

# Bye-Laws of Macquarie Atlas Roads International Limited

Dated

A company limited by shares  
Incorporated in the Islands of Bermuda

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# Bye-Laws of Macquarie Atlas Roads International Limited

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# Bye-Laws of Macquarie Atlas Roads International Limited

## General Terms

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### 1 Definitions

In these Bye-Laws unless the context otherwise requires:

**Adviser** means Macquarie International Advisory Services Pty Limited (ACN 127 735 960) or any other substitute or successor investment adviser appointed by the Company from time to time.

**Alternate Director** means a director or other person appointed and removed pursuant to Bye-Law 59(a).

**Annual General Meeting** has the meaning set out in Bye-Law 38(a).

**associate** of a body corporate means a subsidiary or holding company of the body corporate or a subsidiary of the holding company of the body corporate (and subsidiary or holding company is to be construed in accordance with section 86(2) of the Companies Act).

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as appropriate.

**Auditors** means any person or persons for the time being appointed as such by the Shareholders.

**Aust Share** has the meaning set out in Schedule 2 of these Bye-Laws.

**Australian Listing Rules** means the Listing Rules of the ASX and any other rules of the ASX which are applicable while the Company is admitted to the Official List of ASX, each as amended and replaced from time to time, except to the extent of any express written waiver by ASX.

**BBSW** for a period:

- (a) the rate determined by the Directors to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10.30am Sydney time on the first day of that period on the Reuters screen BBSW page for a term of one month after eliminating one of the highest and one of the lowest of those rates; or
- (b) if for any reason there are no rates displayed for a term then BBSW will be the rate determined by the Directors to be the average of the buying rates quoted to the Directors by 3 Australian banks selected by the Directors at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to one month.

**Bermuda** means the Islands of Bermuda.

**Branch Register** means a local or branch register of Shareholders maintained at a location outside Bermuda.

**Bye-Laws** means these Bye-Laws in their present form or as from time to time amended.

**Business Day** means any day (other than a Saturday or Sunday) normally treated as a business day in Bermuda, or such other day or days in substitution thereof or in addition thereto as the Directors may from time to time specify.

**Cashout Bank** means an Australian Financial Services Licence holder with sufficient authority and expertise to sell the Transfer Securities.

**CHESS** means the Clearing House Electronic Sub-register System and means the system established and operated by the CS Facility Operator for:

- (a) the clearing and settlement of transactions in CHESS Approved Securities;
- (b) the transfer of securities; and
- (c) the registration of transfers.

**CHESS Approved Securities** means securities in respect of which approval has been given by the CS Facility Operator in accordance with the Operating Rules.

**Clear Days** means, in relation to the period of a notice, that period excluding the day when the notice is given or deemed to be given and the day for which it is given or on which it is to take effect.

**Common Shares** means the unrestricted ordinary shares of a par value of \$1.00 in the capital of the Company and having the rights and having the restrictions specified in the Bye-Laws.

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

**Company** means the company incorporated in Bermuda under the name of Macquarie Atlas Roads International Limited 43828 on December 16, 2009.

**Corporations Act** means the Corporations Act 2001 (Cwth) (Australia).

**CS Facility** has the same meaning as prescribed CS facility in the Corporations Act.

**CS Facility Operator** means the operator of a CS Facility.

**Directors** means the directors of the Company for the time being, or as the case may be, the Directors present at a meeting of Directors at which there is a quorum.

**Divestment Notice** has the meaning ascribed thereto in Bye-Law 98(c).

**Electronic Records** means a record created, generated, received or communicated by electronic means and includes any electronic code or device necessary to decrypt or interpret the electronic record.

**Entity** means a corporation or a trust.

**Indemnified Person** has the meaning ascribed thereto in Bye-Law 89(a).

**Independent Director** means a Director that satisfies the Independence Criteria.

**Independence Criteria** means the criteria published by the Company in its corporate governance reporting from time to time.

**Interested Director** has the meaning ascribed thereto in Bye-Law 68(d).

**Issuer Sponsored Holding** has the same meaning as it is given in the ASTC Settlement Rules.

**Member** means a person entered in the Register as a holder of shares in the capital of the Company.

**Memorandum** means the Memorandum of Association of the Company as amended from time to time.

**MQA Australia** means Macquarie Atlas Roads Limited (ACN 141 075 201).

**MQA Australia Board** means the board of directors of MQA Australia.

**New Small Holder** has the meaning ascribed thereto in Bye-Law 98(c).

**Non-Australasian Shareholder** means any means any Shareholder who is a citizen or resident of a jurisdiction outside Australia and New Zealand or whose address in the Register is a place outside of Australia and New Zealand, unless the Directors are satisfied that it would not be unlawful to issue securities to the Shareholder either unconditionally or after compliance with conditions which the Directors in their sole discretion regard as acceptable and not unduly onerous.

**Official List** means in relation to ASX, the official list of Entities that ASX has admitted and not removed.

**Officially Quoted** means quotation on the official list of ASX, including when quotation is suspended for a continuous period of not more than 60 days, all times during that period of suspension.

**Operating Rules** means the operating rules of a CS Facility regulating the settlement, clearing and registration of uncertificated shares as amended, varied or waived (whether in respect of the Company or generally) from time to time.

**Ordinary Shares** means ordinary, voting shares of a par value \$0.01 in the capital of the Company issuable by the Directors pursuant to Bye-Law 5 in such classes as the Directors may from time to time determine and having the rights, and being subject to the restrictions, specified in these Bye-Laws or by the Directors. For the avoidance of doubt, any non-voting shares or preference shares that the Directors see fit to issue from time to time are not Ordinary Shares. **Ordinary Share** has a corresponding meaning.

