- (g) Subject to rule 8.5(h), a director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:

- (1) 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;
 - (2) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
 - (3) sign any document relating to that contract or arrangement or proposed contract or arrangement the company may execute.
- (h) Rule 8.5(g) does not apply if, and to the extent that, it would be contrary to the Corporations Act or, while the company is a listed company, the Listing Rules.
- (i) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate and any regulations made under this constitution will bind all directors.

7.68.6 Powers and duties of directors

- (a) 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, this constitution or while the company is a listed company, the Listing Rules, to be exercised by the company in general meeting.
- (b) Without limiting the generality of rule 8.6(a), the directors may exercise all the powers of the company to borrow or otherwise raise money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The 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.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
 - (1) 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;
 - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.

- (f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

7.78.7 Proceedings of directors

- (a) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other electronic means of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and the rules 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 other electronic means.
- (c) A director participating in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is to be taken to be held at the place determined by the chairperson of the meeting provided that at least 1 of the directors involved was at that place for the duration of the meeting.

7.88.8 Convening of meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

7.98.9 Notice of meetings of directors

- (a) 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:
 - (1) a director, other than a director on leave of absence approved by the directors; or
 - (2) an alternate director appointed under rule 8.14 by a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
 - (1) must specify the time and place of the meeting;
 - (2) need not state the nature of the business to be transacted at the meeting;
 - (3) may be given immediately before the meeting;
 - (4) may be given in person or by post or by telephone, fax or other electronic means; and
 - (5) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.

- (c) A director or alternate director may waive notice of any meeting of directors by notifying the company to that effect in person or by post or by telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
 - (1) the non-receipt or failure occurred by accident or error;
 - (2) before or after the meeting, the director or an alternate director appointed by the director:
 - (A) has waived or waives notice of that meeting under rule 8.9(c); or
 - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, or by telephone, fax or other electronic means; or
 - (3) the director or an alternate director appointed by the director attended the meeting.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, an alternate director of a director on leave of absence approved by the directors does not invalidate any act, matter or thing done or resolution passed at the meeting if:
 - (1) the non-receipt or failure occurred by accident or error;
 - (2) before or after the meeting, the alternate director or the director who appointed the alternate director:
 - (A) has waived or waives notice of that meeting under rule 8.9(c); or
 - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, or by telephone, fax or other electronic means; or
 - (3) the alternate director or the director who appointed the alternate director attended the meeting.
- (f) Attendance by a person at a meeting of directors waives any objection that person and:
 - (1) if the person is a director, any alternate director appointed by that person; or
 - (2) if the person is an alternate director, the director who appointed that person as alternate director,
 may have to a failure to give notice of the meeting.

7.108.10 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum consists of:

- (1) if the directors have fixed a number for the quorum, that number of directors; and
- (2) in any other case, 3 directors,
present at the meeting of directors.
- (c) If there is a vacancy in the office of a director then, subject to rule 8.10(d), the remaining director or directors may act.
- (d) If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors or is less than the minimum number of directors fixed under this constitution, the remaining director or directors must act as soon as possible:
 - (1) to increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this constitution; or
 - (2) to convene a general meeting of the company for that purpose,
and, until that has happened, must only act if and to the extent that there is an emergency requiring them to act.

7.118.11 Chairperson and deputy chairperson of directors

- (a) The directors may elect 1 of the directors to the office of chairperson of directors and may determine the period for which that director is to be chairperson of directors.
- (b) The directors may elect 1 of the directors to the office of deputy chairperson of directors and may determine the period for which that director is to be deputy chairperson of directors.
- (c) The office of chairperson of directors or deputy chairperson of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the director holding that office for the purposes of rule 8.3(e).
- (d) The chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of directors.
- (e) If at a meeting of directors:
 - (1) there is no chairperson of directors;
 - (2) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,
 then if the directors have elected a deputy chairperson of directors, the deputy chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as the chairperson of the meeting.
- (f) Subject to rules 8.11(d) and (e), if at a meeting of directors:
 - (1) there is no deputy chairperson of directors;

- (2) the deputy chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
- (3) the deputy chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

the directors present must elect 1 of themselves to be chairperson of the meeting.

7.128.12 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) 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.
- (c) Subject to rule 8.12(d), in the case of an equality of votes upon any proposed resolution the chairperson of the meeting, in addition to his or her deliberative vote, has a casting vote.
- (d) Where only 2 directors are present or qualified to vote at a meeting of directors and there is an equality of votes upon any proposed resolution:
 - (1) the chairperson of the meeting will not have a second or casting vote; and
 - (2) the proposed resolution is taken as having been lost.

7.138.13 Written resolutions

- (a) If:
 - (1) all of the directors, other than:
 - (A) any director on leave of absence approved by the directors;
 - (B) any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (C) any director who the directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
 - (2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.
- (b) For the purposes of rule 8.13(a):

- (1) the meeting is to be taken as having been held:
 - (A) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
 - (B) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
 - (2) 2 or more separate documents in identical terms each of which is assented to by 1 or more directors are to be taken as constituting 1 document; and
 - (3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, or by telephone, fax or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

7.148.14 Alternate directors

- (a) A director may, with the approval of the directors, appoint a person to be the director's alternate director for such period as the director thinks fit.
- (b) An alternate director may, but need not, be a member or a director of the company.
- (c) One person may act as alternate director to more than 1 director.
- (d) An alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
- (e) An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (f) In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise and the exercise of any such power by the alternate director is to be taken to be the exercise of the power by the appointer.
- (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- (h) The appointment of an alternate director may be terminated at any time by the appointer even though the period of the appointment of the alternate director has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take effect unless and until the company has received notice in writing of the appointment or termination.

- (j) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this constitution.
- (k) In determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
- (l) An alternate director is entitled to be paid such remuneration as the directors think fit, either in addition to or in reduction of the remuneration payable to the director for whom the alternate director acts as alternate.
- (m) An alternate director is not entitled to be remunerated by the company for his or her services as alternate director except as provided in rule 8.14(l).
- (n) An alternate director, while acting as a director, is responsible to the company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.

7.158.15 Committees of directors

- (a) The directors may delegate any of their powers to a committee or committees consisting of such number of directors as they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The rules applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purposes of rule 8.3(e).

7.168.16 Delegation to individual directors

- (a) The directors may delegate any of their powers to 1 director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) Acceptance of such a delegation may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 8.3(e).

7.178.17 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as the case may be) when the act was done.

89 Executive officers

8.19.1 Managing directors

- (a) The directors may appoint 1 or more of the directors to the office of managing director.
- (b) A managing director's appointment as managing director automatically terminates if the managing director ceases to be a director.

8.29.2 Deputy managing directors

- (a) The directors may appoint 1 or more of the directors to the office of deputy managing director.
- (b) A deputy managing director's appointment as deputy managing director automatically terminates if the deputy managing director ceases to be a director.

8.39.3 Executive directors

- (a) A reference in this rule 9.3 to an executive director is a reference to a director who is also an officer of the company or of a related body corporate in a capacity other than director, managing director or deputy managing director.
- (b) The directors may confer on an executive director such title as they think fit.
- (c) An executive director may be appointed on the basis that the executive director's appointment:
 - (1) as a director automatically terminates if the executive director ceases to be an officer of the company or of a related body corporate in a capacity other than director; or
 - (2) as an officer of the company or of a related body corporate in a capacity other than director automatically terminates if the executive director ceases to be a director.

8.49.4 Associate directors

- (a) The directors may appoint 1 or more associate directors.
- (b) The directors may confer on an associate director such title as they think fit.
- (c) Even though the word "director" may appear in an associate director's title, an associate director is not to be taken to be a director of the company and is not entitled:
 - (1) to attend any meeting of directors except by the invitation and with the consent of the directors; or

- (2) to vote at any meeting of directors.

8.59.5 Secretaries

- (a) The directors must appoint at least 1 secretary and may appoint additional secretaries.
- (b) The directors may appoint 1 or more assistant secretaries.

8.69.6 Provisions applicable to all executive officers

- (a) A reference in this rule 9.6 to an executive officer is a reference to a managing director, deputy managing director, executive director, associate director, secretary or assistant secretary appointed under this rule 9.
- (b) The appointment of an executive officer may be for such period, at such remuneration and upon such conditions as the directors think fit.
- (c) The remuneration payable by the company to an executive officer who is also a director must not include a commission on, or percentage of, operating revenue.
- (d) Subject to any contract 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.
- (e) The directors may:
- (1) 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;
 - (2) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (f) An executive officer is not required to hold any shares to qualify for appointment.
- (g) An act done by a person acting as an executive officer is not invalidated by reason only of:
- (1) a defect in the person's appointment as an executive officer; or
 - (2) the person being disqualified to be an executive officer,
- if that circumstance was not known by the person when the act was done.

910 Indemnity and insurance

9.110.1 Persons to whom rules 10.2 and 10.3 apply

Rules 10.2 and 10.3 apply:

- (a) to each person who is or has been a director, alternate director or executive officer (within the meaning of rule 9.6(a) of the company; and

- (b) to such other officers or former officers of the company or of its related bodies corporate as the directors in each case determine.
- (each an **Officer** for the purposes of this rule).

9.210.2 Indemnity

Subject to rule 10.3, the company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as an officer of the company, including without limitation:

- (a) a Liability for negligence; and
- (b) a Liability for reasonable legal costs.

9.310.3 Limit on indemnity

- (a) The indemnity in rule 10.2 does not operate in relation to any Liability which:
 - (1) is a Liability to the company or any of its related bodies corporate;
 - (2) is a Liability for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H of the Corporations Act; or
 - (3) arises out of conduct of the Officer which was not in good faith, or which involves wilful misconduct, gross negligence, reckless misbehaviour or fraud,provided that this rule 10.3(a) does not apply to a Liability for legal costs.
- (b) The indemnity in rule 10.2 does not operate in relation to legal costs incurred by the Officer in defending an action for a Liability if the costs are incurred:
 - (1) in defending or resisting proceedings in which the Officer is found to have a Liability referred to in rule 10.3(a);
 - (2) in defending or resisting criminal proceedings in which the Officer is found guilty;
 - (3) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established. For the avoidance of doubt, this does not include costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order; or
 - (4) in connection with proceedings for relief to the Officer under the Corporations Act in which the court denies the relief.
- (c) If there is any appeal in relation to any proceedings referred to in rule 10.3(b), it is the outcome of the final appeal that is relevant for the purposes of rule 10.3(b).
- (d) The indemnity in rule 10.2:

- (1) does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void, unenforceable or not permitted by law; and
- (2) does not operate in respect of any Liability of the Officer to the extent that Liability is covered by insurance.

9.410.4 Extent of indemnity

The indemnity in rule 10.2:

- (a) is enforceable without the Officer having to first incur any expense or make any payment;
- (b) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the relevant group company; and
- (c) applies to Liabilities incurred both before and after the date of this constitution.

9.510.5 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for each Officer against any Liability incurred by the Officer as an officer of the company or of a related body corporate including, but not limited to, a Liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

9.610.6 Savings

Nothing in rule 10.2 or 10.3:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply.

1011 Winding up

10.111.1 Distribution of surplus

Subject to this constitution and to the rights or restrictions attached to any shares or class of shares:

- (a) if the company is wound up and the property of the company is more than sufficient:
 - (1) to pay all of the debts and liabilities of the company; and
 - (2) the costs, charges and expenses of the winding up,

the excess must be divided among the members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;

- (b) for the purpose of calculating the excess referred to in rule 11.1(a), any amount unpaid on a share is to be treated as property of the company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under rule 11.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under rule 11.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the company.

10.211.2 Division of property

- (a) If the company is wound up, the liquidator may, with the sanction of a special resolution:
 - (1) divide among the members the whole or any part of the property of the company; and
 - (2) determine how the division is to be carried out as between the members or different classes of members.
- (b) Any division under rule 11.2(a) may be otherwise than in accordance with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under rule 11.2(a) is otherwise than in accordance with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Act.
- (d) If any of the property to be divided under rule 11.2(a) includes securities with a liability to calls, any person entitled under the division to any of the securities may within 10 days after the passing of the special resolution referred to in that rule, by notice in writing direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds and the liquidator must, if practicable, act accordingly.
- (e) Nothing in this rule 11.2 derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (f) Rule 5.3 applies, so far as it can and with such changes as are necessary, to a division by a liquidator under rule 11.2(a) as if references in rule 5.3 to the directors and to a distribution or capitalisation were references to the liquidator and to the division under rule 11.2(a) respectively.

11.12 Minutes and records

11.12.1 Minutes of meetings

- (a) The directors must ensure minutes of proceedings and resolutions of general meetings and of meetings of directors (including committees of directors) are recorded in books kept for the purpose, within 1 month after the relevant meeting is held.
- (b) The directors must ensure that the company records in the minutes of a meeting in respect of each resolution in the notice of meeting;
 - (1) the total number of proxy votes exercisable by all validly appointed proxies; and
 - (2) how many proxy votes were for, against or abstained from the resolution or were to vote at the proxy's discretion.
- (c) If a poll is taken on the resolution, in addition to the information in rules 12.1-(b)(1) and (2), the minutes must also record the total number of votes cast on the poll, and the number of votes for, against and abstaining from the resolution.

11.12.2 Minutes of resolutions passed without a meeting

The directors must ensure minutes of resolutions passed by directors (and committees of directors) without a meeting are recorded in books kept for that purpose within 1 month after the resolution is passed.

11.12.3 Signing of minutes

- (a) The minutes of a meeting must be signed within a reasonable time by the chairperson of the meeting or the chairperson of the next meeting.
- (b) The minutes of the passing of a resolution without a meeting must be signed by a director within a reasonable time after the resolution is passed.

11.12.4 Minutes as evidence

A minute that is recorded and signed under rules 12.1, 12.2 and 12.3 is evidence of the proceeding or resolution to which it relates unless the contrary is proved.

11.12.5 Inspection of records

- (a) The directors must ensure the minute books for general meetings are open for inspection by members free of charge.
- (b) Subject to rule 12.5(a) the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of members (other than directors).
- (c) A member (other than a director) does not have the right to inspect any books, records or documents of the company except as provided by law or authorised by the directors.

12.13 Execution of documents

12.113.1 Manner of execution

The company may execute a document if the document is signed by:

- (a) 2 directors; or
- (b) a director and a secretary.

12.213.2 Common seal

The company may have a common seal. If the company has a common seal, rules 13.3 to ~~12.13.6~~ will apply.

12.313.3 Safe custody of seal

The directors must provide for the safe custody of the seal.

12.413.4 Use of seal

- (a) The 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 seal.
- (b) The authority to use the seal may be given before or after the seal is used.
- (c) Subject to rule ~~12.6~~13.6, until the directors otherwise determine, every document to which the seal is fixed must be signed by:
 - (1) 2 directors;
 - (2) a director and a secretary; or
 - (3) a director and another person appointed by the directors to countersign that document or a class of documents in which that document is included.

12.513.5 Seal register

- (a) The company may keep a seal register. If the company does keep a seal register the company must enter in the register particulars of any document on which the seal is fixed (other than a certificate for securities of the company), giving in each case:
 - (1) the date of the document;
 - (2) the names of the parties to the document;
 - (3) a short description of the document; and
 - (4) the names of the persons signing the document under rule 13.4(c)~~13.4(e)~~.
- (b) The register must be produced at meetings of directors for confirmation of the use of the seal since confirmation was last given under this rule 13.5.
- (c) Failure to comply with rules 13.5(a) or (b) does not invalidate any document to which the seal is properly fixed.

12.613.6 Duplicate seal

- (a) The company may have 1 or more duplicate seals for use in place of its common seal outside the state or territory where its common seal is kept. Each duplicate seal must be a facsimile of the common seal of the company with the addition on its face of the words “duplicate seal” and the name of the place where it is to be used.
- (b) A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the company.

1314 Notices

13.114.1 Notices by the company to members

- (a) A notice may be given by the company to a member:
 - (1) by serving it personally at, or by sending it by post in a prepaid envelope to, the member’s address as shown in the register of members or such other address, or by sending it to the fax number or electronic address the member has supplied to the company for the giving of notices; or
 - (2) if the member does not have a registered address and has not supplied another address to the company for the giving of notices, by exhibiting it at the registered office of the company.
- (b) A notice may be given by the company to the joint holders of a share by giving the notice in the manner authorised by rule 14.1(a) to the joint holder first named in the register of members in respect of the share.
- (c) A notice may be given by the company to a person entitled to a share as a result of a transmission event by serving it or sending it in the manner authorised by rule 14.1(a)(1) addressed to the name or title of the person, at or to such address, fax number or electronic address supplied to the company for the giving of notices to that person, or if no address, fax number or electronic address has been supplied, at or to the address, fax number or electronic address to which the notice might have been sent if the relevant transmission event had not occurred.
- (d) The fact that a person has supplied a fax number or electronic address for the giving of notices does not require the company to give any notice to that person by fax or electronically.
- (e) A notice given to a member in accordance with rules 14.1(a) or (b) is, despite the occurrence of a transmission event and whether or not the company has notice of that occurrence:
 - (1) duly given in respect of any shares registered in that person’s name, whether solely or jointly with another person; and
 - (2) sufficient service on any person entitled to the shares as a result of the transmission event.

- (f) A notice given to a person who is entitled to a share as a result of a transmission event is sufficient service on the member in whose name the share is registered.
- (g) Any person who, because of a transfer of shares, becomes entitled to any shares registered in the name of a member is bound by every notice which, before that person's name and address is entered in the register of members in respect of those shares, is given to the member in accordance with this rule 14.1.
- (h) A signature to any notice given by the company to a member under this rule 14.1 may be in writing or a facsimile printed or affixed by some mechanical, electronic or other means.
- (i) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

13.214.2 Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any director or alternate director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's or alternate director's usual residential or business address, or such other address, or by sending it to the fax number or electronic address, as the director or alternate director has supplied to the company for the giving of notices.

13.314.3 Notices by members or directors to the company

Subject to this constitution, a notice may be given by a member, director or alternate director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by sending it to the principal fax number of the company at its registered office.

13.414.4 Notices posted to addresses outside the Commonwealth

A notice sent by post to an address outside the Commonwealth must be sent by airmail, fax or in another way that ensures it is received quickly.

13.514.5 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (1) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by fax or electronic means, service of the notice is to be taken to be effected on the day after the date it is sent.
- (c) Where the company gives a notice under rule 14.1(a)(2) by exhibiting it at the registered office of the company, service of the notice is to be taken to be effected when the notice was first so exhibited.

13.614.6 Other communications and documents

Rules 14.1 to 14.5 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

13.714.7 Notices in writing

A reference in this constitution to a notice in writing includes a notice given by fax or electronic means.

1415 General

14.115.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State of Queensland, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

14.215.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

15Power of the directors to require information

- ~~(a) A director or company secretary may, by notice in writing, require information from any member for the purpose of determining whether that person or any other person has, or is taking action to acquire or assist in acquiring, a Prohibited Interest.~~
- ~~(b) A notice under rule 15(a) must:
 - ~~(1) be signed by a director or company secretary;~~
 - ~~(2) outline the information required to be provided to the company (which may be determined by the directors from time to time);~~
 - ~~(3) state that the information required by the notice must be provided within 7 days of the date of the notice; and~~
 - ~~(4) specify whether the person on whom the notice is served is required to verify the information by statutory declaration.~~~~
- ~~(c) The Directors must give a notice under rule 15(a) to a person whom they have reasonable grounds to believe has, or is taking action to acquire or assist in acquiring, a Prohibited Interest.~~

16 Enforcement of prohibition on Prohibited Interests

- (a) If, under clause 21 of the BBIT Trust Deed, the trustee of BBIT is required to sell, and sells, a 'Unit' (as defined in the BBIT Trust Deed) that a member holds in BBIT (BBIT Unit), any director or company secretary is authorised to execute all such documents and instruments of transfer and do all such things as may be necessary to sell any shares held by the member as a component of a Stapled Security of which the BBIT Unit is also a component.~~The directors may, by resolution, suspend any voting rights (including the rights of a member under this constitution to vote at any general meeting of members) and rights to receive or participate in any dividend or other distribution to or entitlement of members (including a bonus issue or other pro rata offer) attaching to a share held by a Defaulting Shareholder as the directors may determine.~~
- ~~(b) A director or company secretary may, by notice in writing to a Defaulting Shareholder, require the Defaulting Shareholder to dispose of any shares held by the Defaulting Shareholder as are specified in the notice to a person other than a person who would be a Defaulting Shareholder as a consequence of that transfer within such period as is specified in the notice. While the company is listed, the period specified in the notice must be a period of at least 28 days or such lesser period as the ASX may agree to in writing. If the shares specified in the notice are not disposed of by the Defaulting Shareholder within the period specified in that notice, any director or company secretary may execute all such documents and instruments of transfer and do all such things as may be necessary to sell and transfer any shares held by the Defaulting Shareholder to such person or persons as the Director or company secretary think fit.~~
- (e)(b) The proceeds of any sale made by a director or company secretary under rule 17(b)16(a) must be applied in the following order:
- (1) in payment of the costs of the sale;
 - (2) in payment of any surplus to the former member whose shares were sold.
- (d)(c) The company, the directors (or any of them) or a company secretary will not be liable for anything done in good faith in the exercise or purported exercise of a power under the preceding provisions of rule 15 or this rule 1616.