**Other Interest** means a share, unit or other security in or issued by an Entity.

**Period End Date** means 30 June and 31 December in each calendar year or such other or additional dates as the Directors may from time to time specify.

**Paid up** means paid up or credited as paid up.

**Register** means the register of Shareholders of the Company.

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

**Registrar** means the registrar and transfer agent and/or fund administrator appointed by the Directors for the purposes of compliance with Bermuda law and includes any temporary or assistant Registrar so appointed.

**Resident Representative** means the person (or, if permitted in accordance with the Companies Act, the company) appointed to perform the duties of resident representative set out in the Companies Act and includes any assistant or deputy Resident Representative appointed by the Directors to perform any of the duties of the Resident Representative.

**Resolution** means a resolution of the Shareholders (entitled to vote thereon) or, where required, of a separate class or separate classes of Shareholders, adopted either in general meeting or by written resolution, in accordance with the provisions of these Bye-Laws.

**Restricted Securities** has the meaning given in the Australian Listing Rules.

**Seal** means the common seal of the Company and includes any duplicate thereof.

**SEATS** has the meaning given in the Australian Listing Rules.

**Secretary** includes a temporary or assistant or deputy Secretary and any person appointed by the Directors to perform any of the duties of the Secretary.

**Shareholder** means a person or body corporate registered in the Register as the holder of shares, and when two or more persons are so registered as joint holders of shares, means the person whose name stands first in the Register as one of such joint holders.

**Small Holder** has the meaning ascribed thereto in Bye-Law 98(c).

**Special General Meeting** has the meaning set out in Bye-Law 38(b)

**Special Resolution** means a resolution that has been passed by at least 75% of the votes cast by Shareholders entitled to vote on the particular resolution before the general meeting or a resolution in writing, in accordance with the provisions of these Bye-Laws, by all the Shareholders (entitled to vote thereon) and constituting the necessary voting majority required.

**Stapling** has the meaning set out in Schedule 2 of these Bye-Laws. **Stapled** has a corresponding meaning.

**Stapled Security** has the meaning set out in Schedule 2 of these Bye-Laws.

**Stapling Commencement Date** has the meaning set out in Schedule 2 to these Bye-Laws.

**Stapling Provisions** means the provisions relating to Stapling contained in Bye-Law 10 and in Schedule 2 to these Bye-Laws as the same may be amended or added to from time to time in accordance with that schedule.

**Transmittee** has the meaning ascribed thereto in Bye-Law 33.

**Unstapling** has the meaning set out in Schedule 2 to these Bye-Laws.  
**Unstapled** has a corresponding meaning.

**Valuation Date** has the meaning ascribed thereto in Bye-Law 34(d)

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## 2 Interpretation

- (a) For the purposes of these Bye-Laws a corporation shall be deemed to be present in person if its representative(s) duly authorised pursuant to the Companies Act is present.
- (b) Words importing only the singular number include the plural number and vice versa.
- (c) Words importing only the masculine gender include the feminine and neuter genders respectively.
- (d) Words importing persons include companies or associations or bodies of persons, whether corporate or unincorporate.
- (e) Reference to writing shall include typewriting, printing, lithography, photography electronic mail and other modes of representing or reproducing words in a legible and non transitory form.
- (f) Any requirement of a signature shall be satisfied if such signature is a reproduction of a signature affixed by mechanical means.
- (g) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (h) A reference to \$ or dollars is a reference to the currency of Australia.
- (i) Except as otherwise set out in these Bye-Laws and unless the context otherwise requires, words or expressions contained in these Bye-Laws bear the same meaning as in the Companies Act or the Australian Listing Rules or the Operating Rules (as the case may be) and in the event of any inconsistency, the meaning in the Companies Act shall prevail.
- (j) A reference to the Australian Listing Rules or the Operating Rules is to the Australian Listing Rules or the Operating Rules (as the case may be) in force in relation to the Company after taking into account any waiver or exemption which is in force either generally or in relation to the Company.
- (k) A reference to a certificate for a share is taken to be, in the case of a share which is a CHESSE Approved Security, to be a reference to a notice or notices which, pursuant to the Corporations Act or the Australian Listing Rules, provides some or all of the information which would otherwise have been shown on the certificate.

- (l) A reference to securities being “on issue” or “in issue” in these Bye-Laws is to such securities as are, at the relevant time, issued and outstanding.

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### **3 Australian Listing Rules**

At all times that the Company is admitted to the Official List of the ASX:

- (a) These Bye-Laws are to be interpreted subject to the Companies Act, the Corporations Act, the Australian Listing Rules and the Operating Rules, or all of these, as the case may be and accordingly to the extent permitted by the Companies Act:
  - (i) notwithstanding anything contained in these Bye-Laws, if the Australian Listing Rules prohibit an act being done, the act shall not be done;
  - (ii) nothing contained in these Bye-Laws prevents an act being done that the Australian Listing Rules require to be done;
  - (iii) if, the Australian 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);
  - (iv) if, the Australian Listing Rules require these Bye-Laws to contain a provision and these Bye-Laws do not contain such a provision these Bye-Laws are deemed to contain such a provision;
  - (v) if, the Australian Listing Rules require these Bye-Laws not to contain a provision and these Bye-Laws contains such a provision these Bye-Laws are deemed not to contain such a provision; and
  - (vi) if, any provision of these Bye-Laws is or becomes inconsistent with the Australian Listing Rules, these Bye-Laws are deemed not to contain such a provision to the extent of that inconsistency.
- (b) If, as a result of any amendments to the Australian Listing Rules, there is any inconsistency between these Bye-Laws and a provision of the Australian Listing Rules which is unable to be cured by the provisions of paragraph (a), the Company shall take all steps necessary to alter the relevant provision of these Bye-Laws to overcome the inconsistency, to the extent it is able to do so under the Companies Act.
- (c) While any shares are CHES Approved Securities, the Company and the Directors shall, notwithstanding any provision in these Bye-Laws to the contrary (other than this Bye-Law), comply with the Operating Rules.
- (d) In these Bye-Laws, unless the contrary intention appears the expressions “closing price on SEATS”, “Uncertificated Securities”, “disposed of”, “disposed” and “Restricted Securities” have the same meaning as in the Australian Listing Rules.

# CAPITAL

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## 4 Share Capital

The authorised share capital of the Company at the date of adoption of these Bye-Laws is \$680,000,002 divided into two Common Shares and 68,000,000,000 unclassified Ordinary Shares.

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## 5 Ordinary Shares

The holders of the Ordinary Shares shall:

- (a) be entitled to receive notice of, and attend, any meeting of the Company and shall be entitled to one vote per share on all matters;
  - (b) be entitled to such dividends as may be declared by the Directors from time to time;
  - (c) be subject to redemption of their shares at the option of the Company pursuant to Bye-Law 34;
  - (d) not be entitled to request redemption or repurchase of their Ordinary Shares, other than with the prior written consent of the Directors and in accordance with the provisions of Bye-Law 34; and
  - (e) in the event of the winding up or dissolution of the Company, whether voluntary or involuntary or for the reorganisation or otherwise or upon the distribution of capital, after the capital paid up on the preference shares on issue (if any) has been paid to the holders of these shares, be entitled *pari passu* to receive a distribution of capital Paid up on the Ordinary Shares and to share *pari passu* in the surplus assets of the Company.
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## 6 Preference Shares

The Company may not issue preference shares (including redeemable preference shares) and issued shares may not be converted into preference shares unless the rights attached to the preference shares are as set out in Schedule 1 or have been otherwise approved by Special Resolution.

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## 7 Valuation

The Directors shall carry out or cause to be carried out as at each Period End Date a valuation of the Company's assets and liabilities by reference to generally accepted accounting principles and may seek, as necessary, the advice of the Adviser or other independent experts in connection with such valuation.

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## 8 Power of Directors to Issue Securities

- (a) The Directors may, subject to these Bye-Laws, issue shares or options over shares in, and other securities of, the Company rounded up to the nearest whole number and at such price as the Directors may determine

from time to time. Fractional shares or other securities may not be issued.

- (b) Subject to the provisions of the Companies Act and these Bye-Laws, and without prejudice to any special rights conferred on the holders of any issued shares, options or other securities, any share, option or other security in the Company may be issued in such number of classes and/or series, for such consideration and with or have attached thereto such preferred, deferred, qualified or other special rights or such restrictions, whether in regard to dividend, voting, redemption, return of capital, termination of series, payment of calls or otherwise, as the Directors may determine.
- (c) Subject to the provisions of the Companies Act and these Bye-Laws (including Schedule 2 to these Bye-Laws), the unissued shares in the Company shall be at the disposal of the Directors, who may offer, allot, grant options over or otherwise dispose of them to such persons and on such terms as the Directors think fit.

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## 9 Modification of Rights

- (a) Subject to the Companies Act and the Australian Listing Rules, if, at any time the capital of the Company, is divided into different classes of shares, the special rights for the time being attached to any class of shares for the time being issued may from time to time (whether or not the Company is being wound up) be varied:
  - (i) in such manner (if any) as may be provided by those rights; or
  - (ii) in the absence of any such provision, with the consent in writing of the holders of 75% in nominal value of the issued shares in that class, or with the sanction of a Special Resolution passed at a separate meeting of the holders of the shares of that class;but not otherwise.
- (b) To every such separate meeting, the provisions of these Bye-Laws relating to general meetings shall *mutatis mutandis* apply, except that:
  - (i) the necessary quorum at such meetings, other than an adjourned meeting and subject to the proviso below, shall be two (2) persons together holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question; and
  - (ii) at an adjourned meeting shall be one person holding shares of the class in question or his proxy,

provided however, that if the Company or a class of Shareholders shall have only one Shareholder, then one Shareholder present in person or by proxy shall constitute the necessary quorum.

- (c) The special rights conferred upon the holders of any shares or class of shares shall not, unless otherwise expressly provided in the rights attaching to or the terms of issue of such shares, be deemed to be altered by the creation or issue of further shares ranking *pari passu* therewith.

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## 10 Stapling

- (a) The Stapling Provisions take effect if determined by the Directors and, if so determined, apply on and from the Stapling Commencement Date unless and until they cease to apply in accordance with these Bye-Laws.
- (b) On and from the Stapling Commencement Date:
  - (i) the Stapling Provisions apply and these Bye-Laws are to be read subject to the Stapling Provisions;
  - (ii) subject to Bye-Law 3, the Stapling Provisions prevail over all other provisions of these Bye-Laws including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Australian Listing Rules or any other law; and
  - (iii) without limiting Bye-Law 3, those provisions of these Bye-Laws, which by their meaning and context apply only while shares are not Stapled do not apply while the shares are Officially Quoted as part of a Stapled Security.