Schedule 1— Prohibited Interest

1 Definitions

In this Schedule 1:

Affiliate has the meaning given to “associate” by sections 10, 11, 12, 15 and 16 of the Corporations Act 2001 as if:

- (a) ~~to the extent that any of those sections purports to be an exclusive or exhaustive definition of “associate”, that section is not an exclusive or exhaustive definition;~~
- (b) ~~the words of section 12(1) appearing after the words “in relation to a designated body” were deleted and replaced with a full stop; and~~
- (c) ~~for the purposes of section 15(1), the matter to which the associate reference relates is:~~
 - (1) ~~any investment in the Trust or in the Dalrymple Bay Coal Terminal in Queensland; or~~
 - (2) ~~the control of the Trustee or the company; or~~
 - (3) ~~access to the Dalrymple Bay Coal Terminal in Queensland or access to the services that Dalrymple Bay Coal Terminal provides; or~~
 - (4) ~~the control of the operations of Dalrymple Bay Coal Terminal in Queensland;~~

~~with the intent that any person will be regarded as being an Affiliate of a primary person for the purposes of this Schedule if they would, in the circumstances to which those sections relate, be an associate of that primary person for any reason within those sections. Despite any other provision of this document, the reference to any part of the Corporations Act 2001 in this definition of “Affiliate” is a reference to:~~

- (d) ~~that part of Corporations Act 2001 as in force at the date of the incorporation of the company, as amended or replaced by any statute where that amendment or replacement has been approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783); and~~
- (e) ~~if all or a relevant part of the Corporations Act 2001 is repealed, the Corporations Act 2001 (or the relevant part of it) as in force at the date of the incorporation of the company, as amended or replaced by any statute where that amendment or replacement has been approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783), and was in force immediately before such repeal;~~

Approved Financial Institution means:

- (a) ~~an authorised deposit-taking institution within the meaning of section 5(1) of the Banking Act 1959 (Cth) which has net assets of at least the Base Amount;~~
- (b) ~~a body corporate authorised to carry on insurance business under the Insurance Act 1973 (Cth) which has net assets of at least the Base Amount;~~

~~(c) a life company registered under the Life Insurance Act 1995 (Cth) which has net assets of at least the Base Amount;~~

~~(d) a body registered under the Financial Corporations Act 1974 (Cth) which has net assets of at least the Base Amount;~~

~~(e) the trustee of:~~

~~(1) a superannuation fund;~~

~~(2) an approved deposit fund;~~

~~(3) a pooled superannuation trust; or~~

~~(4) a public sector superannuation scheme,~~

~~within the meaning of the Superannuation Industry (Supervision) Act 1993 (Cth), where the trust, fund or scheme has net assets of at least the Base Amount, and which is not:~~

~~(1) an entity the business of which is related to handling, storage or transportation of goods;~~

~~(2) Controlled by an entity the business of which is related to handling, storage or transportation of goods; or~~

~~(3) an entity that has an Affiliate (other than the Trustee or the company) the business of which is related to handling, storage or transportation of goods;~~

~~(f) a corporation (statutory or otherwise) that is incorporated in Australia or an external Territory and is:~~

~~(1) a public authority; or~~

~~(2) an instrumentality or agency of the Crown in right of the Commonwealth of Australia or in right of a State or Territory of the Commonwealth of Australia;~~

~~(g) a foreign entity that, if established or incorporated in Australia, would be covered by any of the preceding paragraphs; or~~

~~(h) any other entity or class of entity approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783),~~

~~that is not a User or an Affiliate of a User.~~

Approved Investor means

~~(a) a person that controls at least the Base Amount (including any amount held under a trust that the person manages) for the purposes of investment and which is not:~~

~~(1) an entity the business of which is related to handling, storage or transportation of goods;~~

~~(2) Controlled by an entity the business of which is related to handling, storage or transportation of goods; or~~

~~(3) an entity that has an Affiliate (other than the Trustee or the company) the business of which is related to handling, storage or transportation of goods; or~~

~~(b) any other entity or class of entity approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783);~~

~~that is not a User or an Affiliate of a User;~~

~~**Base Amount** means \$100,000,000 Escalated at CPI;~~

~~**Change Transaction** means a transaction described in paragraph 2(a) or paragraph 2(b) as the context requires;~~

~~**Controlled** refers to a situation where one entity exercises a power or control over a second entity where that power or control is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of trusts, relevant agreements and practices, or any of them, whether or not they are enforceable;~~

~~**CPI** means the "All Groups" Consumer Price Index published by the Australian Bureau of Statistics for the city of Brisbane (or any comparable index as advised by the Trustee from time to time) for the calendar quarter last published before the relevant date;~~

~~**CPI_{Base}** means the CPI for the Quarter ending 31 March 2001;~~

~~**CPI_n** means the relevant CPI current for the most recent Quarter at the time that a calculation is made under this Schedule 2;~~

~~**Escalated at CPI** in relation to an amount means that amount adjusted, on 15 September 2006 and at five yearly intervals thereafter, by reference to a factor the numerator of which is **CPI_n** and the denominator of which is **CPI_{Base}**;~~

~~**Percentage Interest** means, in the case of a person and the Trust, the proportion (expressed as a percentage) which the total votes attached to voting Units in which that person or an Affiliate of that person has a relevant interest (within the meaning of sections 608 and 609 of the Corporations Act 2001) bears to the total number of votes attached to the voting Units. Despite any other provision of this Constitution, the reference to any part of the Corporations Act 2001 in this definition of Percentage Interest is a reference to:~~

~~(a) that part of Corporations Act 2001 as in force at the date of the incorporation of the company, as amended or replaced by any statute where that amendment or replacement has been approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783); and~~

~~(b) if all or a relevant part of the Corporations Act 2001 is repealed, the Corporations Act 2001 (or the relevant part of it) as in force at the date of the incorporation of the company, as amended or replaced by any statute where that amendment or replacement has been approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783), and was in force immediately before such repeal; and~~

~~**User** means a user of the services of the facility known as the Dalrymple Bay Coal Terminal in Queensland that is a party to an agreement in relation to the use of those services;~~

2 Prohibited Interest

- (a) ~~A person has a Prohibited Interest if as a consequence of a transaction (**Change Transaction**) which does not have the prior written consent of DBCT Holdings Pty Ltd (ACN 096 395 783):~~
- ~~(1) the Percentage Interest in the Trust of the person (not being an Approved Financial Institution or an Approved Investor) increases from nil, or from 5% or less, to more than 5%; or~~
 - ~~(2) the Percentage Interest in the Trust of the person (being an Approved Financial Institution or an Approved Investor) increases from nil, or from 20% or less, to more than 20%;~~
- (b) ~~A person has a Prohibited Interest if as a consequence of a transaction (**Change Transaction**) which does not have the prior written consent of DBCT Holdings Pty Ltd (ACN 096 395 783), by itself or when aggregated with one or more transactions for which the prior written consent of DBCT Holdings Pty Ltd (ACN 096 395 783) has not been obtained:~~
- ~~(1) there is an increase of at least 1% in the Percentage Interest in the Trust of the person (not being an Approved Financial Institution or an Approved Investor) where the person, immediately prior to the Change Transaction, had a Percentage Interest in the Trust of more than 5%;~~
 - ~~(2) there is an increase of at least 1% in the Percentage Interest in the Trust of the person (being an Approved Financial Institution or an Approved Investor) where the person, immediately prior to the Change Transaction, had a Percentage Interest in the Trust of more than 20%.~~
- (c) ~~A person may have a Prohibited Interest even though they are not a party to any Change Transaction.~~
- (d) ~~A person will not be taken to have a Prohibited Interest merely because an agreement is entered into in relation to a Change Transaction if the provisions of the agreement giving effect to the Change Transaction do not become binding on the parties to it until prior written consent to the Change Transaction is obtained from DBCT Holdings Pty Ltd (ACN 096 395 783).~~

Schedule 21 – ASX compliance checklist

Listing Rule / SCH Business Rule reference			Description
1.1 Condition 2, 15.11, Appendix 15A & Appendix 15B		1.31.3 Yes	Constitution to be consistent with the Listing Rules. Does the constitution contain the provisions of Appendix 15A or 15B?
2.1 Condition 1, 2.5 Condition 1 & 6.1		1.31.3	Requirements for securities to be quoted.
2.1 Condition 3		1.31.3	Satisfaction of requirements for securities to be CHESS approved.
3.13		1.31.3, 67.2(a).2(a), 67.6(i).6(i)	Information to be given to ASX about meetings.
3.17, 15.2.1 & 15.2.2		1.31.3	Copies of all documents sent to security holders to be given to ASX.
3.19		1.31.3, 1616	Disclosure about specified ownership limits.
6.2		There is only one class	Entity to have only one class of ordinary securities.
6.3 & 6.4		2.2(g)2.2(g)	Voting rights of preference security holders.
6.5		2.2(c)2.2(e), 2.2(d)2.2(d)	Distribution or dividend rights of preference security holders.
6.6		2.2(d)(2)2.2(d)(2)	Rights of preference security holders about returns of funds or returns of capital.
6.7		1.31.3, 2.2(f)2.2(f)	Rights of preference security holders about notices, reports, accounts and meetings.
6.8		7.8(a)(1)6.8(a)(1)	Voting rights - on a show of hands.
6.9		7.8(a)(2)6.8(a)(2)	Voting rights - on a poll.
6.10		1.4(a)1.4(a)	Removal or change to voting and distribution or dividend rights of security holders.
6.10, 6.12 & SCHBR 8.13	XX	1.41.4	Restricted use of divestment and disenfranchisement provisions in constitutions. CHESS holdings - requirements for notices of divestment.
6.11		5.1(d)4.1(d)	Proportion of dividends (except for NL company), distributions and issues of bonus securities for partly paid securities. Amounts paid in advance of call ignored.

Listing Rule / SCH Business Rule reference			Description
6.13 & SCHBR 11.1	XX	4.73.7	Lien on securities, distributions and dividends restricted to unpaid calls and instalments, amounts owed under employee incentive schemes, and amounts payable by law. Holding lock - liens.
6.24, Appendix 6A & SCHBR 13.7		4.1(b)3.1(b)	Timetables - dividends and distributions, interest on debt securities, calls, expiry of options, conversions of convertible debt securities.
Appendix 6A para 4.1		N/A	Requirements of call notices for NL companies.
Appendix 6A para 5.1		4.1(b)3.1(b)	Requirements of call notices for entities other than NL companies.
7.1		1.31.3	Restriction on issues of securities.
7.10		1.31.3	No interference with issue of securities.
7.24		1.31.3	Reorganisations of issued capital - partly paid shares.
7.26	XX	1.31.3, 4.43.4	Cancellation of forfeited partly paid shares by limited liability company.
7.40, Appendix 7A & SCHBR 13.7		1.31.3	Timetables - bonus issues, pro rata issues, reorganisation of capital.
8.1 & SCHBR 1.5		1.31.3, 65	Compliance with SCH Business Rules.
8.3		1.31.3, 65	CHESS approved securities - Issuer sponsored subregister.
8.4.1		1.31.3, 65	Reorganisations of capital - rejection of transfers if received with old certificate.
8.5, 8.6, 8.7 & 8.14		1.31.3, 65	Statement requirements for holders on Issuer Sponsored Subregister
8.8 & SCHBR 8.6.2		1.31.3, 65	Issue of replacement certificates. Issuer to recognise broker's cancellation of certificates.
8.10 & SCHBR 8.9		6.1(e)5.1(e), 6.25.2	No interference with registration of paper-based transfers or generation of proper SCH transfers.
8.11		1.31.3, 65	Prohibition on use of pre-registration statutory declarations.
8.12		1.31.3, 65	Reservation of securities for takeover offeror.
8.14		1.31.3, 65	Registration of transfers and issue of certificates etc without charge.
8.17		1.31.3, 65	Registry offices to remain open.

Listing Rule / SCH Business Rule reference			Description
8.21, Appendix 8A & SCHBR 13.7		1.31.3	Time limits - sending certificates, marking of transfer forms, conversions between subregisters.
Appendix 8A		1.31.3	CHESS approved securities - conversion from certificated to Issuer sponsored subregister.
10.11		1.31.3	Participation of related parties in new issues.
10.17		8.37.3	Payments to directors of a company. Increase of fees subject to approval. Notice requirements.
10.18 & 10.19		1.31.3	Service agreements.
11.2		1.31.3	Disposal of main undertaking requires approval of holders of ordinary securities.
14.2		1.31.3, 7.96.9	Requirements for proxy forms.
14.3	XX	8.1(l)7.1(f)	Time for acceptance of nominations for election of directors of companies.
14.4		8.17.1	Limit on directors of companies holding office including those appointed to fill casual vacancy and managing directors where more than one.
14.5		8.1(e)7.1(e), 8.1(f)(f)	Election of directors of companies each year.
14.10		8.12(d)7.12(d))	No casting vote by chairman of board of a company where only 2 directors present are entitled to vote.
15.10		14.413.4	Documents for overseas security holders to be sent by air or fax.
15.12.1	XX	2.7(a)2.7(a)	Prohibition on disposal of restricted securities during escrow period.
15.12.2	XX	2.7(b)2.7(b)	Entity must refuse to acknowledge a disposal of restricted securities in escrow period.
15.12.3	XX	2.7(c)2.7(e)	Distribution, dividend and voting rights to end if breach of Listing Rules or restriction agreement.
15.13 & SCHBR 8.13	XX	1.31.3	Restriction on provisions for sale of security holdings of less than a marketable parcel. Requirements for notices of divestment.
15.14	XX	N/A	Prohibition on sanctions or penalties in trust constitution to enforce provisions relating to acquisitions of units above a limit or substantial shareholding.

Listing Rule / SCH Business Rule reference			Description
15.15	XX	N/A	Foreign companies - prohibition on sanctions or penalties to enforce provisions relating to takeovers or substantial shareholdings.
SCHBR definitions of "Record Date" and "End of Day"		No specific reference	Record date.
SCHBR 5.1.2		1.31.3	CHES subregister forms part of principal register.
SCHBR 5.6	XX	2.5(d) 2.5(d)	CHES holdings - maximum 3 joint holders.
SCHBR 5.7	XX	1.31.3	Restricted ability to establish holdings of less than a marketable parcel.
SCHBR 5.8		2.62.6	Recognition of equitable interests.
SCHBR 5.10		1.31.3	Registration date.
SCHBR's 5.11 & 8.3		1.31.3	Subregisters to remain open.
SCHBR's 6.5.4 & 6.6.4		1.31.3	Certain documents to be received by issuers.
SCHBR 8.17		1.31.3	Non-issue of certificates.
SCHBR 8.18		1.31.3	Numbering of certificates.
SCHBR 13.5		1.31.3	Nil paid rights record.
SCHBR 16.6		1.31.3	Completion of takeover transfers.

* If rule is not covered by the constitution, please indicate there is no specific reference.

XX means the rule may require specific provisions to be included or may prohibit the inclusion of certain provisions in the constitution. Alternatively, the rule may allow the constitution to make provision for the matter.

Deed

Babcock & Brown Investor Services Limited
ACN 099 717 638

Constitution of Prime Infrastructure Trust Amending Deed

Babcock & Brown Investor Services Limited

Freehills

MLC Centre Martin Place Sydney NSW 2000 Australia
GPO Box 4227 Sydney NSW 2001 Australia

Sydney Melbourne Perth Brisbane Singapore

Telephone +61 2 9225 5000 Facsimile +61 2 9322 4000
www.freehills.com DX 361 Sydney

Correspondent offices in Hanoi Ho Chi Minh City Jakarta

Table of contents

1	Definitions and interpretation	2
	1.2 Definitions.....	2
2	Operation of this amending deed	2
3	Amendment of the Trust Deed	2
	3.1 Amendment.....	2
	3.2 Binding conditions	3
4	Governing law and jurisdiction	3
	Signing page	4
	Schedule A – Constitution of the Trust	5

Constitution of Prime Infrastructure Trust Amending Deed

Date ►

Between the parties	
Trustee	Babcock & Brown Investor Services Limited ACN 099 717 638 of Level 21, 2 Chifley Square, Sydney, New South Wales.
Recitals	<ol style="list-style-type: none">1 The Prime Infrastructure Trust ARSN 100 375 479 (Trust) is governed by a trust deed dated 29 April 2002 as amended from time to time (Trust Deed) and lodged with the Australian Securities and Investments Commission.2 The Trust is registered as a managed investment scheme under Chapter 5C of the Corporations Act 2001. The constitution of the Trust is contained in the Trust Deed.3 The Constitution was amended by deeds dated 3 May 2002, 8 July 2003, 5 November 2003, 13 September 2004, 24 February 2005, 9 March 2005, 27 April 2005, 16 May 2005, 1 July 2005, 17 August 2007, 8 October 2009 and resolutions of Unitholders on 14 October 2003, 5 November 2008 and 16 November 2009.4 The Trustee wishes to amend the constitution of the Trust in the manner set out in this amending deed.5 Under the Trust Deed and pursuant to section 601GC of the Corporations Act 2001, the Trustee may modify the Trust Deed provided the Trustee reasonably considers the amendment will not adversely affect Unitholders' rights.6 The Trustee reasonably considers the amendments to the Trust Deed contemplated in this amending deed will not adversely affect Unitholders' rights.7 The amendments to the constitution of the Trust set out in this amending deed will be effective on and from the Effective Date.
This deed witnesses as follows:	

1 Definitions and interpretation

- (a) A word or phrase (except as otherwise provided) defined in the Trust Deed has the same meaning when used in this amending deed.
- (b) Clause 1.2 of the Trust Deed applies to this amending deed.

1.2 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Effective Date	is the date on which a copy of this amending deed is lodged with ASIC under section 601GC(2) of the Corporations Act 2001.

2 Operation of this amending deed

Clause 3 of this amending deed shall take effect on and from the Effective Date.

3 Amendment of the Trust Deed

3.1 Amendment

- (a) The Trust Deed as it applies to the Trust is amended (except for clause 2.1 (**Trustee**) and clause 2.3 (**Vesting of Assets in Trustee**), which are not amended or affected by this amending deed in any way) by:
 - (1) deleting the text which is struck through in Schedule A;
 - (2) inserting the text which is underlined in Schedule A; and
 - (3) renumbering the clauses to conform with the clause numbering set out in Schedule A, including consequential amendments of cross references to those clauses.
- (b) The Trustee confirms that clauses 2.1 and 2.3 of the Trust Deed are not replaced, amended or otherwise affected in any way by this deed.
- (c) The Trust Deed as it applies to the Trust and as amended by this amending deed is the constitution of the Trust.

3.2 Binding conditions

This amending deed is binding on the Trustee, each Unitholder and any other person claiming through any of them as if each was a party to this amending deed.

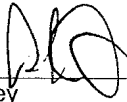
4 Governing law and jurisdiction

This amending deed is governed by the law of New South Wales.