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## 11 Brokerage and Commission

- (a) The Directors may in connection with the issue of any shares exercise all powers of paying commission and brokerage conferred or permitted by law in the manner provided by the law.
- (b) The brokerage or commission may be satisfied by:
  - (i) the payment of cash;
  - (ii) the allotment of fully or partly paid shares; or
  - (iii) partly by the payment of cash and partly by the allotment of fully or partly paid shares.

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## 12 Recognition of Third Party Interest

Except as ordered by a court of competent jurisdiction or as required by law, the Company shall not recognise a person as holding any share upon trust. The Company shall not be bound by or required in any way to recognise (even when having notice thereof):

- (a) any equitable, contingent, future or partial interest in any share;
- (b) any interest in any fractional part of a share; or
- (c) (except only as otherwise provided in these Bye-Laws, or by law) any other right in respect of any share,

except an absolute right to the entirety thereof in the registered holder.

# FORM OF HOLDING OF SECURITIES

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## 13 Certificates

The Directors may determine to issue certificates for shares or other securities of the Company, to cancel any certificates on issue and to replace lost, destroyed or defaced certificates on issue on the basis and in the form they think fit from time to time.

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## 14 Computerised share transfer system

Without limiting Bye-Law 13, if the Company participates, or to enable the Company to participate, in any computerised or electronic share transfer system introduced by or acceptable to ASX, the Directors may, subject to the provisions of the Companies Act:

- (a) provide that shares may be held in certificated or uncertificated form and make any provision they think fit, including for the issue or cancellation of certificates, to enable Shareholders to hold shares in uncertificated form and to convert between certificated and uncertificated holdings;
- (b) provide that some or all Shareholders are not to be entitled to receive a share certificate in respect of some or all of the shares which the Shareholders hold in the Company;
- (c) accept any instrument of transfer, transfer document or other method of transfer in accordance with the requirements of the share transfer system; and
- (d) despite any other provision in these Bye-Laws but subject to the Companies Act, do all things they consider necessary, required or authorised by the Australian Listing Rules or the Operating Rules in connection with the share transfer system.

# CALL ON SHARES

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## 15 Directors' Power to Make Calls

- (a) The Directors may, subject to Schedule 2, at any time make calls upon the Shareholders in respect of any moneys unpaid on their shares (whether on account of the par value of the shares or by way of premium) and not by the terms of issue thereof made payable at a date fixed by or in accordance with such terms of issue, and each Shareholder shall (subject to the Company serving upon the Shareholder at least 30 Business Days notice specifying the time or times and place of payment) pay to the Company at the time or times and place so specified by the notice the amount called on the Shareholder's shares.
- (b) The Directors may revoke or postpone a call prior to its payment.
- (c) A call may be required to be paid by instalments.
- (d) Subject to Bye-Law 15(a) (as regards the giving of notice as to its payment), a call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed.

- (e) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any Shareholder shall not invalidate the call.
- (f) Unless permitted to do so by the Companies Act and the Australian Listing Rules, the Directors may not extinguish in full or in part any liability of Shareholders in respect of any monies unpaid on their shares. If the Directors are entitled to extinguish any liability, then they may do so subject to compliance with the procedure and requirements of the Companies Act and the Australian Listing Rules in respect of such extinguishment.
- (g) A person upon whom a call is made shall remain liable for calls made upon him notwithstanding the subsequent transfer of the shares in respect of which the call was made.

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## **16 Interest on Unpaid Amounts**

If a sum called or otherwise payable to the Company in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for the payment of the sum to the time of actual payment at the rate of BBSW plus 3% or at such other rate as may be approved by the Directors and the Directors may waive payment of interest wholly or in part.

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## **17 Fixed Sums taken to be called**

Any sum which, by the terms of issue of a share, becomes payable on allotment or at any date fixed by or in accordance with such terms of issue, whether on account of the nominal amount of the share or by way of premium, shall for all the purposes of these Bye-Laws be deemed to be a call duly made, notified and payable on the date on which, by the terms of issue, the same becomes payable and, in case of non payment, all the relevant provisions of these Bye-Laws as to payment of interest, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

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## **18 Differentiation between Holders**

The Directors may, on the issue of shares, differentiate between the allottees or holders as to the amount of calls to be paid (but not as to the pro-rata percentage of uncalled amounts, payable by each allottee or holder and the times of payment).

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## **LIEN ON SHARES AND FORFEITURE**

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### **19 Notice requiring payment of sums payable**

If any Shareholder fails to pay any sum payable in respect of any shares, either for money payable on issue, calls, or instalments, on or before the day for payment, the Directors may serve a notice on the Shareholder requiring that Shareholder to pay the sum together with interest accrued and all expenses incurred by the Company by reason of the non-payment. The notice may be served at any time whilst any part of the sum remains unpaid.

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## **20 Time and place for payment**

The notice referred to in Bye-Law 19 must state a day on or before which the sum, interest and expenses (if any) are to be paid and the place where payment is to be made and that, if payment is not made by the time and at the place specified, the shares in respect of which the sum is payable are liable to be forfeited.

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## **21 Forfeiture on non-compliance with notice**

If there is non-compliance with the requirements of any notice given under Bye-Law 19, any shares in respect of which notice has been given may be forfeited by a resolution of the Directors passed at any time after the day specified in the notice for payment. The forfeiture is to include all dividends, interest and other money payable by the Company in respect of the forfeited shares and not paid before the forfeiture.

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## **22 Surrender of Shares**

The Directors may accept the surrender of any share liable to be forfeited under these Bye-Laws and, in such case, references in these Bye-Laws to forfeiture shall include surrender.

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## **23 Notice of forfeiture**

When any share is forfeited, notice of the resolution of the Directors must be given to the Shareholder in whose name the share was registered immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture must be made in the Register. Failure to give notice or make the entry as required by this Bye-Law does not invalidate the forfeiture. At any time before any forfeited share is sold or otherwise disposed of, the Directors may annul the forfeiture of the share on any condition they think fit.

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## **24 Disposal of forfeited shares**

Any forfeited share is considered the property of the Company and the Directors may sell or otherwise dispose of or deal with the share in any manner they think fit and with or without any money paid on the share by any former holder being credited as Paid up.

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## **25 Liability despite forfeiture**

Any Shareholder whose shares have been forfeited is, despite the forfeiture, liable to pay and must immediately pay to the Company all sums of money, interest and expenses owing on or in respect of the forfeited shares at the time of forfeiture, together with expenses and interest from that time until payment at the rate of interest provided in Bye-Law 16. The Directors may enforce the payment or waive the whole or part of any sum paid or payable under this Bye-Law as they think fit.

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## 26 Company's lien or charge

- (a) The Company has a first and paramount lien or charge, for unpaid calls, instalments, interest due in relation to any calls or instalments and any amounts the Company is called on by law to pay in respect of the shares of a Shareholder, on shares registered in the name of the Shareholder in respect of which the calls, instalments and interest are due and unpaid (whether then payable or not) or in respect of which the amounts are paid and on the proceeds of sale of the shares.
- (b) The lien or charge extends to all dividends and bonuses declared in respect of the shares but, if the Company registers a transfer of any shares on which it has a lien or charge without giving the transferee notice of any claim it may have at that time, the shares are freed and discharged from the lien or charge of the Company in respect of that claim.
- (c) The Company may do all things necessary or appropriate under the Operating Rules and the Australian Listing Rules in order to protect or enforce any lien or charge.
- (d) The Directors may, at any time, waive any lien that has arisen or declare any share to be wholly or in part exempt from the provisions of Bye-Laws 19 to 28 or parts thereof.

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## 27 Sale of shares to enforce lien

For the purpose of enforcing a lien or charge, the Directors may sell the shares which are subject to the lien or charge in any manner they think fit and with or without giving any notice to the Shareholder in whose name the shares are registered.

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## 28 Title to shares forfeited or sold to enforce lien

- (a) In a sale or a re-issue of forfeited shares or in the sale of shares to enforce a lien or charge, an entry in the Directors' minute book that the shares have been forfeited, sold or re-allotted in accordance with these Bye-Laws is sufficient evidence of that fact as against all persons entitled to the shares immediately before the forfeiture, sale or re-issue of the shares. The Company may receive the purchase money or consideration (if any) given for the shares on any sale or re-issue.
- (b) In a sale or re-issue, a certificate signed by a Director or the Secretary to the effect that the shares have been forfeited and the receipt of the Company for the price of the shares constitutes a good title to them.
- (c) In a sale, the Company may appoint a person to execute, or may otherwise effect, a transfer in favour of the person to whom the shares are sold.
- (d) On the issue of the receipt or the transfer being executed or otherwise effected the person to whom the shares have been re-allotted or sold is to be registered as the holder of the shares, discharged from all calls or other money due in respect of the shares prior to the re-issue or purchase and the person is not bound to see to the regularity of the proceedings or

to the application of the purchase money or consideration and the person's title to the shares is not affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or re-issue.

- (e) The net proceeds of any sale or re-issue are to be applied first in payment of all costs in relation to the enforcement of the lien or charge or the forfeiture and of the sale or re-issue, next in satisfaction of the amount in respect of which the lien or charge exists as is then payable to the Company (including interest) or the amount in respect of the forfeited shares then payable to the Company (including interest) and the residue (if any) paid to, or at the direction of, the person registered as the holder of the shares immediately prior to the sale or re-issue or to the person's personal representative on the production of any evidence as to title required by the Directors.

## TRANSFER OF SHARES

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### 29 Transfers; proper CS Facility transfers

- (a) A transfer of any shares may be effected by:
  - (i) a written transfer in the usual or common form or in any form the Directors may prescribe or in a particular case accept, properly stamped (if necessary) being delivered to the Company;
  - (ii) a proper CS Facility transfer, which is to be in the form required or permitted by the Operating Rules; or
  - (iii) any other electronic system established or recognised by the Australian Listing Rules in which the Company participates in accordance with the rules of that system.
- (b) Except in the case of a proper CS Facility transfer, the transferor is considered to remain the holder of the shares transferred until the name of the transferee is entered on the Register. A proper CS Facility transfer is considered recorded in the Register and the name of the transferee to be registered as the holder of the shares comprised in the proper CS Facility transfer, as provided in the Operating Rules.
- (c) The Directors may take any action they think fit to comply with the Operating Rules and may request the CS Facility to apply a holding lock to prevent a transfer of shares the subject of the Operating Rules if the Directors think fit.