Signing page

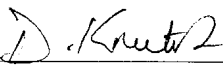
Executed as a deed

Signed sealed and delivered for
Babcock & Brown Investor Services Limited
by its attorney

sign here ▶  _____
Attorney

print name PAUL SIM

in the presence of

sign here ▶  _____
Witness

print name Daniel Krutik

Schedule A – Constitution of the Trust

**Prime Infrastructure Trust (formerly known as Babcock & Brown Infrastructure Trust)
Trust Deed (consolidated to include amendments made by amending deeds dated 3 May 2002, 8 July 2003, 5 November 2003, 13 September 2004, 24 February 2005, 9 March 2005, 27 April 2005, 16 May 2005, 1 July 2005, 17 August 2007 and 8 October 2009 and 19 November and resolutions of Unitholders on 14 October 2003, 5 November 2008 and 16 November 2009)**

Babcock & Brown Investor Services Limited
ACN 099 717 638

Freehills

Table of contents

<i>Clause</i>	<i>Page</i>
1 Definitions and Interpretation	1
1.1 Definitions	1
1.2 Interpretation	9
1.3 Market Price	10
1.4 General compliance provision	13
1.5 Application of Corporations Act, Listing Rules and ASTC Business Rules	13
1.6 Additional Listing Rule requirements	14
1.7 Corporations Act prior to registration	15
1.8 Maintenance of registers prior to listing	15
1.9 Accounting standards	15
2 The Trust	15
2.1 Trustee	15
2.2 Name of Trust	15
2.3 Vesting of assets in Trustee	16
3 Interest of Unitholder	16
3.1 Division into Units	16
3.2 Splitting	16
3.3 Issue of Partly Paid Units	16
3.4 Joint Holders	17
3.5 Benefits and obligations of Unitholders and Optionholders	17
3.6 No further liability	18
3.7 Failure to pay Instalment on Partly Paid Unit	18
3.8 Forfeiture of Units	19
3.9 Sale of Forfeited Unit	19
3.10 Income and Capital of a Forfeited Unit	20
3.11 Notice of sale of Forfeited Unit	20
3.12 Cancellation of Forfeiture	20
3.13 Consequences of sale and continuing liability	20
3.14 Proceeds of sale of Forfeited Unit	21
3.15 Lien for Amounts Owing	21
4 Issue of Options and Units	22
4.1 Number of Units issued	22
4.2 Application for Units or Options	23
4.3 Payments to the Trustee	23
4.4 Allotment	23
4.5 Trustee's discretion on Application	23
4.6 Certificates	24
4.7 Foreign Unitholders	24
5 Power to issue Units and Options	25
5.1 Powers Cumulative	25

5.2	Underwriting of Issue	25
5.3	Issues of Options	25
5.4	Issue of Units pursuant to Options	25
5.5	Issue at Market Price or Current Unit Value	25
5.6	Placements of Units and Options without Unitholder approval	26
5.7	Placements of Units and Options with Unitholder approval	27
5.8	Rights issues of Units	27
5.9	Rights issues of Options	28
5.10	Issues of Units - distribution reinvestment	28
5.11	Issues of Units – exchange of SPARCS	29
5.12	Issues of Units – security purchase plans	29
5.13	Issue of Units under disclosure document dated on or about 7 October 2009	31
5.14	Allocation between Stapled Securities	31
5A	Buy-Back of Units	31
6	Trustee's Powers	32
6.1	General powers of Trustee	32
6.2	Delegation by Trustee	32
6.3	Further powers of Trustee	32
6.4	Small holdings	32
6.5	Fractions	33
7	Trustee's responsibilities and indemnities	34
7.1	No limitation of other undertakings	34
7.2	Limitation of liability	34
7.3	Indemnities	34
7.4	Trustee may rely on advice	35
7.5	Interested dealings by Trustee	35
8	Valuation of the Fund	35
8.1	Valuation of assets	35
8.2	Currency Conversion	36
8.3	Trustee to determine Current Unit Value	36
9	Income and Distributions	36
9.1	Determination of income and reserves	36
9.2	Distribution of income	36
9.3	Distribution Entitlement	36
9.4	Distribution of Entitlement	37
9.5	Distribution Reinvestment Arrangements	38
9.6	Discharge of Trustee's obligation	38
9.7	Trust taxed as a company	38
10	Indemnity of Trustee	38
10.1	Indemnity	39
10.2	Proper performance of duties	39
10.3	Reimbursement of GST	39

11	Indemnity and insurance	40
11.1	Persons to whom clauses 11.2 and 11.4 apply	40
11.2	Indemnity	40
11.3	Extent of indemnity	40
11.4	Insurance	40
11.5	Savings	41
12	Transfers and other transactions	41
12.1	Transfer	41
12.2	Transaction advice after transfer	41
12.3	No General Restriction on Transfer	41
12.4	Power to suspend registration of transfers	42
12.5	Restricted Securities	42
12.6	Transmission of Units and Options	42
12.7	Recognition of Holder	43
12.8	Participation in Transfer Systems	44
13	Options	44
13.1	Terms and Subscription	44
13.2	Nominees	44
13.3	Exercise	44
13.4	Optionholder's Rights and Interest	44
13.5	Redemption or Repurchase	45
14	Retirement or Removal of Trustee	45
14.1	Retirement and removal of Trustee	45
15	Alterations to Trust	46
16	Term of Trust and termination of Trust	46
16.1	Term of Trust	46
16.2	Procedure on winding up of Trust	46
16.3	Audit of accounts of Trust	47
17	Meetings	47
17.1	Meetings	47
17.2	Resolution by Postal Ballot	48
17.3	Passing of resolution	48
18	Complaints	48
18.1	General	48
18.2	Complaints handling	48
18.3	Holder Complaints	48
18.4	Handling of Complaints	48
18.5	Assistance and Information	49
19	Stapling	49
19.1	Power to Staple Securities	49

19.2	Applications, transfers and distributions in specie	49
19.3	Operation of Stapling provisions	50
19.4	Units to be Stapled	50
19.5	Unstapling Date	51
19.6	Transfer of Stapled Securities	51
19.7	Stapled Security Register	52
19.8	Variation of Stapling provisions	52
19.9	Restricted issue of Units of different class	52
20	Power of the Trustee to require information	52
21	Enforcement of prohibition on prohibited interest	53
22	General	54
22.1	Service of notices	54
22.2	Method of payment, repayment or redemption	54
22.3	Binding conditions	55
22.4	Governing law and jurisdiction	55
22.5	Severability	55
	Schedule 2 – Prohibited Interest	60
	Schedule 3 - ASX compliance checklist	64
1189131314141515151515151616161617171818181920202020212122222223232323		
2424242525252526262728282929303030303131323232323343434343535		
35363636363637373738383838393939394040404040414141414242		
4243434343444444444545454546474747474848484848494949505050		
51515252525253535454545460641	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	8
1.3	Market Price	9
1.4	General compliance provision	12
1.5	Application of Corporations Act, Listing Rules and SCH Business Rules	13
1.6	Additional Listing Rule requirements	13
1.7	Corporations Act prior to registration	14
1.8	Maintenance of registers prior to listing	14
1.9	Accounting standards	15
2	The Trust	15
2.1	Trustee	15
2.2	Name of Trust	15
2.3	Vesting of assets in Trustee	15
3	Interest of Unitholder	15
3.1	Division into Units	15
3.2	Splitting	16
3.3	Issue of Partly Paid Units	16
3.4	Joint Holders	16
3.5	Benefits and obligations of Unitholders and Optionholders	17

3.6	No further liability	17
3.7	Failure to pay Instalment on Partly Paid Unit	18
3.8	Forfeiture of Units	18
3.9	Sale of Forfeited Unit	19
3.10	Income and Capital of a Forfeited Unit	19
3.11	Notice of sale of Forfeited Unit	20
3.12	Cancellation of Forfeiture	20
3.13	Consequences of sale and continuing liability	20
3.14	Proceeds of sale of Forfeited Unit	21
3.15	Lien for Amounts Owing	21
4	Issue of Options and Units	22
4.1	Number of Units issued	22
4.2	Application for Units or Options	22
4.3	Payments to the Trustee	22
4.4	Allotment	23
4.5	Trustee's discretion on Application	23
4.6	Certificates	23
4.7	Foreign Unitholders	23
5	Power to issue Units and Options	24
5.1	Powers Cumulative	24
5.2	Underwriting of Issue	24
5.3	Issues of Options	25
5.4	Issue of Units pursuant to Options	25
5.5	Issue at Market Price or Current Unit Value	25
5.6	Placements of Units and Options without Unitholder approval	26
5.7	Placements of Units and Options with Unitholder approval	26
5.8	Rights issues of Units	27
5.9	Rights issues of Options	28
5.10	Issues of Units – distribution reinvestment	28
5.11	Issues of Units – exchange of SPARCS	29
5.12	Issues of Units – security purchase plans	29
5.13	Issues of Units Issues – Unitholder Approval	30
5.14	Issue of Units to Alinta Limited's shareholders	30
5.15	Issue of Units upon conversion of EPS	30
5.16	30	
5.17	Issue of Units under disclosure document dated on or about 7 October 2009	31
5A	Buy-Back of Units	31
6	Trustee's Powers	31
6.1	General powers of Trustee	31
6.2	Delegation by Trustee	32
6.3	Further powers of Trustee	32
6.4	Small holdings	32

7	Trustee's responsibilities and indemnities	33
7.1	No limitation of other undertakings	33
7.2	Limitation of liability	33
7.3	Indemnities	33
7.4	Trustee may rely on advice	34
7.5	Interested dealings by Trustee	34
8	Valuation of the Fund	34
8.1	Valuation of assets	34
8.2	Currency Conversion	35
8.3	Trustee to determine Current Unit Value	35
9	Income and Distributions	35
9.1	Determination of income and reserves	35
9.2	Distribution of income	35
9.3	Distribution Entitlement	35
9.4	Distribution of Entitlement	36
9.5	Distribution Reinvestment Arrangements	37
9.6	Discharge of Trustee's obligation	37
9.7	Trust taxed as a company	37
10	Remuneration of Trustee	37
10.1	Trustee's remuneration	37
10.2	Manager's fees	38
10.3	Waiver of remuneration	38
10.4	Priority of Trustee's remuneration	38
10.5	Indemnity	38
10.6	Proper performance of duties	38
10.7	Form of payment	38
10.8	Reimbursement of GST	38
11	Indemnity and insurance	39
11.1	Persons to whom clauses 11.2 and 11.4 apply	39
11.2	Indemnity	39
11.3	Extent of indemnity	39
11.4	Insurance	39
11.5	Savings	40
12	Transfers and other transactions	40
12.1	Transfer	40
12.2	Transaction advice after transfer	40
12.3	No General Restriction on Transfer	40
12.4	Power to suspend registration of transfers	41
12.5	Restricted Securities	41
12.6	Transmission of Units and Options	41
12.7	Recognition of Holder	42
12.8	Participation in Transfer Systems	43

13	Options	43
	13.1 Terms and Subscription	43
	13.2 Nominees	43
	13.3 Exercise	43
	13.4 Optionholder's Rights and Interest	43
	13.5 Redemption or Repurchase	44
14	Retirement or Removal of Trustee	44
	14.1 Retirement and removal of Trustee	44
15	Alterations to Trust	45
16	Term of Trust and termination of Trust	45
	16.1 Term of Trust	45
	16.2 Procedure on winding up of Trust	45
	16.3 Audit of accounts of Trust	46
17	Meetings	46
	17.1 Meetings	46
	17.2 Resolution by Postal Ballot	47
	17.3 Passing of resolution	47
18	Complaints	47
	18.1 General	47
	18.2 Complaints handling	47
	18.3 Holder Complaints	47
	18.4 Handling of Complaints	47
	18.5 Assistance and Information	48
19	Stapling	48
	19.1 Power to Staple Securities	48
	19.2 Applications, transfers and distributions in specie	48
	19.3 Operation of Stapling provisions	49
	19.4 Units to be Stapled	49
	19.5 Unstapling Date	50
	19.6 Transfer of Stapled Securities	50
	19.7 Stapled Security Register	51
	19.8 Variation of Stapling provisions	51
	19.9 Restricted issue of Units of different class	51
20	Power of the Trustee to require information	51
21	Enforcement of prohibition on prohibited interest	52
22	General	53
	22.1 Service of notices	53
	22.2 Method of payment, repayment or redemption	53
	22.3 Binding conditions	54

22.4	Governing law and jurisdiction	54
22.5	Severability	54
Schedule 2	Prohibited Interest	59
Schedule 3	ASX compliance checklist	63

This trust deed

is made on 29 April 2002 by:

Babcock & Brown Investor Services Limited

ACN 099 717 638

of Level 37, Chifley Tower, 2 Chifley Square, Sydney, New South Wales

(Trustee)

Recital

The Trustee intends that this trust deed will be the constitution for a unit trust known as the Prime Infrastructure Trust¹. ~~The Trustee intends that this trust may be registered as a managed investment scheme under section 601EB(1) of the Corporations Act.~~

This deed witnesses that:

1 Definitions and Interpretation

1.1 Definitions

(a) In this deed, unless the context otherwise requires:

Application means any of the following, as the case requires:

- (1) an application for Units;
- (2) a notification of the exercise of or application to exercise Options;
or
- (3) an application for Options;

Application Moneys means the amount required to be paid to or the value of any cash or other property to be transferred to the Trustee by an applicant on the making of an Application for Units or Options;

Approved Valuer means a valuer appointed by the Trustee;

ASIC means the Australian Securities and Investments Commission;²

ASTC means the ASX Settlement and Transfer Corporation Pty Ltd ACN 008 504 532;³

ASTC Business Rules means the ASTC settlement rules and any other rules of ASTC which apply while the Units are CHES Approved Securities, each as amended or replaced from time to time;⁴

¹ Name of unit trust changed from Prime Infrastructure Trust to Babcock & Brown Infrastructure Trust by resolution of Trustee on 28 June 2005. Name change to Prime Infrastructure Trust approved by a resolution of Unitholders on 16 November 2009.

² Approved by a resolution of Unitholders on 16 November 2009.

³ Inserted by Amending Deed of 19 November 2009.

⁴ Inserted by Amending Deed of 19 November 2009.

ASX means ~~Australian Stock Exchange~~ ASX Limited and any successor to or the stock exchange operated by it;

Attached Security means a Security (including a Share) which is from time to time Stapled or to be Stapled to a Unit;⁵

Auditor means the auditor from time to time appointed by the Trustee to audit the Trust;

Business Day has the meaning given to that term in the Listing Rules;

BBIL means Babcock & Brown Infrastructure Limited (formerly known as Prime Infrastructure Management Limited) (ACN 100 364 234)⁶;

~~**BBIL Management Services Agreement** means an agreement between the Manager and BBIL whereby the Manager agrees to provide general management and investment services to BBIL.~~

~~**BBIS Management Services Agreement** means an agreement between the Manager and the Trustee whereby the Manager agrees to provide general management and investment services to the Trustee.~~

CHES Approved Securities means securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely, SCH ASTC in accordance with the SCH ASTC Business Rules;

Commonwealth means the Commonwealth of Australia and its external territories;

Company means Babcock & Brown Infrastructure Limited (ACN 100 364 234)⁷;

Compliance Committee means the compliance committee (if any) for the Trust as required by section 601JA of the Corporations Act;

Compliance Plan means the compliance plan for the Trust as required by section 601HA of the Corporations Act;

Corporations Act means the Corporations Act 2001;

Corresponding Number in relation to an Attached Security, means at any time the number of those Attached Securities that are stapled to an issued Unit at that time;⁸

Costs includes costs, charges, fees, expenses, commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments;

Current Unit Value means the amount calculated as follows:

$$CUV = \frac{NAV}{NU}$$

⁵ Approved by a resolution of Unitholders on 16 November 2009.

⁶ Amended by Amending Deed of 1 July 2005.

⁷ Name changed from Prime Infrastructure Management Limited on 1 July 2005.

⁸ Approved by a resolution of Unitholders on 16 November 2009.

where:

CUV is Current Unit Value

NAV is Net Asset Value

NU is the number of Units on Issue;

Defaulting Unitholder means:

- (1) a Holder who has been served with an Information Notice and has not provided to the Trustee the information in accordance with that Information Notice within 7 days of the date of the Information Notice;
- (2) a Holder who, in response to an Information Notice, provides information to the effect that their holding of Units results in the Holder or some other person having a Prohibited Interest (whether or not the Holder was a party to any transaction which resulted in the Holder becoming a Defaulting Unitholder); or
- (3) a Holder whose holding of Units results in that Holder or some other person having a Prohibited Interest (whether or not the Holder was a party to any transaction which resulted in that Holder becoming a Defaulting Unitholder);

Distributable Amount means the amount (if any) determined in accordance with clause 9.3(a);

Distribution Calculation Date means any date the Trustee may determine to be a distribution calculation date from time to time;

Distribution Date means either:

- (1) a day not more than three calendar months after the Distribution Calculation Date for the relevant Distribution Period; or
- (2) if the Trustee determines that it is in the interests of Unitholders to delay the Distribution Date for a particular Distribution Period, the date determined by the Trustee as being the appropriate Distribution Date for that Distribution Period;

Distribution Entitlement means the entitlement to any Distributable Amount determined in accordance with clause 9.3(b);

Distribution Period means:

- (1) for the last Distribution Period, the period beginning on the day after the preceding Distribution Calculation Date to the date of termination of the Trust; and
- (2) in all other circumstances, the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date;

Exercise Price in relation to a Unit issued on exercise of an Option, means the dollar value of the total consideration payable in respect of the issue of that Unit determined in accordance with Part 5;

Financial Year means:

- (1) for the first Financial Year, the period beginning on the date of this deed and ending on 30 June 2002;
- (2) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- (3) in all other circumstances, the 12 month period ending on 30 June in each year;

Foreign Interests means the rights to the Units or Options a Foreign Unitholder would have been entitled to but for clause 4.7(a);

Foreign Unitholder means a Holder whose address appearing in the Register is in a country outside Australia;

Forfeited Unit means a Unit which is forfeited pursuant to clause 3.8(b) or (c);

Fully Paid Unit means a Unit on which the whole of the Issue Price has been paid;

Fund means all the cash, investments, rights and other property of the Trust (including, but not limited to, each Instalment in respect of each Partly Paid Unit);

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world;

Gross Asset Value means the sum of:

- (1) the value of the Fund less any assets of the Fund relating to derivative instruments used for hedging⁹; and
- (2) any other amounts which, in the opinion of the Trustee should be included for the purpose of making a fair and reasonable determination of the value of the Trust on an undiscounted basis, having regard to generally accepted accounting principles;

GST means any goods and services tax or similar value added tax imposed in relation to a supply of any goods, property, service or any other thing;

Holder means a Unitholder or Optionholder (as the context may require);

Information Notice means a notice served under clause 20;

Instalment means, in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and must be paid at the time specified in the Terms of Issue;

⁹ Amended by Amending Deed of 1 July 2005.

Issue Price in relation to a Unit or an Option means the dollar value of the total consideration payable at any time in respect of the issue of that Unit or Option determined in accordance with the clause in Part 5 pursuant to which the Unit or Option was issued and in respect of a Unit issued on the exercise of an Option, means the Exercise Price;

Leases means the real property leases dated 12 September 2001 and the plant lease dated 14 September 2001 under which DBCT Holdings Pty Ltd (ABN 57 096 395 783) granted to Babcock & Brown Investment Services Limited (ABN 11 052 156 082) leases of the Dalrymple Bay Coal Terminal site in Queensland and of certain equipment then or subsequently located on that site. It also includes any lease granted on the renewal of a Lease.

Liabilities means the liabilities in respect of the Trust and includes:

- (1) unpaid administrative costs and expenses including fees of the Trustee;
- (2) accrued charges in respect of or owing in relation to any asset of the Fund;
- (3) amounts required to meet present liabilities;
- (4) amounts of all borrowings;
- (5) any provision for Tax which in the opinion of the Trustee should be taken into account; and
- (6) any other amounts required to meet liabilities or other expenditure (including deferred liabilities) which in the opinion of the Trustee should be taken into account in determining the amount of liabilities ~~in any of the preceding paragraphs;~~

Listed means admitted to the official list of ASX;

Listing Rules means the Listing Rules of ASX and any other rules of ASX which are applicable while the Trust is Listed, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

~~**Manager** means Babcock & Brown Infrastructure Management Pty Ltd (ACN 113 585 229).~~

Market Price has the meaning given in clause 1.3;

Meeting means a meeting of Holders convened in accordance with this deed;

month means calendar month;

Net Asset Value means the Gross Asset Value less the following:

- (1) all amounts required to repay borrowings and to meet Liabilities (including the amount of any provisions the Trustee determines, in consultation with the Auditor, should be made) but excluding

Liabilities (if any) to Unitholders in respect of Units and Liabilities (if any) relating to derivative instruments used for hedging¹⁰;

- (2) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unitholders on the day on which the Net Asset Value is determined; and
- (3) any amount paid in advance of the date on which an Instalment for a Partly Paid Unit is due;

Official Quotation or **Officially Quoted** means official quotation by ASX of the Units or Options, as the case requires;

Operating Income¹¹ means the gross income realised by the Trust from its operations including rent, interest, dividends, distributions, realised (but not unrealised) gains and otherwise less expenses arising in deriving that income including, but not limited to:

- (1) property outgoings;
- (2) repairs and maintenance;
- (3) interest and other borrowing costs;
- (4) fees paid to the Trustee;
- (5) any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust; and
- (6) realised (but not unrealised) losses on disposal of property and investments;

Option means an option granted by the Trustee in respect of unissued Units;

Optionholder means the person for the time being registered as a holder of an Option, including any persons jointly registered;

Paid-up Proportion in relation to a Unit means the fraction determined by dividing the amount to which the Unit has been paid (excluding any amount paid in advance of the date on which an Instalment is due or any other amount credited in respect of the Unit) by the Issue Price of the Unit;

Partly Paid Unit means a Unit in respect of which any portion of its Issue Price remains unpaid;

Prohibited Interest has the meaning given in Schedule 2;

Prospectus means a prospectus lodged under Chapter 6D.2 of the Corporations Act and a product disclosure statement lodged under section 1015B of the Corporations Act or either of them in respect of an issue of Units or Options;

Quarter means each 3 month period ending on the last day of March, June, September and December in each year;

¹⁰ Amended by Amending Deed of 1 July 2005.

¹¹ Amended by Amending Deed of 1 July 2005.

Register means the register of Unitholders or Optionholders maintained by or on behalf of the Trustee pursuant to clause 1.7 or Chapter 2C of the Corporations Act, as the context requires;

Representative, in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act or a corresponding previous law;

~~**SCH** means ASX Settlement and Transfer Corporation Pty Ltd ACN 008 504 532;~~

~~**SCH Business Rules** means the SCH Business Rules and any other rules of SCH which apply while the Units are CHESS Approved Securities, each as amended or replaced from time to time;~~

Security has the meaning given to that term in section 92(1) of the Corporations Act;¹²

Share means an ordinary share in the Company;

SPARCS are Subordinated Prime Adjusting Reset Convertible Securities issued by the SPARCS Issuer pursuant to the SPARCS Trust Deed which provides that in specified circumstances SPARCS may, in accordance with the terms of the SPARCS Trust Deed, be exchanged for Units which form part of a Stapled Security;¹³

SPARCS Issuer means Prime Infrastructure Networks (New Zealand) Limited, a company incorporated in New Zealand and which is a subsidiary of the Company;¹⁴

SPARCS Trust Deed means the trust deed between the SPARCS Issuer, The New Zealand Guardian Trust Company Limited, the Company and the Trustee relating to the issue of SPARCS dated 7 September 2004;¹⁵

Stapled means, in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other;

Stapled Entity means any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to Units;¹⁶

Stapled Security means one Unit and each Attached Security that are Stapled together;

Stapled Security Register means the register of Stapled Securities to be established and maintained by or on behalf of the Trustee in accordance with clause 19.7;

Stapling means the process that results in Units and Attached Securities being Stapled;

¹² Approved by a resolution of Unitholders on 16 November 2009.

¹³ Amended by Amending Deed of 13 September 2004.

¹⁴ Amended by Amending Deed of 13 September 2004.

¹⁵ Amended by Amending Deed of 13 September 2004.

¹⁶ Approved by a resolution of Unitholders on 16 November 2009.

Stapling Date means the date determined by the Trustee to be the first day on which all Units on issue in the Trust will be Stapled to an Attached Security or Attached Securities;

Tax means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Governmental Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above;

Tax Act means the Income Tax Assessment Act (Cth) 1936 and the Income Tax Assessment Act (Cth) 1997;

Terms of Issue in relation to a Unit or an Option means the terms and conditions upon which that Unit or Option is issued (other than those contained in this deed);

Terms of Offer in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option;

Transmission Event means:

- (1) in respect of a Holder who is an individual:
 - (A) the death of the Holder;
 - (B) the bankruptcy of the Holder; or
 - (C) the Holder 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;
- (2) in respect of a Holder who is a body corporate, the dissolution of the Holder or the succession by another body corporate to the assets and liabilities of the Holder;

Trust means the trust constituted under this deed;

Trustee includes the trustee of the Trust for the time being or any other company named in ASIC's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust;

Unit means an undivided interest in the Trust as provided for in this deed;

Unitholder means a person registered as the holder of a Unit, including any persons jointly registered;

Unit Holding means the total number of Units held by a Unitholder;

Units on Issue means the number of Units created under this deed and not cancelled;

Unstapled means, in relation to a Unit, not being Stapled to an Attached Security ; and

Unstapling Date means the date determined by the Trustee to be the Unstapling Date pursuant to clause 19.5.¹⁷

- (b) Unless otherwise specified in this deed, terms defined in the Corporations Act are used in this deed with the same defined meaning.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and underlinings are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
- (e) a reference to a person includes that person's successors and legal personal representatives;
- (f) a reference to a Part, clause or schedule is a reference to a Part and clause of, and a schedule to, this deed and a reference to this deed includes any schedule;
- (g) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to the Listing Rules or the ~~SCH-ASTC~~ Business Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted in respect of the Trust from compliance with those rules;
- (i) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (j) a reference to a document, except the SPARCS Trust Deed, includes an amendment or supplement to, or replacement or novation of, that document;¹⁸
- (k) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (l) a reference to cash includes cheques and bank cheques;
- (m) references to sums of money are to amounts in Australian dollars; and

¹⁷ Amended by a resolution of Unitholders on 16 November 2009.

¹⁸ Amended by Amending Deed of 13 September 2004.

- (n) a reference to the proper performance of a duty is a reference to the proper performance of the duty after all available appeals from each judgment in respect of the matter have been exhausted.

1.3 Market Price¹⁹

- (a) The “Market Price” for a Stapled Security on any Business Day is:
- (1) an amount equal to the average of the daily volume weighted average sale price per Stapled Security of all Stapled Securities sold on the ASX during the 10 trading days immediately preceding the relevant Business Day (whether or not a sale was recorded on any particular day) but does not include:
 - (A) any transaction defined in the ASX Business Rules as a “Special Crossing”;
 - (B) any transaction defined in the ASX Business Rules as a “Crossing” that occurs prior to the commencement of normal trading or during the after-hours adjust phase; or
 - (C) any transaction pursuant to the exercise of Options over Stapled Securities; or²⁰
 - (2) if the Trust is not Listed or the Trustee believes that the calculation in paragraph (1) does not provide a fair reflection of the market price of a Stapled Security, an amount as determined by an Approved Valuer, as being the fair market price of the Stapled Security; or
 - (3) if the issue of Stapled Securities is a pro rata issue for the purposes of the Listing Rules, an amount determined by the Trustee, provided that the Trustee believes on reasonable grounds that the issue price of the Stapled Securities is reasonable having regard to:
 - (A) the circumstances of the relevant offer of Stapled Securities; and
 - (B) the interests of Unitholders,
 and provided that an Approved Valuer which is independent of the Trustee and has experience in arranging issues of the relevant kind in the Australian equity market provides written certification to the Trustee that the issue price of the Stapled Securities is reasonable having regard to those factors and any other factors it considers relevant.²¹
- (b) Notwithstanding clause 1.3(a), for the purposes of:
- (1) clauses 5.5(d)(2) and 5.9(g), the Market Price for a Stapled Security means an amount calculated in a manner which complies with the Corporations Act, is set out in the Terms of Issue and

¹⁹ Amended by Amending Deed of 8 July 2003.

²⁰ Amended by Amending Deed of 5 November 2003.

²¹ Amended by Amending Deed of 13 September 2004.

which in the opinion of an Approved Valuer will approximate the market price of Stapled Securities at or around the relevant date;

- (2) clause 5.6, Market Price means:
- (A) an amount equal to the average of the daily volume weighted average sale price per Stapled Security (rounded to the nearest full cent) of all Stapled Securities sold on the ASX during the 5 trading days immediately preceding the date on which the Stapled Securities were offered or issued but does not include:
- (i) any transaction defined in the ASX Business Rules as a “Special Crossing”;
 - (ii) any transaction defined in the ASX Business Rules as a “Crossing” that occurs prior to the commencement of normal trading or during the after-hours adjust phase; or
 - (iii) any transaction pursuant to the exercise of Options over Stapled Securities; or
- (B) if the Trust is not Listed or the Trustee believes that the calculation in paragraph (A) does not provide a fair reflection of the market price of a Stapled Security, an amount as determined by an Approved Valuer, as being the fair market price of the Stapled Security.
- (3) clause 5.10, Market Price means²²:
- (A) an amount equal to the average of the daily weighted average market price in cents per Stapled Security (rounded to the nearest full cent) of all Securities sold on the ASX over the 10 trading days ending on the trading day which is 3 trading days before the date that the Stapled Securities are to be allotted under any distribution reinvestment arrangement in relation to the relevant distribution but does not include:
- (i) any transaction defined in the ASX Business Rules as a “Special Crossing”; or
 - (ii) any transaction defined in the ASX Business Rules as a “Crossing” that occurs prior to the commencement of normal trading or during the after-hours adjust phase; or
 - (iii) any transaction pursuant to the exercise of Options over Stapled Securities; or
- (B) if the Trust is not Listed or the Trustee believes that the calculation in paragraph (A) does not provide a fair reflection of the market price of a Stapled Security, an

²² Amended by Amending Deed of 24 February 2005.

amount as determined by an Approved Valuer, as being the fair market price of the Stapled Security;

~~(4) the issue of Stapled Securities to the Trustee as part payment of its fees by instalments, under clause 10 and under the Prospectus for the issue of Stapled Securities dated 10 May 2002, Market Price means the amount equal to the average of the daily volume weighted average price per Stapled Security for sales of Stapled Securities on the ASX over the last 20 days of trading of Stapled Securities in respect of the financial year to which the instalment of the fees relates but does not include:~~

~~(i) any transaction defined in the ASX Business Rules as a "Special Crossing";~~

~~(ii) any transaction defined in the ASX Business Rules as a "Crossing" that occurs prior to the commencement of normal trading or during the after hours adjust phase; or~~

~~(iii) any transaction pursuant to the exercise of Options over Stapled Securities;²³~~

(5)(4) clause 5.12, Market Price of a Stapled Security means an amount equal to the average of the daily weighted average market price in cents per Stapled Security (rounded to the nearest full cent) of all Stapled Securities sold on the ASX over the 10 trading days ending on, and including, the trading day which is the closing date for applications under the relevant security purchase plan but does not include:

(i) any transaction defined in the ASX Business Rules as a "Special Crossing"; or

(ii) any transaction defined in the ASX Business Rules as a "Crossing" that occurs prior to the commencement of normal trading or during the after-hours adjust phase; or

(iii) any transaction pursuant to the exercise of Options over Stapled Securities²⁴.

(c) For the purposes of clause 1.3(b)(2) the "relevant ex date" means the first day on which Stapled Securities are traded on the ASX without rights to the distribution which will be applied in paying up Stapled Securities to be issued pursuant to clause 9.5 at an issue price to be calculated by reference to the Market Price over a period which includes that day.

(d) The "Market Price" of an Option on any Business Day must be determined in the same manner as the Market Price for a Stapled Security is determined.

(e) The "Buy-Back Market Price" for:

²³ ~~Amended by a resolution of Unitholders on 14 October 2003 and by Amending Deed of 5 November 2003.~~

²⁴ Amended by Amending Deed of 27 April 2005.

- (1) a Unit on any Business Day is the average of the market price (as that term is defined in the Listing Rules) per Unit of all Units sold on the ASX during the last 5 days on which sales in Units were recorded before the relevant Business Day; or
- (2) if Stapling applies, a Stapled Security on any Business Day is the average of the market price (as that term is defined in the Listing Rules) per Stapled Security of all Stapled Securities sold on the ASX during the last 5 days on which sales in Stapled Securities were recorded before the relevant Business Day.²⁵

1.4 General compliance provision

On and from the date that the Trust becomes a registered scheme:

- (a) a provision of this deed which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency;
- (b) clause 1.4(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this deed; and
- (c) this clause 1.4 prevails over all other provisions of this deed including any that are expressed to prevail over it.

1.5 Application of Corporations Act, Listing Rules and ~~SCH-ASTC~~ Business Rules

- (a) This deed is to be interpreted subject to:
 - (1) the Corporations Act;
 - (2) the Listing Rules, while the Trust is Listed; and
 - (3) the ~~SCH-ASTC~~ Business Rules, while the Units are CHESSE Approved Securities.
- (b) If the Trust is Listed, the following clauses apply:
 - (1) notwithstanding anything contained in this deed, if the Listing Rules prohibit an act being done, the act must not be done;
 - (2) nothing contained in this deed prevents an act being done that the Listing Rules require to be done;
 - (3) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (4) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is deemed to contain that provision;
 - (5) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is deemed not to contain that provision; and

²⁵ Amended by Amending Deed of 17 August 2007.

- (6) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is deemed not to contain that provision to the extent of the inconsistency.
- (c) While the Trust is Listed, the Trustee must comply with the obligations imposed on it under the Listing Rules and the ~~SCH-ASTC~~ Business Rules. This obligation does not detract from or alter the power of the Trustee to cause the Trust to cease to be Listed .
- (d) Unless the contrary intention appears, an expression in a clause that deals with a matter dealt with by a provision of the Corporations Act, the Listing Rules or the ~~SCH-ASTC~~ Business Rules has the same meaning as in that provision.

1.6 Additional Listing Rule requirements

At all times that the Trust is Listed:

- (a) the Trustee must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit except in any of the following cases:
 - (1) an Instalment which is due and payable on that Unit under Part 3 has not been paid;
 - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit has not been deposited in accordance with the Schedule;
 - (3) in the case of the voting right, the Holder became the holder of that Unit after the time determined under section 1109N of the Corporations Act as the “specified time” for deciding who held the Unit for the purpose of the meeting;
 - (4) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
 - (5) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
 - (6) the right is removed or changed under a court order;
- (b) a holder of a Unit must not be divested of that Unit except in any of the following cases:
 - (1) the divestment is under Australian legislation and the mechanism the Trustee adopts for divesting the Unit is set out in the legislation or is approved by ASX as appropriate and equitable;
 - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;
 - (3) the divestment is under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
 - (4) the divestment is under a court order; or

- (5) the divestment is under clause 3.9; and
- (c) the Trustee must not divest a Holder of Units or forfeit Units while those Units are in a “CHESS Holding” as that term is defined in the SCH Business Rules. Without limitation to clause 1.5, at all times that the Trust is Listed the Trustee must comply with ~~SCH~~ASTC Business Rule ~~85.1312~~.

1.7 Corporations Act prior to registration

Whilst and so long as the Trust is not a registered scheme, the Trustee must comply with the following provisions of the Corporations Act as far as the circumstances admit as if the Trust was a registered scheme and the Trustee was the responsible entity of that scheme namely:

- (a) Chapter 2C (Registers);
- (b) Part 2G.4 (Meetings of Members of Registered Managed Investment Schemes); and
- (c) Chapter 2M (Financial Reports and Audit).

1.8 Maintenance of registers prior to listing

Until the Trust is Listed, all Registers must be set up and maintained in the State of Queensland.

1.9 Accounting standards²⁶

To the extent to which:

- (a) the calculation of the Issue Price;
- (b) the amount of any fees payable to the Trustee; or
- (c) the calculation of the Distributable Amount,

may involve the application of generally accepted accounting principles or accounting standards, the principles or standards to be applied are those as generally accepted ~~or in force immediately before 1 January 2005~~.

2 The Trust

2.1 Trustee

Babcock & Brown Investor Services Limited is and agrees to act as Trustee of the Trust.

2.2 Name of Trust

The name of the Trust is the Prime Infrastructure Trust²⁷. The Trustee may change the name of the Trust provided that such change of name must be approved by unanimous resolution of the board of directors of the Trustee.

²⁶ Amended by Amending Deed of 1 July 2005.

2.3 Vesting of assets in Trustee

Each asset of the Fund is vested in, and is held by, the Trustee on behalf of the Unitholders.

3 Interest of Unitholder

3.1 Division into Units

- (a) The beneficial interest in the Fund is divided into Units. No Unit confers an interest in a particular part of the Trust or the Fund.
- (b) A Holder may not:
 - (1) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
 - (2) claim or exercise any right in respect of any asset of the Fund or lodge any caveat or other notice affecting any asset of the Fund; or
 - (3) require that any asset of the Fund be transferred to a Holder.
- (c) Holders may not give any directions to the Trustee (whether at a meeting convened pursuant to sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Trustee to do or omit doing anything which may result in:
 - (1) the Trust ceasing to comply with the Listing Rules or the Trustee acting inconsistently with clause 4.7; or
 - (2) the exercise of any discretion expressly conferred on the Trustee by this deed or the determination of any matter which under this deed requires the agreement of the Trustee.

3.2 Splitting

The Trustee may consolidate or split the Units. The Trustee must in respect of any such consolidation or split:

- (a) immediately amend the Register to record the consolidation or split;
- (b) notify the Unitholder within 30 days of the consolidation or split; and
- (c) ensure that each Unit is consolidated or split on the same basis as each other Unit.

3.3 Issue of Partly Paid Units

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units, the Issue Price of which is payable on issue and by Instalments.

²⁷ Name changed from Prime Infrastructure Trust to Babcock & Brown Infrastructure Trust by resolution of Trustee on 28 June 2005. Name change to Prime Infrastructure Trust approved by a resolution of Unitholders on 16 November 2009.

- (b) The Trustee must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The whole of the unpaid Issue Price of each Partly Paid Unit is payable immediately upon termination of the Trust.
- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue and in accordance with this deed.
- (e) A Partly Paid Unit which forms part of a Stapled Security will not be credited or deemed to be fully paid until:
 - (1) the Trustee has received all moneys unpaid in relation to that Unit; and
 - (2) each Stapled Entity has received any amounts unpaid in relation to each Attached Security to which it is Stapled.

3.4 Joint Holders

Where two or more persons are registered as the Holders of a Unit or an Option (“joint holders”) they are, for the purposes of the administration of the Trust and not otherwise, deemed to hold the Unit or Option as joint tenants with rights of survivorship, on the following conditions:

- (a) the joint holders and their respective legal personal representatives are jointly and severally liable in respect of all payments, including payment of any Instalment that is due and payable and Tax, which ought to be made in respect of the Unit or Option;
- (b) subject to clause 3.4(a), on the death of a joint holder, the survivor or survivors are the only person or persons whom the Trustee will recognise as having any title to the Unit or Option, but the Trustee may require any evidence of death which it thinks fit;
- (c) any one of the joint holders may give an effective receipt which will discharge the Trustee in respect of any payment or distribution in respect of the Unit or Option;
- (d) except where otherwise required under the SCH-ASTC Business Rules, the Trustee is not bound to register more than three persons as joint holders of the Unit or Option;
- (e) the Trustee is not bound to issue more than one certificate in respect of the Unit; and
- (f) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques, certificates or other communications from the Trustee, and any notice, cheque, certificate or other communication given to that person is deemed to be given to all the joint holders.

3.5 Benefits and obligations of Unitholders and Optionholders

- (a) Except where expressly provided in this deed to the contrary, all benefits and obligations contained in this deed apply for the benefit of and bind each Unitholder to the extent provided in this deed.

- (b) Except where expressly provided in this deed to the contrary, all obligations contained in this deed bind each Optionholder to the extent provided in this deed. The benefits contained in this deed only apply for the benefit of Optionholders where expressly provided in this deed.
- (c) Subject to the Corporations Act, where the interests of Optionholders and Unitholders conflict, the Trustee must prefer the interests of Unitholders.

3.6 No further liability

- (a) This clause 3.6 is subject to any separate agreement between a Unitholder and the Trustee and to any Instalments, interest and expenses on Partly Paid Units payable under clauses 3.3 and 3.7 to 3.14
- (b) The liability of each Holder in its capacity as such is limited to the Holder's investment in the Trust.
- (c) A Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.
- (d) The recourse of the Trustee and any creditor of the Trustee is limited to the assets of the Fund.
- (e) Except as provided in clauses 3.9(a), 3.13(h) and 19.6 nothing in or under this deed makes either the Trustee the agent of a Unitholder nor does it create any relationship other than that of beneficiary and Trustee.

3.7 Failure to pay Instalment on Partly Paid Unit

- (a) The Trustee must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days (or 4 Business Days in the case of new Holders and Holders whose holdings have changed since the first notices were sent) prior to the due date for payment of an Instalment. The notice must specify the time and place for payment and the amount of the Instalment. The omission to give such notice by the Trustee or the non-receipt of such notice by the Holder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.
- (b) If a Unitholder does not pay an Instalment on the due date, the Unitholder must pay:
 - (1) so much of the Instalment as is unpaid;
 - (2) interest, which accrues daily and may be capitalised monthly or at such other intervals as the Trustee determines, on so much of the Instalment as is unpaid from time to time, from the date when the Instalment falls due to the date of actual payment:
 - (A) if the Trustee has fixed a rate, at the rate so fixed; or
 - (B) in any other case, the rate prescribed in respect of unpaid judgments in the Supreme Court of Queensland; and
 - (3) any costs, expenses or damages incurred by the Trust in relation to the non-payment or late payment of the Instalment.