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### 30 Directors may refuse to register

- (a) The Directors may refuse to register any transfer of shares:
  - (i) if the registration of the transfer would result in a contravention of or failure to observe the provisions of any applicable law, these Bye-Laws or the Australian Listing Rules;
  - (ii) on which the Company has a lien or which are subject to forfeiture; or

- (iii) if permitted to do so under the Australian Listing Rules.
- (b) The decision of the Directors relating to the registration of a transfer is absolute. Failure to give notice of refusal to register any transfer as may be required under the Companies Act or the Australian Listing Rules does not invalidate the decision of the Directors.
- (c) Subject to any directions of the Directors from time to time in force, the Secretary may exercise the powers and discretions of the Directors under this Bye-Law.

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### **31 Transfer and certificate (if any)**

- (a) Every transfer must be left for registration at the Registered Office or any other place the Directors determine. Unless the Directors otherwise determine either generally or in a particular case, the transfer is to be accompanied by the certificate (if any) for the shares to be transferred. In addition, the transfer is to be accompanied by any other evidence which the Directors may require to prove the title of the transferor, the transferor's right to transfer the shares, execution of the transfer or compliance with the provisions of any law relating to stamp duty. The requirements of this Bye-Law do not apply in respect of a proper CS Facility transfer.
- (b) Subject to Bye-Law 31(a) on each application to register the transfer of any shares or to register any person as the holder in respect of any shares transmitted to that person by operation of law or otherwise, the certificate (if any) specifying the shares in respect of which registration is required must be delivered to the Company for cancellation and on registration the certificate is considered to have been cancelled.
- (c) Each transfer which is registered may be retained by the Company for any period determined by the Directors after which the Company may destroy it.
- (d) A Shareholder, who, by reason of any restriction imposed pursuant to these Bye-Laws, was not qualified to acquire or ceased to be qualified to hold all or any of the shares registered in the Shareholder's name shall transfer the same to a person approved by the Directors duly qualified to hold the same and shall be treated as having never been a Shareholder.

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### **32 Transmission on death**

The personal representative of a deceased Shareholder (who is not one of several joint holders) is the only person recognised by the Company as having any title to shares registered in the name of the deceased Shareholder. Subject to compliance by the transferee with these Bye-Laws, the Directors may register any transfer signed by a Shareholder prior to the Shareholder's death, despite the Company having notice of the Shareholder's death.

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### **33 Transmission by operation of law**

A person (**a Transmitttee**) who establishes to the satisfaction of the Directors that the right to any shares has devolved on the Transmitttee by will or by operation of

law may be registered as a holder in respect of the shares or may (subject to the provisions in these Bye-Laws relating to transfers) transfer the shares. The Directors have the same right to refuse to register the Transmittree as if the Transmittree was the transferee named in a transfer presented for registration.

## REDEMPTION

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### 34 Redemption of Shares

- (a) The Company, subject to (x) compliance with the terms on which the Ordinary Shares are Stapled; and (y) the provisions of these Bye-Laws:
- (i) may, require a Shareholder to redeem the whole or a specified percentage of his holding of Ordinary Shares; and
  - (ii) shall so require such redemption if, any Shareholder was not qualified to, or is, or has at any time, not been qualified, to hold all or any of the Ordinary Shares registered in the name of the Shareholder,

then in such circumstances, the Company shall give any such Shareholder not less than 15 Business Days' written notice of its intention to redeem the Ordinary Shares of such Shareholder.

- (b) It shall be for the Directors acting reasonably to determine whether or not the provisions of this Bye-Law are to apply to a Shareholder and this power may be exercised regardless of the date of entry of the Shareholder on the Register and the number of Ordinary Shares held by the Shareholder. The Directors shall, if required by a Shareholder, give reasons for any decision, determination or declaration taken or made in accordance with this Bye-Law.
- (c) In addition the Directors may request such declarations and information from Shareholders, as the Directors consider appropriate.
- (d) The redemption price shall be calculated as follows:
- (i) In the case of any Ordinary Shares redeemed under this Bye-Law which are fully Paid up, they shall be redeemed at a redemption price, in the case of the Ordinary Shares, equal to a pro rata share of the assets of the Company (including for the purposes of determining the assets of the Company any amounts which should be included for the purpose of making a fair and reasonable determination of the value of such assets having due regard to generally accepted accounting standards and principles) less all liabilities (including for the purpose of determining the liabilities of the Company any amounts which should be included for the purposes of making a fair and reasonable determination of such liabilities having regard to generally accepted accounting standards and principles). The net assets may be further reduced by the aggregate of all costs, charges, expenses, disbursements, commissions, brokerage and other usual fees which would be incurred if all assets of the Company held at the applicable date of calculation of the redemption price (**Valuation Date**) were sold on such Valuation

Date at the respective amounts at which each of the assets are brought to account in computing the value of the net assets and after making such further allowance as the Directors determine in respect of any tax that would be payable if all of such assets had been disposed on that Valuation Date.

- (ii) In the case of any Ordinary Share redeemed under this Bye-Law which is not fully Paid up, they shall be redeemed at a redemption price determined above calculated pro rata on the basis of the amount Paid up on such Ordinary Shares.
  - (iii) Where the Ordinary Shares are redeemed as part of a Stapled Security, the Directors must determine what proportion of the redemption price paid for the Stapled Security is to be paid from the assets of the Company.
- (e) In the case of a redemption under this Bye-Law, the proceeds of redemption less any fees and expenses incurred by the Company as a result of the redemption shall be deposited by the Company in a bank for payment to the holder of the Ordinary Shares subject to redemption against surrender of any outstanding certificate(s) representing such Ordinary Shares or the proffering of such evidence as the Directors may require.
  - (f) Upon the deposit of the redemption proceeds, the Shareholders shall have no further interest in such Ordinary Shares or any of them or any claim against the Company in respect thereof except the right to receive the redemption proceeds so deposited (without interest) upon surrender of the said certificate(s).
  - (g) Where no share certificate has been issued for the Ordinary Share subject to the redemption under this Bye-Law, the Company may make payment of the redemption proceeds to the relevant Shareholder in such manner as it thinks fit.
  - (h) The holder of Ordinary Shares shall not be permitted to redeem the whole or any part of such Shareholder's Ordinary Shares either before or after the Ordinary Shares are Unstapled, other than with the prior written consent of the Directors and on such terms as the Directors shall determine and in accordance with the provisions of these Bye-Laws.