3.8 Forfeiture of Units

- (a) If a Unitholder fails to pay the whole of an Instalment when it falls due, the Trustee may serve a notice on that Unitholder:
 - (1) requiring payment of the amount payable under clause 3.7(b);
 - (2) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under clause 3.7(b) is to be paid; and
 - (3) stating that, in the event of non-payment of the whole of the amount payable under clause 3.7(b) by the time and at the place named, the Unit in respect of which the Instalment was due will be liable to be forfeited.
- (b) A Partly Paid Unit is forfeited and the Trustee may offer that Partly Paid Unit for sale if payment in full is not received by the due date specified in the notice issued under clause 3.8(a).
- (c) A Unit is forfeited and the Trustee may offer that Unit for sale if the Unit is Stapled to a partly paid Attached Security and that partly paid Attached Security is forfeited under the constitution of any Stapled Entity because of non payment of a call on those partly paid Attached Security or for any other reason.
- (d) A forfeiture under clause 3.8(b) or 3.8(c) will include all distributions, interest and other money payable in respect of the Forfeited Unit and not actually paid before the forfeiture.
- (e) Where a Unit has been forfeited:
 - (1) notice of the forfeiture must be given to the Unitholder who owned the Forfeited Unit immediately before the forfeiture; and
 - (2) an entry of the forfeiture, with the date, must be made in the Register.
- (f) Failure to give the notice or to make the entry required under clause 3.8(e) does not invalidate the forfeiture.

3.9 Sale of Forfeited Unit

- (a) The Trustee may offer a Forfeited Unit for sale as agent for the Holder of the Forfeited Unit.
- (b) Subject to clause 3.9(c), if the Trustee sells the Forfeited Unit, it must sell it by public auction in a manner determined by the Trustee.
- (c) The Trustee must ensure that the sale of the Forfeited Unit is in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (10) and (13)) as if the Forfeited Unit was a share, the Trust was a company and the Trustee was the directors of the company.
- (d) The Trustee is not liable to the Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (e) A person whose Units have been forfeited ceases to be the Holder of those Units, but remains liable to pay, and must immediately pay, to the Trustee

all Instalments, interest, costs, expenses and damages owing in respect of the Units at the time of the forfeiture.

- (f) Where permitted by the Listing Rules (while the Trust is Listed, the Trustee may:
- (1) exempt a Unit from all or any part of this clause 3.9;
 - (2) waive or compromise all or any part of any payment due to the Trustee (as trustee of the Trust); and
 - (3) before a Forfeited Unit has been sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as it thinks fit.

3.10 Income and Capital of a Forfeited Unit

Distribution of income and capital under Part 9:

- (a) to which the Holder of a Forfeited Unit is entitled; and
- (b) which have not been paid to the Holder prior to forfeiture,

must be applied in accordance with clause 3.14 as if they formed part of the proceeds of sale of a Forfeited Unit.

3.11 Notice of sale of Forfeited Unit

At least 14 days but no more than 21 days before the date appointed for sale under clause 3.9, the Trustee must give notice of the sale of a Forfeited Unit by placing an advertisement in a daily newspaper circulating generally throughout Australia.

3.12 Cancellation of Forfeiture

- (a) The Trustee must cancel the forfeiture of a Partly Paid Unit if forfeited under clause 3.8(b) before a sale if the Holder of the Forfeited Unit pays the Trustee the amount payable pursuant to clause 3.7(b) and any other amount payable in respect of the forfeiture.
- (b) The Trustee must cancel the forfeiture of a Unit if forfeited under clause 3.8(c) if the forfeiture of the Attached Security to which the Unit is Stapled is cancelled.
- (c) If a Unit is forfeited under both clause 3.8(b) and clause 3.8(c), both clause 3.12(a) and clause 3.12(b) must be satisfied before the Trustee is obliged to cancel the forfeiture of the Unit.

3.13 Consequences of sale and continuing liability

- (a) On completion of the sale of the Forfeited Unit, the Unitholder ceases to be the Unitholder of that Unit but remains liable to the Trustee for the total amount payable pursuant to clause 3.7(b).
- (b) The Unitholder's liability under this clause ceases as soon as the Trustee receives:
 - (1) payment in full of the amount payable pursuant to clause 3.7(b) (excluding any amount paid by an underwriter pursuant to an underwriting agreement entered into under clause 5.2);

- (2) the Costs associated with the forfeiture; and
 - (3) the Costs of all proceedings instituted against the Unitholder to recover the amount due.
- (c) A statement signed by a director or secretary of the Trustee setting out:
- (1) that a Partly Paid Unit has been forfeited; and
 - (2) the date of forfeiture,
- is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale the Trustee must apply the consideration paid for a Forfeited Unit in accordance with clause 3.14.
- (e) If the Trustee executes a transfer of a Forfeited Unit, the Trustee must register the transferee as the Unitholder of the Forfeited Unit.
- (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.
- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

3.14 Proceeds of sale of Forfeited Unit

- (a) If a Forfeited Unit is sold under clause 3.9, the Trustee must apply the proceeds of the sale in the following order and manner:
- (1) by paying any Costs incurred by the Trustee in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
 - (2) by paying any Costs incurred by the Trustee in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit;
 - (3) by holding as an asset of the Fund, the interest accrued in respect of the outstanding Instalments calculated under clause 3.7(b)(1);
 - (4) by holding as an asset of the Fund, the balance of all Instalments due and payable in respect of the Forfeited Units; and
 - (5) by paying any balance (subject to any lien that exists under clause 3.15 in respect of money not presently payable) to the former Unitholder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Trustee must pay the expenses listed in clause 3.14(a)(1) and (2) pro rata to the number of Forfeited Units being sold.

3.15 Lien for Amounts Owing

- (a) The Trustee has a first and paramount lien over Units for:

- (1) any amounts owing to the Trustee in respect of Units registered in the name of a Unitholder, including any fees or unpaid Instalments which are payable to the Trustee in respect of those Units;
 - (2) any amount payable pursuant to clause 3.7(b);
 - (3) such amounts as the Trustee may be called upon by law to pay and has paid in respect of the Units of such Unitholders; and
 - (4) any reasonable interest and expenses incurred because the amount referred to in clause 3.15(a)(1), (2) or (3) is not paid.
- (b) The Trustee's lien extends to distributions from time to time declared in respect of such Units and to the proceeds of sale of such Units.
- (c) If the Trustee registers any transfer of any Units upon which it has a lien, those Units are freed and discharged from the lien.
- (d) The Trustee may sell any Units subject to a lien in accordance with the procedures set out in clause 3.9 where:
- (1) an amount in respect of which a lien exists under this clause 3.15 is presently payable; and
 - (2) the Trustee has, not less than 14 days before the date of the sale, given to the Holder of the Unit a notice in writing setting out, and demanding payment of, such amount in respect of which the lien exists as is presently payable.
- (e) The Trustee may do all things necessary or desirable to protect any lien, charge or other right to which it may be entitled under any law or under this deed.
- (f) To the extent permitted by the Listing Rules if the Trust is Listed, the Trustee may:
- (1) exempt a Unit from all or any part of this clause 3.15; and
 - (2) waive or compromise all or any part of any payment due to the Trustee under this clause 3.15.

4 Issue of Options and Units

4.1 Number of Units issued

- (a) If the Trustee accepts an Application for Units in whole or in part, the number of Units issued is the number (rounded down to the nearest whole number) determined by the Trustee by dividing the relevant Application Moneys by the Issue Price.
- (b) If the Trustee accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Trustee dividing the relevant Application Moneys by the amount of the Issue Price for a Unit which is to be paid on Application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Terms of Issue and Terms of Offer.

4.2 Application for Units or Options

A person who wishes to subscribe for Units or Options must:

- (a) complete or make an Application in the form or manner determined by the Trustee;
- (b) lodge or make the Application at the place or address and in the manner determined by the Trustee; and
- (c) include with the Application the Application Moneys in the form or manner specified by the Trustee or by the transfer of property to be vested in the Trustee.

4.3 Payments to the Trustee

- (a) If an applicant is to transfer property to the Trustee, the Trustee must not accept the Application unless it has received from the applicant:
 - (1) an effective transfer of the title to the property in favour of the Trustee; and
 - (2) a valuation acceptable to the Trustee stating the current market value of the property or other statement of its current market value.
- (b) Unless the applicant has paid all amounts payable in respect of the issue of Units or the transfer of property (if any) to the Trustee prior to the Trustee accepting the Application, the Trustee must deduct those amounts before determining the number of Units to be issued under clause 4.1.
- (c) If Units or Options are issued and:
 - (1) the Trustee has not received the Application Moneys in accordance with the Terms of Issue; or
 - (2) any payment for Units or Options is not cleared or property is not effectively transferred to the Trustee,

the Units or Options are void as from their date of issue or such other date as the Trustee determines if the Trustee has not otherwise received payment of an amount equal to the Application Moneys for the Units or Options.
- (d) All income in respect of the payment or property received on an application for Units or Options (which has been accepted by the Trustee) prior to the issue of those Units or Options forms part of the Fund.

4.4 Allotment

A Unit or Option created is regarded as issued or granted to the person entitled to it if and when the person's name is recorded in the Register. No rights whatsoever attach to a Unit until it is issued or Option until it is granted.

4.5 Trustee's discretion on Application

The Trustee may in its absolute discretion accept or refuse to accept in whole or in part any Application or subscription for Units or Options (other than on the exercise of an Option). Subject to the Listing Rules, the Trustee is not required to assign any reason or ground for such refusal.

4.6 Certificates

If it is not contrary to the Listing Rules while the Trust is Listed, the Trustee may determine:

- (a) not to issue a certificate for a Unit; and
- (b) to cancel a certificate for a Unit and not to issue a replacement certificate.

4.7 Foreign Unitholders

- (a) The Trustee may determine that Foreign Unitholders are not to be offered Units or Options under clauses 5.8, 5.9 and 5.10 where it reasonably considers that it would:
 - (1) be in the best interests of the Holders; and
 - (2) not be unfair to the Foreign Unitholders.
- (b) If the Trustee makes a determination under clause 4.7(a), the Trustee must sell the Foreign Interests and pay to each Foreign Unitholder the amount calculated as follows:

$$AF = NP \times \frac{NF}{N}$$

where:

AF is the amount to be paid to that Foreign Unitholder;

NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:

- (1) the Costs of the sale;
- (2) the amounts (if any) payable to the Trustee by any nominee appointed under clause 4.7(c) in respect of the Foreign Interest; and
- (3) any amounts the Trustee would be required by law or otherwise entitled to deduct or withhold under this deed;

N is the aggregate number of Foreign Interests; and

NF is the number of Foreign Interests to which that Foreign Unitholder would otherwise have been entitled.

- (c) The Trustee may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Unitholder the amount calculated in accordance with the formula in, clause 4.7(b).
- (d) The Trustee must take reasonable steps to endeavour to maximise the amount payable to each Foreign Unitholder under clause 4.7(b).

5 Power to issue Units and Options

5.1 Powers Cumulative

- (a) The Trustee may issue Units only in accordance with this Part 5 and subject to this deed.
- (b) No clause of this Part 5 (other than this clause 5.1) limits any other such clause.

5.2 Underwriting of Issue

- (a) The Trustee may arrange for:
 - (1) an offer for sale, subscription or issue of Units or Options;
 - (2) the payment of Instalments in respect of Partly Paid Units; or
 - (3) the exercise of Options,to be underwritten by an underwriter on terms determined by the Trustee.
- (b) The underwriter may:
 - (1) be the Trustee or a related body corporate of the Trustee; and
 - (2) take up any Units or Options not subscribed for.
- (c) The Trustee may issue Units and Options pursuant to this clause 5.2 at an Issue Price equal to the Issue Price at which the Units or Options in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.

5.3 Issues of Options

The Trustee may offer Options for subscription in accordance with the Terms of Offer and Terms of Issue.

5.4 Issue of Units pursuant to Options

The Trustee may issue a Unit or Units in accordance with the Terms of Offer and Terms of Issue of an Option.

5.5 Issue at Market Price or Current Unit Value

In addition to any other power the Trustee has to issue Units under this deed, the Trustee may issue Units or Options at any time to any person at an Issue Price as follows:

- (a) for the initial issue of Units in the Trust, Units at an Issue Price of \$0.99 per Unit;
- (b) after the initial issue of Units in the Trust but before the issue of Units in accordance with an offer made in the Prospectus relating to the initial public offering of Units in the Trust, Units at an Issue Price of \$0.99 per Unit;
- (c) after the initial issue of Units in the Trust but prior to the Trust being Listed and where clause 5.5(b) does not apply, Units at an Issue Price per

Unit as set out in or calculated in accordance with a Prospectus or other offer document issued by the Trustee;

- (d) where the Trust has been Listed and the Units form part of Stapled Securities and those Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily):
 - (1) Units at a price determined by the Trustee provided that the aggregate of the Issue Price of that Unit and the issue price of all Attached Securities to which that Unit will be Stapled is equal to the Market Price for Stapled Securities on the Business Day prior to the day on which the offer or issue is made;
 - (2) Options at the consideration for the issue of the Option specified in the Terms of Offer and Terms of Issue, where the Units to be issued pursuant to the exercise of those Options are to be Stapled to Attached Securities and issued at a price determined by the Trustee provided that the aggregate of the Issue Price of that Unit and the issue price of any Attached Securities to which that Unit will be Stapled is equal to the Market Price for Stapled Securities immediately prior to the date upon which the Option is issued; and
- (e) where Units form part of Stapled Securities and those Stapled Securities have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust is no longer Listed, Units at the Current Unit Value on the Business Day prior to the day the offer to issue the Units is made.

5.6 Placements of Units and Options without Unitholder approval

The Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2 and 5.5, where:

- (a) the Trust has been Listed and the Units form part of Stapled Securities and those Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily);
- (b) the issue is not to the Trustee or any person associated with the Trustee;
- (c) the amount by which the aggregate of the Issue Price of those Units and the issue price of Attached Securities to which those Units will be Stapled is less than the Market Price for Stapled Securities does not exceed ~~10%~~such amount (if any) as may be prescribed by the Corporations Act; and
- (d) the issue is of Units that would not, immediately before the issue, (when aggregated with any other issue of Units pursuant to this clause 5.6 up to one year previously other than an issue that was subsequently ratified by the Holders) comprise more than 15% (or such greater percentage as may be permitted from time to time by both the Corporations Act and the Listing Rules) of either:
 - (1) all of the Units in the Trust; or

- (2) the Units on issue in the Trust in the same class as the Units comprised in the issue.²⁸

5.7 Placements of Units and Options with Unitholder approval

The Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.55-2 and 5.65-5, where:

- (a) the Trust has been Listed and the Units form part of Stapled Securities and those Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily);
- (b) the issue is not to the Trustee or any person associated with the Trustee;
- (c) the Holders approve the issue;
- (d) if the Units to be issued are in a particular class, Holders in that class approve the issue;
- (e) unless the Trustee reasonably considers that the issue will not adversely affect the interests of Holders in another class, Holders in that other class approve the issue;
- (f) any notice convening a Meeting to vote on the issue contains particulars of the use to be made of the money raised by the issue;
- (g) an approval for the purposes of paragraphs (c), (d) and (e) of this clause is given by special resolution of the relevant Holders where Holders with at least 25% of the total value of all the Units of Holders entitled to vote on the question vote on the question at the Meeting; and
- (h) if, in making the calculations referred to in paragraph (g) of this clause, any vote of a person to whom the Units are to be issued or any vote of any associate of that person were not counted, the special resolutions would be passed.

5.8 Rights issues of Units²⁹

- (a) The Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2 and 5.5 pursuant to offers made at substantially the same time to only and all the then Unitholders if:
 - (1) all the Units offered are in the same class;
 - (2) the Units are to be Stapled to Attached Securities;
 - (3) the Issue Price of all the Units offered is the same;
 - (4) the aggregate of the Issue Price of those Units and the issue price of Attached Securities to which those Units are Stapled is not less than 50% of the Market Price of Stapled Securities on the Business Day preceding the day on which the intention to make the offer or issue is announced on ASX;

²⁸ Amended by the Amending Deeds of 8 July 2003 and 9 March 2005.

²⁹ Amended by Amending Deed of 13 September 2004.

(5) the amount of Units offered to each Unitholder is proportionate to the value of that Unitholder's Unit Holding; and

~~(6)~~ where Units are issued to a bona fide underwriter pursuant to an underwriting agreement, the underwriter is not an associate of the Trustee. ~~For the purposes of clause 5.8(a):~~

~~(2)(6) a person is taken to be a Unitholder if the person has elected to subscribe for Units under clause 5.10 and those units are issued to the person on or about 27 August 2004, even if the person is not otherwise a Unitholder on the date the offer under clause 5.8(a) is made; and a Unitholder's Unit Holding is taken to include all Units held by the Unitholder on the date of the offer under clause 5.8(a) plus Units subscribed for by the Unitholder under clause 5.10; which are to be issued to the Unitholder on or about 27 August 2004.~~

5.9 Rights issues of Options

The Trustee may issue Options and Units on the exercise of an Option at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.2 and 5.5 if:

- (a) the Options are issued pursuant to offers made at substantially the same time to only and all the then Unitholders in proportion to the value of their Unit Holding;
- (b) the Units to be issued pursuant to the exercise of those Options are to be Stapled to Attached Securities;
- (c) all the Options offered are in the same class;
- (d) the Issue Price of all the Options offered is the same;
- (e) the Exercise Price of all the Units to be issued on exercise of the Options is the same;
- (f) the means of calculating the Exercise Price is set out in the Terms of Issue; and
- (g) the aggregate of the Exercise Price on the date of exercise of the Options and the exercise price on the date of exercise of the options over the Attached Securities to which the Units to be issued pursuant to those Options will be Stapled is not less than 50% of the Market Price of a Stapled Security on the Business Day preceding the day on which the Option is issued.

5.10 Issues of Units - distribution reinvestment

The Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses ~~5.55-2~~ and ~~5.65-5~~ pursuant to a distribution reinvestment arrangement referred to in clause 9.5 where:

- (a) the whole or part of a Unitholder's Distribution Entitlement is applied in payment for the subscription for Units or Attached Securities;

- (b) each Unitholder may from time to time elect to participate in that arrangement as to the whole, or some proportion, of the Distribution Entitlement which is or would otherwise be payable to that Unitholder;
- (c) all the Units issued under the arrangement are of the same class;
- (d) the Issue Price of each Unit or Attached Security issued pursuant to that arrangement at substantially the same time is the same; and
- (e) the aggregate of the Issue Price of those Units and the issue price of Attached Securities to which those Units will be Stapled is not less than 90% of the Market Price of a Stapled Security calculated in accordance with clause 1.3(b).³⁰

5.11 Issues of Units – exchange of SPARCS³¹

The Trustee may issue Units at an Issue Price determined by the Trustee where the Units will be Stapled to Attached Securities and issued to a holder or former holder of SPARCS in connection with the exchange of SPARCS and the aggregate of the Issue Price of the Units and the issue price of the Attached Securities will be determined in accordance with the terms of the SPARCS Trust Deed.

5.12 Issues of Units – security purchase plans³²

- (a) The Trustee may issue Units at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 5.55-2 and 5.65-5, pursuant to a security purchase plan where:
 - (1) the Trust is Listed and the Units form part of Stapled Securities and those Stapled Securities are Officially Quoted and those Stapled Securities are not suspended from Official Quotation;
 - (2) an offer for the issue of Units is made to each Unitholder or, where the offer is being made to Unitholders of a class of Units, to each Unitholder of Units in that class, provided that an offer need not be made to a Unitholder whose address on the Register is in a place where the Trustee reasonably considers it is not lawful or not practical for the Trustee to offer and issue Units to the Unitholder under the security purchase plan;
 - (3) each offer of Units is made on the same terms and conditions and on a non-renounceable basis;
 - (4) the aggregate of the Issue Price of a Unit and the issue price of the Attached Securities to which that Unit is Stapled is less than the Market Price of a Stapled Security calculated in accordance with clause 1.3(b); and
 - (5) the aggregate of the Issue Price of the Units and the issue price of the Shares to which those Units are Stapled, issued to a Unitholder

³⁰ Amended by Amending Deed of 8 July 2003 and by a resolution of Unitholders on 14 October 2003.