## **INCREASE, ALTERATION AND REDUCTION OF CAPITAL**

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### **35 Increase of Capital**

- (a) The Company may from time to time increase its capital by such sum to be divided into shares of such par value as the Company by Resolution shall prescribe.
- (b) The Company may, by Resolution increasing the capital, direct that the new shares or any of them shall be offered in the first instance either at par or at a premium or (subject to the provisions of the Companies Act) at a discount to all the holders for the time being of shares of any class or classes in proportion to the number of such shares held by them

respectively or make any other provision as to the issue of the new shares.

- (c) The new shares shall be subject to all the provisions of these Bye-Laws with reference to lien, the payment of calls, forfeiture, transfer, transmission and otherwise.

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## **36 Alteration of Capital**

- (a) The Company may, subject to Bye-Law 9, from time to time by Resolution:
  - (i) divide its shares into several classes and attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions;
  - (ii) consolidate and divide all or any of its share capital into shares of larger par value than its existing shares;
  - (iii) sub divide its shares or any of them into shares of smaller par value than is fixed by its Memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
  - (iv) make provision for the issue and allotment of shares which do not carry any voting rights;
  - (v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled; and
  - (vi) change the currency denomination of its share capital.

Where any difficulty arises in regard to any division, consolidation, or subdivision under this Bye-Law, the Directors may settle the same as they think expedient and, in particular, may arrange for the sale of the shares representing fractions and the distribution of the net proceeds of sale in due proportion amongst the Shareholders who would have been entitled to the fractions, and for this purpose the Directors may authorise some person to transfer the shares representing fractions to the purchaser thereof, who shall not be bound to see to the application of the purchase money nor shall the purchaser's title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale.

- (b) Subject to the Companies Act and to any confirmation or consent required by law or these Bye-Laws, the Company may by Resolution from time to time convert any preference shares into redeemable preference shares.

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## 37 Reduction of Capital

- (a) Subject to the Companies Act, its Memorandum, the Australian Listing Rules and any confirmation or consent required by law or these Bye-Laws, the Company may from time to time by Special Resolution authorise the reduction of its issued share capital or any capital redemption reserve fund or contributed surplus account in any manner provided that such reduction of capital does not fall below the minimum share capital prescribed by its Memorandum.
- (b) In relation to any such reduction, the Company may by Resolution determine the terms upon which such reduction is to be effected including in the case of a reduction of part only of a class of shares, those shares to be affected.

## GENERAL MEETINGS

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### 38 Power of Directors to Convene

- (a) The Directors shall convene and the Company shall hold general meetings as Annual General Meetings in accordance with the requirements of the Companies Act at such times and places as the Directors shall appoint (save that such meetings must not be held in any jurisdiction if to do so would cause the Company to become resident for tax purposes in a jurisdiction other than Bermuda).
- (b) The Directors may, whenever they think fit, and shall, when required by the Companies Act, convene general meetings other than Annual General Meetings which shall be called Special General Meetings (save that such meeting must not be held in any jurisdiction if to do so would cause the Company to become resident for tax purposes in a jurisdiction other than Bermuda).

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### 39 Written Resolutions

- (a) Except in the case of the removal of Auditors and Directors, anything which may be done by resolution of the Company in general meeting or by resolution of a meeting of any class of the Shareholders of the Company may, be done by resolution in writing in accordance with the provisions of this Bye-Law 39.
- (b) Notice of a resolution in writing shall be given, and a copy of the resolution shall be circulated to all Shareholders who would be entitled to attend a general meeting and vote thereon (in the same manner as that required for a notice of a general meeting, save that any requirement in the Companies Act or these Bye-Laws as to the length of the period of notice shall not apply).
- (c) The accidental omission to give notice to, or the non-receipt of a notice by, any person entitled to receive notice of a resolution does not invalidate the passing of a resolution in writing.
- (d) A resolution in writing is passed when it is signed by:

- (i) the Shareholders of the Company who at the date of the notice represent such majority of votes as would be required if the resolution had been voted on at a meeting of the Shareholders; or
  - (ii) all the Shareholders of the Company or such other majority of Shareholders as may be provided by these Bye-Laws.
- (e) Such resolution in writing may be signed by, or in the case of a Shareholder that is a body corporate (whether or not a company within the meaning of the Companies Act), on behalf of the Shareholders (entitled to vote thereon), or any class thereof, and may be signed in as many counterparts as may be necessary.
  - (f) For the purposes of this Bye-Law, the effective date of the resolution in writing is the date when the resolution is signed by the last Shareholder (entitled to vote thereon) and whose signature results in the necessary voting majority having been achieved to sign and any reference in any enactment to the date of passing of a resolution is, in relation to a resolution in writing made in accordance with this section, a reference to such date.
  - (g) A resolution in writing made in accordance with this Bye-Law is as valid as if it had been passed by the Company in general meeting or, if applicable, by a meeting of the relevant class of Shareholders (entitled to vote thereon) as the case may be.
  - (h) A resolution in writing made in accordance with this Bye-Law shall constitute minutes for the purposes of the Companies Act and these Bye-Laws.