³¹ Amended by Amending Deed of 13 September 2004.

³² Amended by Amending Deed of 27 April 2005.

does not total more than \$5,000 in any consecutive 12 month period.

- (b) For the purposes of clause 5.12(a):
- (1) the Trustee may advise Unitholders from time to time in writing that Unitholders may on terms specified in the notice participate in a security purchase plan under which Unitholders are made an offer to purchase an amount of Units at an Issue Price determined in accordance with clause 5.12(a);
 - (2) if a trustee or nominee is expressly noted on the Register as holding Units on account of another person (**beneficiary**):
 - (A) the beneficiary is taken to be the Unitholder in relation to those Units; and
 - (B) any issue of Units to the trustee or nominee is taken to be an issue to the beneficiary; and
 - (3) a reference to an offer for the issue of Units includes a reference to inviting an application for the issue of the Unit.

~~5.13~~ ~~Issues of Units~~ ~~Issues~~ — ~~Unitholder Approval~~³³

~~In addition to any other power the Trustee has to issue Units under this deed, the Trustee may issue Units if the aggregate of the Issue Price of those Units and the issue price of Shares to which those Units are to be Stapled is \$1.40 and the Stapled Securities are otherwise issued in accordance with the resolutions approved by Unitholders and members of the Company at a meeting held on 11 May 2005 and referred to in the notice of that meeting as Resolution 1 and Resolution 3.~~

~~5.14~~ ~~Issue of Units to Alinta Limited's shareholders~~

~~(b) The Trustee may issue Units as part of BBI Securities (as defined in the Scheme) to Alinta Limited's shareholders under the Scheme (or to the Nominee as defined in the Scheme) at an Issue Price per Unit equal to 98.9% of the Value (as defined in Schedule 1 to the Scheme) of a BBI Security.~~

~~(a) The Issue Price of the Units issued under this clause 5.14 may be provided in the form of either cash or promissory notes (or a combination of the two) and by any one or more parties.³⁴~~

~~5.15~~ ~~Issue of Units upon conversion of EPS~~

~~The Trustee may issue Units at an Issue Price determined by the Trustee in accordance with the terms of issue of the EPS as amended from time to time where the Units will be stapled to Shares and issued to a holder or former holder of EPS in connection with the conversion of EPS in accordance with the terms of issue of the EPS as amended from time to time.³⁵~~

³³ Amended by Amending Deed of 16 May 2005.

³⁴ Amended by Amending Deed of 17 August 2007.

³⁵ Amended by Amending Deed of 17 August 2007 and Amending Deed of 8 October 2009.

5.16

For the purposes of clauses 5.14 and 5.15:

~~EPS~~ means an exchangeable preference share issued by BBI EPS Limited (ACN 125 830 631) as partial consideration under the Scheme.

~~Scheme~~ means the scheme of arrangement between Alinta Limited and its shareholders expected to be approved by the Federal Court in or about August 2007.³⁶

5.175.13 Issue of Units under disclosure document dated on or about 7 October 2009

The Trustee may issue Units as part of an issue of Stapled Securities at an Issue Price per Stapled Security calculated by the Trustee in accordance with the formula set out in section 3.6 of the disclosure document issued by the Company and the Trustee on or about 7 October 2009 of A\$0.0003383702.³⁷

5.14 Allocation between Stapled Securities³⁸

The Trustee must determine that the Issue Price per Unit is that proportion of the Issue Price per Stapled Security which is:

(1) agreed from time to time between the Trustee and the issuer of each Attached Security; or

(2) in the absence of agreement referred to in paragraph (1), the proportion which the Current Unit Value of the Trust bears to the aggregate net asset value per Stapled Security.

5A Buy-Back of Units

- (a) While the Trust is Listed, the Trustee may buy-back Units, subject to and in accordance with the Corporations Act (including any modification of the Corporations Act) and any requirements under the Listing Rules.
- (b) Immediately after the registration of a transfer of a Unit, or if Stapling applies, a Stapled Security, following a buy-back under this clause 5A, the Units purchased are cancelled.
- (c) If Stapling applies, the Trustee may only buy-back and cancel Units if the Attached Securities to which those Units are Stapled are also the subject of a contemporaneous buy-back and cancellation.
- (d) The purchase price payable under this clause 5A for a Unit, or where Stapling applies, a Stapled Security, will be determined by the Trustee (or its nominee) as follows:
 - (1) during any period in which a purchase may be made, the Trustee (or its nominee) may set a range of prices at which purchases can

³⁶ Amended by Amending Deed of 17 August 2007.

³⁷ Amended by Amending Deed of 8 October 2009 and by Amending Deed of 19 November 2009.

³⁸ Amended by Amending Deed of 19 November 2009.

be made during all or part of that period in the ordinary course of trading on ASX and may adjust that pricing range from time to time if appropriate, but the maximum purchase price on any day can not exceed the Buy-Back Market Price for that day by more than 5%, the amount of that excess, if any, to be determined by the Trustee (or its nominee); and

- (2) the purchase price must otherwise satisfy the conditions of any relief from or modification of the Corporations Act.³⁹

6 Trustee's Powers

6.1 General powers of Trustee

- (a) Subject to this deed, the Trustee has all the powers that it is possible to confer on a trustee and has all the powers that are incidental to ownership of the Fund as though it were the absolute and beneficial owner of the Fund.
- (b) In the exercise of its powers the Trustee may, without limitation, acquire or dispose of any real or personal property and borrow or raise money, encumber any asset of the Fund, incur any liability, enter into joint venture arrangements or fetter any power.

6.2 Delegation by Trustee

- (a) The Trustee may appoint a person, including an associate of the Trustee, as its delegate, attorney or agent to exercise its powers and perform its obligations.
- (b) The Trustee may appoint an agent, custodian or other person, including an associate of the Trustee (each of whom may, with the approval of the Trustee, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with any asset of the Fund on behalf of the Trustee and perform any action incidental or ancillary thereto or otherwise approved by the Trustee.

6.3 Further powers of Trustee

Without limiting the generality of the powers of the Trustee contained in clause 6.1, the Trustee may guarantee, give indemnities for or otherwise support in favour of third parties the obligations of any Stapled Entity and of any other entity and mortgage or charge any of the assets of the Fund to secure any such obligation.

6.4 Small holdings⁴⁰

- (a) This clause 6.4 applies whilst the Units are Officially Quoted.

³⁹ Amended by Amending Deed of 17 August 2007.

⁴⁰ Amended by a resolution of Unitholders on 5 November 2008.

- (b) Subject to the provisions of this clause 6.4, the Trustee may in its discretion from time to time sell or redeem any Units held by a Holder without request by the Holder where the Units held by a Holder comprise less than a marketable parcel as provided in the Listing Rules. The Trustee may only sell or redeem Units on one occasion in any 12 month period.
- (c) The Trustee must notify the Holder in writing of its intention to sell or redeem Units under this clause 6.4, and give the Holder at least six weeks from the date of the notice in which to tell the Trustee that the Holder wishes to retain the Units.
- (d) The Trustee will not sell or redeem the relevant Units before the expiry of six weeks from the date of the notice given under clause 6.4(c), or if, within the six weeks allowed by clause 6.4(c):
 - (1) the Holder advises the Trustee that the Holder wishes to retain the Units; or
 - (2) the market value of the Units held by the Holder increases to at least a marketable parcel as provided in the Listing Rules.
- (e) The authorisation to sell lapses following the announcement of a takeover, but the procedure may be started again after the close of offers made under the takeover.
- (f) The Trustee or the purchaser of the Units must pay the costs of the sale or redemption as the Trustee decides.
- (g) The proceeds of the sale or redemption will not be sent to the Holder until the Trustee has received any certificate (or other evidence of title) relating to the Units which it considers necessary, or is satisfied that the certificate (or other evidence of title) has been lost or destroyed.
- (h) The Trustee is entitled to execute on behalf of a Holder any transfer of ~~shares~~ Units and, if applicable, Attached Securities under this clause 6.4.
- (i) Where a Unit forms part of a Stapled Security:
 - (1) the references to Units in clauses 6.4(a) to 6.4(h) inclusive are to be read as references to Stapled Securities; and
 - (2) the Trustee may only redeem Units under this clause 6.4 if the Attached Securities to which those Units are Stapled are the subject of a contemporaneous redemption and may only sell Units under this clause 6.4 if the Attached Securities to which those Units are Stapled are the subject of a contemporaneous sale.

6.5 Fractions⁴¹

The Trustee may do anything required to give effect to any resolution altering the Units, including, where a Unitholder becomes entitled to a fraction of a Unit on a consolidation:

- (a) making cash payments;

⁴¹ ~~Amended~~ Approved by a resolution of Unitholders on 16 November 2009.

- (b) determining that fractions may be disregarded in order to adjust the rights of all parties or to round down each fractional entitlement to the nearest whole Unit; and
- (c) appointing a trustee to deal with any fractions on behalf of Unitholders.

In exercising its powers under paragraph (c), the Trustee shall procure as soon as is reasonably practicable that the aggregate of all the fractional entitlements to Units resulting from the consolidation are sold on the ASX and that the appointed trustee distribute the net proceeds of the sale to those Unitholders entitled to a fraction of a Unit on consolidation in proportion to their fractional entitlements or one or more charitable bodies nominated by the Trustee to receive such net proceeds. For this purpose, each Unitholder entitled to or who would otherwise be entitled to a fraction of a Unit on consolidation shall irrevocably appoint the Trustee as its attorney to complete and execute such instruments on the Unitholder's behalf as the Trustee thinks necessary or desirable to give effect to the sale.

7 Trustee's responsibilities and indemnities

7.1 No limitation of other undertakings

This Part 7 does not limit or affect any other indemnities given to the Trustee in this deed or at law.

7.2 Limitation of liability

Except where the Corporations Act expressly provides otherwise:

- (a) the Trustee and each director and officer of the Trustee are not personally liable to a Holder or any other person in connection with the office of the Trustee or director or officer of the Trustee; and
- (b) the Trustee will not be liable to any Holder to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Fund actually vested in the Trustee in respect of the Trust.

7.3 Indemnities

- (a) The Trustee is not responsible for:
 - (1) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;
 - (2) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such items not to be genuine or not to have been passed, executed or signed by the proper parties; or
 - (3) Costs if a person fails to carry out an agreement with the Trustee or an agent or delegate of the Trustee,
 except where the Corporations Act provides otherwise.

- (b) The Trustee will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
- (1) any provision of any present or future law or statute of Australia or any State or Territory;
 - (2) of any decree, order or judgment of any competent court, or
 - (3) any document or agreement binding on the Trustee.
- the Trustee is prevented, forbidden or hindered from doing or performing.

7.4 Trustee may rely on advice

The Trustee may take and act upon:

- (a) the opinion or advice of counsel or solicitors instructed by the Trustee in relation to the interpretation of this deed or any other document (whether statutory or otherwise) or generally as to the administration of the Trust or any other matter in connection with the Trust; and
- (b) the opinion, advice, statements or information from any bankers, accountants, auditors, valuers architects, engineers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted,

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statements or information.

7.5 Interested dealings by Trustee

The Trustee or an officer or employee or associate of the Trustee may:

- (a) be a Holder;
 - (b) act in any capacity including without limitation as a representative, delegate or agent of the Trustee or any Holder;
 - (c) have an interest in or enter into a contract or transaction with:
 - (1) the Trustee or an associate of the Trustee;
 - (2) any Holder; or
 - (3) any other person, including one whose shares or other securities form an asset of the Fund; or
 - (d) hold or deal in or have any other interest in an asset of the Fund,
- and may retain and is not required to account for any benefit derived by doing so.

8 Valuation of the Fund

8.1 Valuation of assets

- (a) The Trustee may at any time cause the valuation of any asset of the Fund.
- (b) In determining whether a valuation accurately reflects the current value of an asset of the Fund, the Trustee is not to be regarded as having the

knowledge of a valuer or any other expertise in respect of the valuation of assets of the Fund.

- (c) Each asset of the Fund must be valued at its market value unless the Trustee determines:
 - (1) there is no market in respect of the asset of the Fund; or
 - (2) the market value does not represent the fair value of the asset of the Fund.
- (d) Where the Trustee makes a determination under clause 8.1(c), the Trustee must at the same time determine the method of valuation of the asset of the Fund.
- (e) Where any asset of the Fund is to be valued or the Net Asset Value of the Trust and the number of Units on Issue is to be determined, the valuation or determination is to be as at a time determined by the Trustee.
- (f) Where the calculation of the Issue Price is to be made as at a particular date, the Trustee need not cause a valuation of the Fund to be performed as at that date but may rely on the most recent valuations for the purposes of that calculation.

8.2 Currency Conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by a bank or other financial institution nominated by the Trustee.

8.3 Trustee to determine Current Unit Value

The Trustee may determine the Current Unit Value at any time.

9 Income and Distributions

9.1 Determination of income and reserves

The Trustee is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made.

9.2 Distribution of income

For each Distribution Period the Trustee must calculate and distribute each Unit Holder's Distribution Entitlement.

9.3 Distribution Entitlement⁴²

- (a) The **Distributable Amount** for a Distribution Period is to be determined in accordance with the following formula:

$$DA = OI + C$$

where:

⁴² Amended by Amending Deed of 8 July 2003.

DA is the amount of Distributable Amount;

OI is Operating Income; and

C is any additional amount (including capital) that the Trustee has determined is distributable.

- (b) Subject to the Terms of Issue for any Unit, each Unitholder's Distribution Entitlement is to be determined in accordance with the following formula:

$$DE = DA \times \frac{UH}{UI}$$

where:

DE is the Distribution Entitlement;

DA is the Distributable Amount;

UH is the aggregate of the Paid-up Proportion of each relevant Unit Holding of the Unitholder at the close of business on the Distribution Calculation Date; and

UI is the aggregate Paid-up Proportion of all Units on issue in the Trust at the close of business on the Distribution Calculation Date.

9.4 Distribution of Entitlement

- (a) The Trustee must pay to each Unitholder its Distribution Entitlement on or before the Distribution Date.
- (b) For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution, the persons who are Unitholders on the Distribution Calculation Date for that Distribution Period have an absolute, vested and indefeasible interest in the income of that Distribution Period.⁴³
- (c) The Trustee may retain from each Unitholder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Unitholder an amount in or towards satisfaction of any amount payable by the Unitholder to the Trustee under this deed or required to be deducted by law.

⁴³ Amended by Amending Deed of 8 July 2003.

9.5 Distribution Reinvestment Arrangements

The Trustee may advise Unitholders from time to time in writing that Unitholders may on terms specified in the notice participate in an arrangement under which Unitholders may request that all or a proportion of specified distributions due to them be satisfied by the issue of further Units or Stapled Securities. The Trustee may amend, suspend or terminate any distribution reinvestment arrangements implemented by it.

9.6 Discharge of Trustee's obligation

The Distributable Amount shall be distributed to persons who are Unit Holders on the record date for that Distribution Period. It is acknowledged by Unit Holders that such payments of Distributable Amounts shall be good and complete discharge to the Trustee in respect of any liability to any person in respect of an entitlement to such Distributable Amount.⁴⁴

9.7 Trust taxed as a company

Notwithstanding clauses 9.3 and 9.4, if in any Financial Year the Trustee in its capacity as trustee becomes taxable as if it were a company under the Tax Act:

- (a) the Trustee has complete discretion as to how much, if any, of:
 - (1) the Distributable Amount for that Financial Year; or
 - (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,
 is to be distributed to Unitholders on the Distribution Date.
- (b) Each Unitholder's Distribution Entitlement to the Distributable Amount (reduced in accordance with clause 9.7(a)) is to be determined in accordance with clause 9.3(b).
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 9.7(b)) to the persons who are Unitholders on the Distribution Calculation Date for that Distribution Period.

10 Remuneration Indemnity of Trustee⁴⁵

10.1 Trustee's remuneration

- ~~(a) The Trustee is entitled to receive out of the Assets of the Fund a fee calculated at the rate of 2.0% per annum of the Gross Asset Value of the Trust.~~
- ~~(b) The Trustee's fee is calculated and accrued on a monthly basis on the last day of each month and is payable in arrears on a quarterly basis.~~

⁴⁴ Amended by Amending Deed of 8 July 2003.

⁴⁵ Amended by Amending Deed of 19 November 2009.

10.2 Manager's fees⁴⁶

- (a) Any fees payable to the Trustee pursuant to clause 10.1 must be reduced by any amounts paid or payable to the Manager under a BBIL Management Services Agreement.
- (b) Any fees to which the Manager is entitled pursuant to a BBIS Management Services Agreement may be paid by the Trustee out of the assets of the Fund but only to the extent that the Trustee is entitled to be paid those amounts pursuant to clause 10.1.
- (c) Any fees payable to the Trustee pursuant to clause 10.1 must be reduced by any amounts paid to the Manager pursuant to clause 10.2(b).

10.3 Waiver of remuneration

The Trustee may waive the whole or any part of the remuneration to which it would otherwise be entitled.

10.4 Priority of Trustee's remuneration

The remuneration of the Trustee has priority over the payment of all other amounts payable from the Fund.

10.510.1 Indemnity

In addition to the Trustee's right of remuneration under clause 10.1 and any other right of indemnity which it may have under this deed or at law, the Trustee is indemnified and entitled to be reimbursed out of or have paid from the Fund for all Costs incurred in the performance of its duties or the exercise of its powers, the course of its office or in relation to the administration or management of the Trust.

10.610.2 Proper performance of duties

The rights of the Trustee to be paid fees out of the Fund, or to be indemnified out of the Fund for liabilities or expenses incurred in relation to the performance of its duties, are available only in relation to the proper performance of those duties.

10.7 Form of payment

The Trustee is entitled, at its option, to receive up to 60% of the amount payable to it pursuant to this clause 10 by the issue to it of additional Units, as part of a Stapled Security, where the issue price of the Stapled Security is the Market Price on the last Business Day of the relevant quarter.

10.810.3 Reimbursement of GST

- (a) Any reference in this clause to terms defined or used in the A New Tax System (Goods and Services Tax) Act 1999 should be taken to be a reference to that term as defined or used in that Act.

⁴⁶ Amended by Amending Deed of 1 July 2005.

- (b) Any amount referred to in this deed which is relevant in determining a payment to be made to or by the Trustee is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this deed, the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is, subject to the recipient having received a tax invoice, payable at the same time and in the same manner as the consideration to which it relates.
- (d) The supplier must issue a tax invoice in respect of a supply to the recipient before the end of the tax period in which the supply is made.
- (e) If the Trustee is entitled to be reimbursed for an expense or outgoing incurred in connection with this deed, the amount of the reimbursement will be net of any input tax credits which may be claimed by the party being reimbursed in relation to that expense or outgoing.

11 Indemnity and insurance

11.1 Persons to whom clauses 11.2 and 11.4 apply

Clauses 11.2 and 11.4 apply to each person who is or has been a member of the Trust's Compliance Committee (if any).

11.2 Indemnity

The Trustee must, from the Fund indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 11.2 applies for Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Act.

11.3 Extent of indemnity

The indemnity in clause 11.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 11.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee (if any); and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

11.4 Insurance

The Trustee may, from the Fund and to the extent permitted by law:

- (a) purchase and maintain insurance; or

- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 11.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

11.5 Savings

Nothing in clauses 11.2 or 11.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Trustee to indemnify or provide insurance for any person to whom those clauses do not apply.

12 Transfers and other transactions

12.1 Transfer

- (a) All transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by the Trustee. The Trustee may decline to register a transfer of Units or Options under this clause 12.1(a) unless the instrument of transfer:
- (1) is duly stamped (if applicable);
 - (2) is accompanied by such evidence as the Trustee requires to prove the title of the transferor; and
 - (3) complies with any requirements prescribed by the Trustee from time to time.
- (b) While the Trust is Listed all transfers of Units or Options must be effected in accordance with the Listing Rules.
- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options or the transfer is effected in accordance with the SCH-ASTC Business Rules.

12.2 Transaction advice after transfer

If the Trustee accepts a transfer under this Part, the Trustee may issue a transaction advice for:

- (a) the Units or Options which have been transferred; and
- (b) the balance of any Units which were not transferred.

12.3 No General Restriction on Transfer

- (a) Whilst the Trust is Listed, there is no restriction on the transfer of Units or Options and, subject to clauses 12.4 and 12.5 and Part 19, the Trustee may

not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units or Options effected under clause 12.1(b).

- (b) Except as otherwise set out in this Part 12 and Part 19, there is no restriction on any other transfer of Units or Options.
- (c) In relation to Units which are CHESSE Approved Securities:
 - (1) subject to clauses 12.3(c)(2) and 12.3(c)(3), the Trustee must not prevent, delay or in any way interfere with the registration of a proper SCH ASTC transfer;
 - (2) the Trustee may apply a holding lock to specified CHESSE Approved Securities where permitted to do so by the Listing Rules; and
 - (3) the Trustee may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

12.4 Power to suspend registration of transfers

Subject to the Listing Rules and the SCH ASTC Business Rules, whilst the Trust is Listed, the Trustee may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as it thinks fit.

12.5 Restricted Securities

Notwithstanding any other provisions of this deed and whilst the Trust is Listed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during any applicable escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the SCH ASTC Business Rules in respect of CHESSE Approved Securities, the Trustee must refuse to acknowledge a disposal (including registering a transfer) of restricted securities during any applicable escrow period except as permitted by the Listing Rules or ASX; and
- (c) during a breach of the Listing Rules relating to restricted securities or a breach of a restriction agreement, the holder of restricted securities is not entitled to any distributions or to any voting rights in respect of the restricted securities.

12.6 Transmission of Units and Options

- (a) In the case of a Transmission Event in respect of a Holder, the only persons who will be recognised as having any title to the Units or Options registered in the Holder's name or any benefits accruing in respect of those Units or Options:
 - (1) where the Holder is a joint holder, the survivor or survivors of the Holder;
 - (2) where the Holder is an individual, the legal personal representative of the Holder or the person entitled to the Units or Options as a result of bankruptcy; or

- (3) where the Holder is a body corporate, the person entitled to the Units or Options as a result of the dissolution or succession.
- (b) Nothing in clause 12.6(a) releases the Holder or the estate of a deceased Holder from any liability in respect of the Units or Options held whether that Unit or Option was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Unit as a result of a Transmission Event may, upon producing such evidence as the Trustee may require to prove that person's entitlement to the Unit or Option, elect:
 - (1) to be registered as the Holder of the Unit or Option by signing and serving on the Trustee a notice in writing stating that election; or
 - (2) to have some other person nominated by that person registered as the transferee of the Unit or Option by executing a transfer to that other person in accordance with clause 12.1.

No election made pursuant to this clause 12.6(c) may be inconsistent with clause 19.

- (d) The Trustee need not register any transfer or transmission pursuant to this clause unless the transferee provides an indemnity in favour of the Trustee in a form determined by the Trustee in respect of any consequence arising from the transfer or transmission.
- (e) The provisions of this deed relating to the right to transfer, and the registration of transfers of, Units and Options apply, so far as they can and with such changes as are necessary, to any transfer under clause 12.6(c) as if the relevant transmission event had not occurred and the transfer were signed by the Holder of the Unit or Option.
- (f) For the purpose of this deed, where 2 or more persons are jointly entitled to any Unit or Option in consequence of a transmission event they will, upon being registered as the Holders of the Unit or Option, be taken to hold the Unit or Option as joint tenants and clause 3.4 will apply to them.
- (g) Despite clause 12.6(a), the Trustee may register a transfer of Units signed by a Holder before a transmission event even though the Trustee has notice of the transmission event.

12.7 Recognition of Holder

- (a) Except as otherwise required by law or provided in this deed, the Trustee:
 - (1) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
 - (2) need not recognise any other equitable, contingent, future or partial claim or interest in any Unit or Option by any other person, even if the Trustee has notice of that claim or interest.
- (b) Each transferor will be deemed to remain the Holder until the transfer is registered and the name of the transferee is entered in the Register.
- (c) With the consent of the Trustee, Units or Options held by a trustee may be marked in the Register in such a way as to identify them as being held subject to the relevant trust.

- (d) Nothing in clause 12.7(c) limits the operation of clause 12.7(a).

12.8 Participation in Transfer Systems

The Trustee may determine that Units or Options which are Officially Quoted will participate in the "Clearing House Electronic Sub-register System" or any other computerised or electronic system of transfer or registration. The Trustee may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this Part 12.

13 Options

13.1 Terms and Subscription

- (a) This Part 13 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Trustee.

13.2 Nominees

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.
- (b) An Option may be exercised by a nominee of the Optionholder unless the Terms of Issue provide otherwise.

13.3 Exercise

- (a) An Optionholder may only exercise an Option in accordance with the Terms of Issue.
- (b) On the termination of or winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the Optionholder on the termination or winding up of the Trust, the liabilities of the Trustee cease in respect of each Option.

13.4 Optionholder's Rights and Interest

- (a) An Option does not confer on the Optionholder any interest in the Fund. Optionholders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules (if applicable).
- (b) Optionholders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Optionholders are entitled:
- (1) to inspect any document which may be inspected by; and
 - (2) to be sent any document which is sent to,
- Unitholders in similar circumstances.

- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Trustee is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Trustee to ensure that it assumes the covenants and obligations of the outgoing Trustee under those Options.

13.5 Redemption or Repurchase

- (a) The Trustee may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided if the Trust is Listed the Terms of Issue have been approved by the ASX) whereupon the Trustee must make any payment to an Optionholder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 13.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Trustee and the Trustee may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 13.5(a) will form part of the Fund and the Trustee must be recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Trustee will retain title in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

14 Retirement or Removal of Trustee

14.1 Retirement and removal of Trustee

- (a) Whilst the Trust is not a registered scheme:
- (1) the Trustee may retire on not less than one month's notice to the Unitholders. On retirement, the Trustee may appoint another person in writing to be the Trustee; and
 - (2) the Trustee must retire if directed to do so by a special resolution of Unitholders.
- (b) Whilst the Trust is a registered scheme:
- (1) despite any other law, the Trustee may only retire as responsible entity of the Trust in accordance with section 601FL of the Corporations Act; and
 - (2) the Trustee may only be removed as responsible entity of the Trust in accordance with section 601FM of the Corporations Act.
- (c) On retirement or removal the Trustee must give the new trustee all books, documents and records relating to the Trust.
- (d) If the Trust is not a registered scheme at the time the Trustee is to retire, any proposed replacement trustee must execute a deed by which it covenants to be bound by this Trust Deed as if it had originally been a party to it.

15 Alterations to Trust

Subject to any approval required by law, the Trustee may by deed replace or amend this deed (including this clause).

16 Term of Trust and termination of Trust

16.1 Term of Trust

The term of the Trust ends on the earlier of:

- (a) the date determined by the Trustee as the date on which the Trust is to be terminated; and
- (b) the date on which the Trust is terminated under this deed or by law.

16.2 Procedure on winding up of Trust

- (a) In winding up the Trust the Trustee must:
 - (1) realise the Fund;
 - (2) pay any amount due to it under clause 16.2(c);
 - (3) pay all Costs of the Trustee in its capacity as Trustee of the Trust including, but not limited to, liabilities owed to any Unitholder who is a creditor of the Trust but excluding liabilities (if any) to that Unitholder in its capacity as a Unitholder⁴⁷; and
 - (4) subject to any special rights or restrictions attached to any Unit or the direction in writing of all Unitholders, distribute the net proceeds of realisation among the Unitholders pro rata in accordance with the number of Units held by Unitholders (irrespective of the Paid-up Proportion of the Units), provided that
 - (A) the amount that would otherwise be distributed to the Holder of a Partly Paid Unit under clause 16.2(a)(4) must be reduced by the amount of the unpaid Instalments on that Unit at the date of distribution; and
 - (B) if the effect of the reduction under clause 16.2(a)(4) would be to reduce the distribution to the Holder of a Partly Paid Unit to a negative amount, the Holder must contribute that amount to the Fund.
- (b) The Trustee may distribute an asset of the Trust to a Unitholder in specie. The Trustee must determine the value of the asset of the Fund to be distributed in specie. Any costs payable on an in specie distribution must be paid by the Unitholders before the distribution is made.
- (c) The Trustee is entitled to:

⁴⁷ Amended by Amending Deed of 1 July 2005.

- (1) be paid from the proceeds of realisation of the Trust before any payment is made to the Unitholders all Costs incurred or which it establishes will be incurred:
 - (A) by it before the winding up of the Trust which it has not recouped;
 - (B) by it in connection with the winding up of the Trust and the realisation of the Fund; and
 - (C) by or on behalf of any creditor of the Trustee in relation to the Trust;
 - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust; and
- (2) an indemnity against the amounts referred to in clause 16.2(c)(1) which may be satisfied out of those proceeds before any distribution under clause 16.2(a)(4) is made; ~~and~~
~~(3) following the termination of the Trust and until the winding up is completed, its remuneration provided for in Part 10.~~
- (d) The Trustee may postpone the realisation of the Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
- (e) The Trustee may retain for as long as it thinks fit any part of the Fund which in its opinion, may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to the Trustee under this deed, including but not limited to under clause 16.2(c).
- (f) The Trustee must distribute among the Unitholders in accordance with clause 16.2(a) anything retained under clause 16.2(e) which is subsequently not required.

16.3 Audit of accounts of Trust

The Trustee must ensure that the final accounts of the Trust following the winding-up are audited by a registered company auditor, or a firm at least one of whose members is a registered company auditor, who is independent of the Trustee.

17 Meetings

17.1 Meetings

- (a) The Trustee may convene a Meeting at any time.
- (b) Part 2G.4 of the Corporations Act and the provisions of Schedule 1 apply to a Meeting.

17.2 Resolution by Postal Ballot

- (a) A resolution of Holders of the Trust may be passed by the Holders completing, signing and returning copies of a written resolution which has been sent by the Trustee within a period specified by the Trustee.
- (b) In respect of such a resolution a Holder has the number of votes determined in accordance with section 253C(2) of the Corporations Act. The value of a Holder's total interests must be determined at such time as the Trustee specifies.

17.3 Passing of resolution

A resolution passed at a meeting of Holders held in accordance with this deed or by postal ballot under clause 17.2 is binding on all Holders.

18 Complaints

18.1 General

The provisions of this Part 18 only apply whilst the Trust is a registered scheme.

18.2 Complaints handling

The Trustee must establish and maintain a procedure for dealing with complaints by Holders in relation to the Trust which is consistent with AS4269 Australian Standard on Complaints Handling or such other standard which satisfies the requirements (if any) of the Corporations Act or any Governmental Agency from time to time.

18.3 Holder Complaints

- (a) A Holder may by notice in writing to the Trustee (or by such other method as the Trustee may approve) lodge a complaint in relation to the Trust.
- (b) The Trustee must:
 - (1) record the complaint and the date it was received in a register maintained for that purpose; and
 - (2) send the Holder an acknowledgment of receipt of the complaint.

18.4 Handling of Complaints

- (a) The Trustee must use reasonable endeavours to deal with a complaint by a Holder under clause 18.3 in accordance with this Part 18, any rules and regulations made by the Trustee for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Trustee must use reasonable endeavours to deal with and resolve the complaint within a reasonable time from the date of receipt of the complaint.
- (c) The Trustee must inform the Holder by notice in writing of:
 - (1) its decision in relation to the complaint;

- (2) the remedies available to the Holder in relation to the complaint; and
- (3) any avenues of appeal that may be available to the Holder if the Holder is dissatisfied with the decision.

18.5 Assistance and Information

- (a) The Trustee must provide a Holder with all reasonable assistance and information that the Holder may reasonably require for the purpose of making a complaint and understanding the complaints handling procedures adopted by the Trustee.
- (b) A Holder lodging a complaint in relation to the Trust must provide the Trustee with all information the Trustee may require in order to properly deal with and resolve the complaint.

19 Stapling

19.1 Power to Staple Securities

- (a) In addition to any power the Trustee has under this deed, the Trustee may, subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules:
 - (1) cause the Stapling of any Security to any Unit; and
 - (2) cause the Stapling of further Securities to Units,
 whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, the Corresponding Number of Attached Securities of every kind is Stapled to each Unit.

19.2 Applications, transfers and distributions in specie

- (a) For the purposes of Stapling, the Trustee may:
 - (1) apply for Securities in the name of a Unit Holder;
 - (2) make a transfer of Securities to all Unit Holders; or
 - (3) make a transfer of Securities by way of an in specie distribution of Securities to all Unit Holders.
- (b) If the Trustee applies for Securities in accordance with clause 19.2(a)(1), it must apply for Securities for all Unit Holders in the same way and the Securities applied for must be of the same type, have the same rights and be fully paid upon issue.
- (c) If the Trustee effects a transfer made in accordance with clause 19.2(a)(2) it must effect the transfer to all Unit Holders in the same way and the Securities transferred to each Unit Holder must be of the same type, have the same rights and be fully paid.
- (d) Notwithstanding clause 9.4(a), if the Trustee makes an in specie distribution under clause 19.2(a)(3) the Trustee:

- (1) must (unless the Trustee otherwise determines) transfer the Securities by way of distribution between 7pm on the Distribution Calculation Date for the distribution in specie and 10am the following day; and
 - (2) must effect the distribution to all Unit Holders in the same way and the Securities transferred to each Unit Holder must be of the same type, have the same rights and be fully paid.
- (e) Where Securities are to be applied for or transferred by the Trustee in accordance with clause 19.2(a), each Unit Holder authorises the Trustee to act as the Unit Holder's agent to:
- (1) apply for Securities in the name of that Unit Holder;
 - (2) accept a transfer of Securities for that Unit Holder; and
 - (3) agree to become a member of the relevant Stapled Entity.

19.3 Operation of Stapling provisions

Clauses 19.4 to 19.9 apply only, and for so long as, a Unit is a component of a Stapled Security.

19.4 Units to be Stapled

- (a) Details of all Stapled Securities sufficient to identify the securities which comprise the Stapled Security must be registered in the Stapled Security Register.
- (b) On and from the Stapling Date and prior to the Unstapling Date, the Trustee must not issue Units unless satisfied that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.
- (c) On and from the Stapling Date and prior to the Unstapling Date, the Trustee and the Holders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Security. In particular:
 - (1) the Trustee must not offer any Units for subscription or sale unless an offer is made at the same time and to the same person for the Corresponding Number of Attached Securities for issue or sale;
 - (2) any offer of Units for subscription or sale must require each offeree to subscribe for or buy the Corresponding Number of each Attached Security;
 - (3) the Trustee must not issue or sell any Units to any person unless a Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
 - (4) the Trustee must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities; and

- (5) the Trustee must not register the transmission or transfer of Units pursuant to clause 12 unless it also causes the transmission or transfer (as the case may be) of an equal number of Attached Securities,

but nothing in this clause 19.4(c) prohibits the Trustee from determining the Unstapling Date.

19.5 Unstapling Date

- (a) Subject to approval by a special resolution of the Unitholders and the members of each Stapled Entity respectively, the Trustee may determine that the Stapling provisions of this deed will cease to apply and that a particular date is to be the Unstapling Date.
- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to a the Attached Securities and the Trustee must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Trustee determines to Unstaple the Stapled Securities pursuant to this clause 19.2, this does not prevent the Trustee from:
- (1) subsequently determining that the Stapling provisions should recommence; and
 - (2) stapling an Unstapled Unit to Attached Securities which are not Stapled.

19.6 Transfer of Stapled Securities

- (a) Until the Unstapling Date:
- (1) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 12, the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security to which the Unit is Stapled in favour of the same transferee;
 - (2) a transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of each Attached Security to which the Unit is Stapled will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security to which the Unit is Stapled to the same transferee; and
 - (3) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Trustee as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the applicable Attached Security is Stapled to the same transferee.
- (b) Each Unitholder irrevocably appoints the Trustee as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the

Trustee the transfer to the Trustee (as trustee of the Trust) or to a person nominated by the Trustee of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

19.7 Stapled Security Register

The Trustee must cause to be set up and maintained a Stapled Security Register which:

- (a) may incorporate or form part of the Register;
- (b) records the names of the Unitholders, the number of Units held, the number of Attached Securities held by the Unitholders to which each Unitholder's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules (if applicable) or determined from time to time by the Trustee.

Until the Trust is Listed, the Stapled Security Register must be set up and maintained in the State of Queensland.

19.8 Variation of Stapling provisions

Prior to the Unstapling Date, the consent of each other Stapled Entity must be obtained to any amendment to this deed which:

- (a) directly affects the terms on which Units are Stapled; or
- (b) removes any restriction on the transfer of a Stapled Unit unless that restriction also exists for all other Attached Securities and is simultaneously removed for all Attached Securities.

19.9 Restricted issue of Units of different class

Notwithstanding any other provision of this deed, the Trustee may not issue any Units which are of a different class from any Units already issued without an ordinary resolution being passed at a meeting of Unitholders to that effect whilst and so long as there is a similar restriction on the issue of Attached Securities pursuant to the terms of the constitutions of the Stapled Entities without the consent of the holders of Attached Securities-

20 Power of the Trustee to require information

- (a) The Trustee may, by notice in writing, require information from any Holder for the purpose of determining whether that person or any other person has, or is taking action to acquire or assist in acquiring, a Prohibited Interest.
- (b) A notice under clause 20(a) must:
 - (1) be signed by a director or company secretary of the Trustee;
 - (2) outline the information required to be provided to the Trustee (which may be determined by the Trustee from time to time);
 - (3) state that the information required by the notice must be provided within 7 days of the date of the notice; and

- (4) specify whether the person on whom the notice is served is required to verify the information by statutory declaration.
- (c) The Trustee must give a notice under clause 20(a) to a person whom it has reasonable grounds to believe has, or is taking action to acquire or assist in acquiring, a Prohibited Interest.

21 Enforcement of prohibition on prohibited interest

- (a) The Trustee may suspend any voting rights (including the rights of a Holder under this deed to vote at any meeting) and rights to receive or participate in any distribution to or entitlement of Holders (including an offer pursuant to clauses 5.8, 5.9 or 5.10) attaching to a Unit or Option held by a Defaulting Unitholder as the Trustee may determine.
- (b) The Trustee may, by notice in writing to a Defaulting Unitholder, require the Defaulting Unitholder to dispose of any Unit or Option held by the Defaulting Unitholder as is specified in the notice to a person other than a person who would be a Defaulting Unitholder as a consequence of that transfer within such period as is specified in the notice. While the Trust is Listed, the period specified in the notice must be a period of at least 28 days or such lesser period as the ASX may agree to in writing. If the Units or Options specified in the notice are not disposed of by the Defaulting Unitholder within the period specified in that notice, the Trustee may execute all such documents and instruments of transfer and do all such things as may be necessary to sell and transfer any Units or Options held by the Defaulting Unitholder to any person or persons.
- (c) The proceeds of any sale made by the Trustee under clause 21(b) must be applied in the following order:
 - (1) in payment of the costs of the sale;
 - (2) in payment of any surplus to the former Holder whose Unit or Option was sold.
- (d) The number of Units in respect of which rights are suspended pursuant to clause 21(a) and the number of Units or Options specified in a notice given pursuant to clause 21(b) must not exceed that number which in the reasonable opinion of the Trustee, if disposed of in accordance with clause 21(b), would result in that Defaulting Unitholder no longer being a Defaulting Unitholder.
- (e) Despite any other provision of this deed, clause 20 and clause 21 will cease to have any effect if the provisions in the Leases placing restrictions on Change Transactions (as that term is defined in Schedule 2 to this deed) are removed or otherwise cease to have effect.

The Trustee will not be liable for anything done in good faith in the exercise or purported exercise of a power under the preceding provisions of clause 20 or this clause 21.

22 General

22.1 Service of notices

- (a) Any application, notice or other communication to or by the Trustee or a Holder:
- (1) must be in legible writing and in English addressed:
 - (A) if to the Trustee, to its registered office;
 - (B) if to a Holder, to the Holder's address specified in the register of Unitholders or Optionholders;
 - (2) must be signed personally or, in the case of a corporation, by a duly authorised officer or under the common seal of the sender or pursuant to section 127 of the Corporations Act;
 - (3) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee; or
 - (B) if by prepaid post, 3 Business Days from and including the date of postage to the addressee; or
 - (C) if by facsimile transmission, when transmitted to the addressee but where the sender's machine indicates a malfunction in transmission or the addressee notifies the sender of an incomplete transmission within 2 hours after transmission is received, the facsimile transmission is regarded as not given or received,

but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day; and
 - (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A notice or other communication to joint holders is validly given if it is given only to the joint Holder whose name appears first on the Register.
- (c) A notice sent to an address outside the Commonwealth must be sent by airmail, fax or in another way that ensures it is received quickly.

22.2 Method of payment, repayment or redemption

- (a) Any money payable by the Trustee to a Unitholder under this deed may be paid by a crossed "not negotiable" cheque made payable to the Unitholder and posted to the Unitholder's registered address.
- (b) A Unitholder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this deed be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.

- (c) A cheque issued to a Unitholder which is presented and paid, or where the payment is to a financial institution or nominated person, payment to the institution or person, discharges the Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within 9 months is cancelled. If the Trustee so determines the amount of the cheque may be reinvested in Units. The reinvestment is deemed to be made on the day the cheque is cancelled.

22.3 Binding conditions

The terms and conditions of this deed and any amending deed are binding on the Trustee, each relevant Holder and any other person claiming through any of them as if each was a party to this deed and each supplemental deed.

22.4 Governing law and jurisdiction

The rights, liabilities and obligations of the Trustee and the Holders are governed by the law of Queensland.

22.5 Severability

If any provision of this deed is held or found to be void, invalid or otherwise unenforceable so much hereof as is necessary to render it valid and enforceable is deemed to be severed but the remainder of this deed will remain in full force and effect.

Executed as a deed:

Signed by
Babcock & Brown Investor Services Limited

pursuant to section 127 of
the Corporations Act
in the presence of:

Secretary/Director

Director

Name (please print)

Name (please print)

Schedule 1 - Meetings of Holders

(Part 17)

1 Notice of meeting

If the Trustee omits to give a Holder notice of a Meeting or if a Holder does not receive notice, the Meeting is still valid.

2 Who may attend and address meeting of Unitholders

- (a) The Trustee, the directors of the Trustee, the Auditor, the auditor of the Trust's Compliance Plan, and any person invited by any of them to do so is entitled to attend and address a Meeting or an adjourned Meeting.
- (b) The following persons may be refused entry to a meeting or required to leave and remain out of a meeting:
 - (1) persons in possession of a pictorial-recording or sound-recording device;
 - (2) persons in possession of a placard or banner;
 - (3) persons in possession of an article considered by an officer of the Trustee to be dangerous, offensive or liable to cause disruption;
 - (4) a person who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
 - (5) a person who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (6) a person who is not:
 - (A) a member or a proxy, attorney or representative of a member; or
 - (B) a person referred to in paragraph 2(a).

3 Quorum

- (a) No business may be transacted at any Meeting unless a quorum of Holders is present at the time when the meeting proceeds to business.
- (b) A quorum consists of:
 - (1) if the number of Holders entitled to vote is 2 or more - 2 of those Holders; or
 - (2) if only 1 Holder is entitled to vote - that Holder,present at the meeting.
- (c) A Holder is counted towards a quorum even though the Holder may not be entitled to vote on any resolution at the Meeting.
- (d) If a quorum is not present within half an hour from the time appointed for the meeting, the Meeting must be adjourned as the chairman directs.
- (e) Other than for a meeting to consider an extraordinary resolution, at an adjourned Meeting the Holders with voting rights who are present either in person or by proxy constitute a quorum and are entitled to pass the resolutions.

4 Adjournments

The chairman may adjourn a meeting for any reason to such time and place as the chairman thinks fit.

5 Proxies

- (a) Any person including a Holder may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (c) If the appointer of a proxy is a corporation, the instrument of appointment must be:
 - (1) under its common seal (if any); or
 - (2) under the hand of an officer or attorney who has been authorised by the corporation; or
 - (3) under the hand of any 2 directors or a director and a secretary of the corporation; or
 - (4) in the case of a corporation where the sole director and sole secretary are the same person, under the hand of that person.
- (d) The instrument appointing a proxy and the original or notarially certified copy of the power of attorney or authority under which it is signed must be deposited with the Trustee at least 48 hours, or any shorter period determined by the Trustee from time to time, before the time appointed for the meeting at which the proxy proposes to vote.
- (e) If paragraph 5(d) is not complied with, the proxy is invalid.
- (f) The Trustee is not obliged to enquire whether a proxy has been validly given.
- (g) A vote given under an instrument of proxy is valid even though the principal is or becomes of unsound mind, has died or has revoked the proxy or the authority under which the proxy was executed.
- (h) Paragraph 5(g) does not apply if the Trustee has notice in writing of the death, unsoundness of mind or revocation before the meeting at which the proxy is to be used.
- (i) Unless otherwise provided in the appointment of a proxy, attorney or representative or in the Corporations Act, an appointment will be taken to confer authority:
 - (1) to agree to a meeting being called by shorter notice than is required by the Corporations Act or by this deed;
 - (2) to speak to any proposed resolution on which the proxy, attorney or representative may vote;
 - (3) to demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote;
 - (4) even though the instrument may refer to specific resolutions and may direct the proxy, attorney or representative how to vote on those resolutions:

- (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
- (5) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (j) Where a Holder appoints 2 proxies or attorneys, on a show of hands, neither proxy or attorney may vote.
 - (k) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the meeting but, if the appointer votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.
 - (l) Where a person present at a meeting represents personally or by proxy, attorney or representative more than 1 Holder:
 - (1) on a show of hands the person is entitled to 1 vote only despite the number of Holders the person represents;
 - (2) that vote will be taken as having been cast for all the Holders the person represents; and
 - (3) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with any instrument appointing the person as a proxy or attorney.

6 Voting

- (a) A poll is to be conducted as directed by the chairman at the meeting or any adjournment of the meeting.
- (b) The demand for a poll does not discontinue the meeting except to decide the question for which the poll is demanded.
- (c) The result of the poll is regarded as the resolution of the meeting.
- (d) A poll may not be demanded on any resolution concerning:
 - (1) the election of the chairman of a meeting; or
 - (2) the adjournment of a meeting.
- (e) If a Holder 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 Holder's committee or trustee or other person who properly has the management of the Holder's affairs or estate may exercise any rights of the Holder in relation to a Meeting as if the committee, trustee or other person were the Holder.

7 Joint Holders

Joint Holders are counted as a single Holder for the purposes of calculating the number of Holders who have:

- (a) requested a Meeting under section 252B(1) of the Corporations Act;
- (b) given the Trustee notice of a special or extraordinary resolution they propose to move at a Meeting under section 252L(1) of the Corporations Act;
- (c) requested that a statement be distributed to members under section 252N of the Corporations Act; or
- (d) demanded a poll under section 253L of the Corporations Act.

8 Class Meetings

The provisions of Part 2G.4 of the Corporations Act, Part 17 of this deed and this Schedule relating to Meetings apply so far as they can and with such changes as are necessary, to each separate meeting of Holders of Units or Options or in a class of Units or Options.

Schedule 2 – Prohibited Interest

1 Definitions

In this Schedule 2:

Affiliate has the meaning given to “associate” by sections 10, 11, 12, 15 and 16 of the Corporations Act 2001 as if:

- (a) to the extent that any of those sections purports to be an exclusive or exhaustive definition of "associate", that section is not an exclusive or exhaustive definition;
- (b) the words of section 12(1) appearing after the words "in relation to a designated body" were deleted and replaced with a full stop; and
- (c) for the purposes of section 15(1), the matter to which the associate reference relates is:
 - (1) any investment in the Trust or in the Dalrymple Bay Coal Terminal in Queensland; or
 - (2) the control of the Trustee or any Stapled Entity; or
 - (3) access to the Dalrymple Bay Coal Terminal in Queensland or access to the services that Dalrymple Bay Coal Terminal provides; or
 - (4) the control of the operations of Dalrymple Bay Coal Terminal in Queensland,

with the intent that any person will be regarded as being an Affiliate of a primary person for the purposes of this Schedule if they would, in the circumstances to which those sections relate, be an associate of that primary person for any reason within those sections. Despite any other provision of this document, the reference to any part of the Corporations Act 2001 in this definition of "Affiliate" is a reference to:

- (d) that part of Corporations Act 2001 as in force at the date of this deed, as amended or replaced by any statute where that amendment or replacement has been approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783); and
- (e) if all or a relevant part of the Corporations Act 2001 is repealed, the Corporations Act 2001 (or the relevant part of it) as in force at the date of this deed, as amended or replaced by any statute where that amendment or replacement has been approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783), and was in force immediately before such repeal;

Approved Financial Institution means:

- (a) an authorised deposit-taking institution within the meaning of section 5(1) of the Banking Act 1959 (Cth) which has net assets of at least the Base Amount;
- (b) a body corporate authorised to carry on insurance business under the Insurance Act 1973 (Cth) which has net assets of at least the Base Amount;
- (c) a life company registered under the Life Insurance Act 1995 (Cth) which has net assets of at least the Base Amount;
- (d) a body registered under the Financial Corporations Act 1974 (Cth) which has net assets of at least the Base Amount;

- (e) the trustee of:
- (1) a superannuation fund;
 - (2) an approved deposit fund;
 - (3) a pooled superannuation trust; or
 - (4) a public sector superannuation scheme,
- within the meaning of the Superannuation Industry (Supervision) Act 1993 (Cth), where the trust, fund or scheme has net assets of at least the Base Amount, and which is not:
- (3) an entity the business of which is related to handling, storage or transportation of goods;
 - (5) Controlled by an entity the business of which is related to handling, storage or transportation of goods; or
 - (6) an entity that has an Affiliate (other than the Trustee or any Stapled Entity) the business of which is related to handling, storage or transportation of goods;
- (f) a corporation (statutory or otherwise) that is incorporated in Australia or an external Territory and is:
- (1) a public authority; or
 - (2) an instrumentality or agency of the Crown in right of the Commonwealth of Australia or in right of a State or Territory of the Commonwealth of Australia;
- (g) a foreign entity that, if established or incorporated in Australia, would be covered by any of the preceding paragraphs; or
- (h) any other entity or class of entity approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783),

that is not a User or an Affiliate of a User.

Approved Investor means

- (a) a person that controls at least the Base Amount (including any amount held under a trust that the person manages) for the purposes of investment and which is not:
- (1) an entity the business of which is related to handling, storage or transportation of goods;
 - (2) Controlled by an entity the business of which is related to handling, storage or transportation of goods; or
 - (3) an entity that has an Affiliate (other than the Trustee or any Stapled Entity) the business of which is related to handling, storage or transportation of goods; or
- (b) any other entity or class of entity approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783),

that is not a User or an Affiliate of a User;

Base Amount means \$100,000,000 Escalated at CPI;

Change Transaction means a transaction described in paragraph 2(a) or paragraph 2(b) as the context requires;

Controlled refers to a situation where one entity exercises a power or control over a second entity where that power or control is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of trusts, relevant agreements and practices, or any of them, whether or not they are enforceable;

CPI means the “All Groups” Consumer Price Index published by the Australian Bureau of Statistics for the city of Brisbane (or any comparable index as advised by the Trustee from time to time) for the calendar quarter last published before the relevant date;

CPI_{Base} means the CPI for the Quarter ending 31 March 2001;

CPI_n means the relevant CPI current for the most recent Quarter at the time that a calculation is made under this Schedule 2;

Escalated at CPI in relation to an amount means that amount adjusted, on 15 September 2006 and at five yearly intervals thereafter, by reference to a factor the numerator of which is CPI_n and the denominator of which is CPI_{Base};

Percentage Interest means, in the case of a person and the Trust, the proportion (expressed as a percentage) which the total votes attached to voting Units in which that person or an Affiliate of that person has a relevant interest (within the meaning of sections 608 and 609 of the Corporations Act 2001) bears to the total number of votes attached to the voting Units. Despite any other provision of this deed, the reference to any part of the Corporations Act 2001 in this definition of Percentage Interest is a reference to:

- (a) that part of Corporations Act 2001 as in force at the date of this deed, as amended or replaced by any statute where that amendment or replacement has been approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783); and
- (b) if all or a relevant part of the Corporations Act 2001 is repealed, the Corporations Act 2001 (or the relevant part of it) as in force at the date of this deed, as amended or replaced by any statute where that amendment or replacement has been approved in writing by DBCT Holdings Pty Ltd (ACN 096 395 783), and was in force immediately before such repeal; and

User means a user of the services of the facility known as the Dalrymple Bay Coal Terminal in Queensland that is a party to an agreement in relation to the use of those services;

2 Prohibited Interest

- (a) A person has a Prohibited Interest if as a consequence of a transaction (**Change Transaction**) which does not have the prior written consent of DBCT Holdings Pty Ltd (ACN 096 395 783):
 - (1) the Percentage Interest in the Trust of the person (not being an Approved Financial Institution or an Approved Investor) increases from nil, or from 5% or less, to more than 5%; or
 - (2) the Percentage Interest in the Trust of the person (being an Approved Financial Institution or an Approved Investor) increases from nil, or from 20% or less, to more than 20%;

- (b) A person has a Prohibited Interest if as a consequence of a transaction (**Change Transaction**) which does not have the prior written consent of DBCT Holdings Pty Ltd (ACN 096 395 783), by itself or when aggregated with one or more transactions for which the prior written consent of DBCT Holdings Pty Ltd (ACN 096 395 783) has not been obtained:
- (1) there is an increase of at least 1% in the Percentage Interest in the Trust of the person (not being an Approved Financial Institution or an Approved Investor) where the person, immediately prior to the Change Transaction, had a Percentage Interest in the Trust of more than 5%;
 - (2) there is an increase of at least 1% in the Percentage Interest in the Trust of the person (being an Approved Financial Institution or an Approved Investor) where the person, immediately prior to the Change Transaction, had a Percentage Interest in the Trust of more than 20%.
- (c) A person may have a Prohibited Interest even though they are not a party to any Change Transaction.
- (d) A person will not be taken to have a Prohibited Interest merely because an agreement is entered into in relation to a Change Transaction if the provisions of the agreement giving effect to the Change Transaction do not become binding on the parties to it until prior written consent to the Change Transaction is obtained from DBCT Holdings Pty Ltd (ACN 096 395 783).

Schedule 3 - ASX compliance checklist

Trust Deed constituting the ~~Babcock & Brown Infrastructure Trust~~ Prime Infrastructure Trust⁴⁸

Listing Rule / SCHASTC Business Rule reference	Location	Description
1.1 Condition 2, 15.11 & Appendix 15A	1.5	Constitution to be consistent with the Listing Rules.
1.1 Condition 5	1.5	Constitution does not contain buy back provisions
2.1 Condition 1, 2.5 Condition 1 & 6.1	1.5	Requirements of securities to be quoted.
2.1 Condition 3	1.5	Satisfaction of requirements for securities to be CHESS approved
3.13	1.5	Information to be given to ASX regarding meetings
3.17, 15.2.1 & 15.2.2	1.5	Copies of all documents sent to security holders to be lodged with ASX
3.19	1.5, 21	Disclosure regarding specified ownership limits
6.2	There is only one class	Entity to have only one class of ordinary securities.
6.3	No provision for preferred units	Rights of preference security holders regarding voting
6.5	N/A	Rights of preference security holders regarding voting
6.6	N/A	Rights of preference security holders regarding returns of capital
6.7	N/A	Rights of preference security holders regarding notices, reports, accounts and meetings
6.8	N/A	Voting rights are regulated by the Corporations Act s253C(1)
6.9, 6.9.2	N/A	Voting rights – on a poll. Voting rights are regulated by the Corporations Act s253C(2)
6.10	1.6(a)	Removal of change to voting and dividend rights of security holders

⁴⁸ Name changed from Prime Infrastructure Trust by resolution of the Trustee on 28 June 2005. Name change from Babcock and Brown Infrastructure Trust approved by a resolution of Unitholders on 16 November 2009.

Listing Rule / SCHASTC Business Rule reference	Location	Description
6.10, 6.12 & SCHBR <u>ASTCBR 85.13.12</u>	1.6	Restricted use of divestment and disenfranchisement provisions in Constitutions. CHES Holdings – requirements for Notices of Divestment
6.11	9.3(b)	Distribution rights
6.13 & SCHBR <u>ASTCBR 11.18.15</u>	3.15	Lien on shares and dividends restricted to unpaid calls and instalments, amounts owed under employee incentive schemes, and amounts payable by law
6.24, Appendix 6A & SCHBR 13.7	1.5	Timetables – dividends and distributions, interest on debt securities, calls, expiry of options, expiry of convertible debt securities
Appendix 6A para 4.1	N/A	Requirements of call notices for NL companies
Appendix 6A para 5.1	1.5 and 3.7(a)	Requirements of call notices for other entities
7.1	1.5, 5.6, 5.7	Issue of securities (15 per cent rule)
7.10	1.5	No interference with issue of securities
7.24	N/A	Reorganisations of issued capital – partly paid shares
7.26	N/A	Cancellation of forfeited partly paid shares by limited liability company
7.29	N/A	On-market buy-backs
7.40, Appendix 7A & SCHBR <u>ASTCBR 13.75.22</u>	1.5 and 5	Timetables – bonus issues, entitlement issues, reorganisation of capital, return of capital
8.1 & SCHBR <u>ASTCBR 1.52.2</u>	1.5, 12.1(b)	Compliance with SCH <u>ASTC</u> Business Rules
8.2, 8.3	1.5, 12.1(b)	CHES approved securities – Issuer Sponsored Subregister
8.4.1	1.5, 12.1(b)	Reorganisations of capital – rejection of transfers if received with old certificate
8.5, 8.6, 8.7 & 8.14	1.5, 12.1(b)	Statement requirements for holders on Issuer Sponsored Subregister
8.8 & SCHBR <u>8.6.2</u>	1.5, 12.1(b)	Issue of replacement certificates. Issuer to recognise Broker's cancellation of certificates
8.10 & SCHBR <u>ASTCBR 8.95.8</u>	1.5, 12.3	No interference with registration of paper-based transfers or generation of proper SCH <u>ASTC</u> transfers
8.11	1.5, 12.1(b)	Prohibition on use of pre-registration statutory declarations

Listing Rule / <u>SCHASTC</u> Business Rule reference	Location	Description
8.12	1.5, 12.1(b)	Reservation of securities for takeover offeror
8.14	1.5, 12.1(b)	Registration of transfers and issue of certificates etc without charge
8.17	1.5	Registry offices to remain open
8.21, Appendix 8A & <u>SCHBR-ASTCBR</u> <u>13.75.22</u>	1.5	Time limits – dispatch of certificates, mark transfer forms, conversions between subregisters
Appendix 8A	1.5	CHESS approved securities – Conversion from Certificated to Issuer Sponsored Subregister
10.11	1.5, 5.6	Participation of related parties in new issues
10.17, 10.18 & 10.19	N/A	Service agreements
11.2	1.5	Disposal of main undertaking requires approval of holders of ordinary securities
14.2	1.5, 17 & Schedule 1	Requirements for proxy forms
14.3	N/A	Time for acceptance of nominations for election of directors
14.4	N/A	Limit on directors holding office including those appointed to fill casual vacancy and managing directors where more than one
14.5	N/A	Election of directors each year
14.10	N/A	No casting vote by chairman where only 2 directors present are entitled to vote
15.10	22.1(c)	Documents for overseas security holders to be sent by air or fax
15.12.1	12.5(a)	Prohibition on disposal of restricted securities during escrow period
15.12.2	12.5(b)	Entity must refuse to acknowledge a disposal of restricted securities in escrow period
15.12.3	12.5(c)	Dividend and voting rights to cease where breach of Listing Rules or restriction agreement
15.13 & <u>SCHBR</u> <u>ASTCBR 8.135.12</u>	1.5 No such provision	Restriction on provisions for sale of security holdings of less than a marketable parcel. Requirements for Notices of Divestment
15.15	N/A	Foreign companies – prohibition on sanctions or penalties to enforce provisions relating to takeover offers or substantial shareholdings
<u>SCHBR-ASTCBR</u>	1.5	CHESS Subregister forms part of principal

Listing Rule / SGHASTC Business Rule reference	Location	Description
5.1.28.6		register
SCHBR-ASTCBR 5.68.10	3.4(d)	CHESSE holdings – maximum 3 joint holders
SCHBR-ASTCBR 5.78.10	1.3	Restricted ability to establish holdings of less than a marketable parcel
SCHBR-ASTCBR 5.88.10	12.7	Recognition of equitable interest
SCHBR-ASTCBR 5.108.12	1.5	Registration date
SCHBR's-ASTCBR 5.11 & 8.38.13	1.5	Subregisters to remain open
SCHBR's-ASTCBR 6.5.49.8.4 & 6.6.4	1.5	Certain documents to be received by Issuers
SCHBR-ASTCBR 8.175.10	1.5 & 4.6	Non-issue of certificates
SCHBR-ASTCBR 8.185.11	1.5	Numbering of certificates
SCHBR-ASTCBR 13.55.21	1.5	Nil Paid Rights Record
SCHBR-ASTCBR 16.614.17	1.5	Completion of Takeover Transfers