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## **40 Notice of General Meetings**

- (a) An Annual General Meeting shall be called by not less than 21 Clear Days notice in writing and a Special General Meeting shall be called by not less than 14 Clear Days notice in writing.
- (b) The notice shall specify the place, day and time of the meeting, and the nature of the business to be considered.
- (c) Notice of every general meeting shall be given in any manner permitted by Bye-Law 86 to all Shareholders other than such as, under the provisions of these Bye-Laws or the terms of issue of the shares they hold, are not entitled to receive such notice from the Company and to any Director or Resident Representative who or which has delivered a written notice upon the Registered Office requiring that such notice be sent to them.
- (d) Notwithstanding that a meeting of the Company is called by shorter notice than that specified in this Bye-Law, it shall be deemed to have been duly called if it is so agreed:
  - (i) in the case of a meeting called as an Annual General Meeting, by all the Shareholders entitled to attend and vote thereat; and

- (ii) in the case of any other meeting, by a majority in number of the Shareholders having the right to attend and vote at the meeting, being a majority together holding not less than 95% in nominal value of the shares giving that right.
- (e) The accidental omission to give notice of a meeting or (in cases where instruments of proxy are sent out with the notice) the accidental omission to send such instrument of proxy to, or the non receipt of notice of a meeting or such instrument of proxy by, any person entitled to receive such notice shall not invalidate the proceedings at that meeting.
- (f) Each Director upon the giving of the notice referred to in this Bye-Law, and the Resident Representative, if any shall be entitled to attend and speak at any general meeting of the Company.

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## 41 Quorum

- (a) No business shall be transacted at any general meeting unless a quorum is present when the meeting proceeds to business, but the absence of a quorum shall not preclude the appointment, choice or election of a chairman which shall not be treated as part of the business of the meeting.
- (b) Save as otherwise provided by these Bye-Laws, at least two (2) Shareholders present in person or by proxy and entitled to vote shall be a quorum for all purposes; provided, however, that if the Company or a class of Shareholders shall have only one Shareholder, one Shareholder present in person or by proxy shall constitute the necessary quorum.

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## 42 If Quorum not Present

If a quorum is not present within 15 minutes after the time appointed for the meeting, (or such longer time as the chairman of the meeting may determine to wait) or if during a meeting a quorum ceases to be present:

- (a) the meeting, if convened on the requisition of Shareholders, shall be dissolved; and
- (b) in any other case the meeting shall stand adjourned to such other day and such other time and place as the chairman of the meeting may determine and at such adjourned meeting two (2) Shareholders present in person or by proxy shall be a quorum, provided that if the Company or a class of Shareholders shall have only one Shareholder, one Shareholder present in person or by proxy shall constitute the necessary quorum. If at the adjourned meeting a quorum is not present within 15 minutes after the appointed time for the meetings, the meeting must be dissolved.

The Company shall give not less than 14 Clear Days notice of any meeting adjourned through want of a quorum and such notice shall state that the sole Shareholder or, if more than one, two (2) Shareholders, present in person or by proxy (whatever the number of shares held by them) shall be a quorum.

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## **43 Chair of Meetings**

- (a) The chairman of the Directors (if one is appointed) pursuant to Bye-Law 71 or, in the absence of a chairman so appointed, the deputy-chairman (if there is one so appointed) shall preside as chairman at every general meeting. The Directors may, by unanimous agreement, also appoint one of their number to preside as chairman at a particular meeting.
- (b) If at any meeting none of the persons mentioned in Bye-Law 43(a) is present within 5 minutes after the time appointed for holding the meeting, or if none of them is willing to act as chairman, the Directors present shall choose one of their number to act or if one Director only is present that Director shall preside as chairman if willing to act. If no Director is present, or if each of the Directors present declines to take the chair, the persons present and entitled to vote on a poll shall elect one of their number to be chairman.

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## **44 Adjournments**

- (a) The chairman of the meeting may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting from which the adjournment took place. When a meeting is adjourned for three months or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (b) Save as expressly provided by these Bye-Laws, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

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## **45 Meetings by Technology**

A meeting of the Shareholders or any class thereof may be held by means of such telephone or electronic means as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

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## **46 Voting at General Meetings**

- (a) Save where a greater majority is required by the Companies Act or these Bye-Laws, any question proposed for consideration at any general meeting shall be decided on by a simple majority of votes cast.
- (b) At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands or by a count of votes received in the form of Electronic Records, unless a poll is demanded pursuant to Bye-Law 46(c). Every Shareholder present in person or by proxy or by telephone or by electronic means shall have one vote and shall cast such vote by raising his hand or where voting is by way of Electronic Record in such manner as the chairman of the meeting may direct.

- (c) If a poll is demanded (before or on the declaration of the result of the show of hands (including a count of votes received in the form of Electronic Records) or on the withdrawal of any other demand for a poll) by:
  - (i) the chairman of the meeting;
  - (ii) at least three (3) Shareholders present in person or represented by proxy;
  - (iii) any Shareholder or Shareholders present in person or represented by proxy and holding between them not less than one tenth (1/10th) of the total voting rights of all the Shareholders having the right to vote at such meeting; or
  - (iv) a Shareholder or Shareholders present in person or represented by proxy holding shares conferring the right to vote at such meeting, being shares on which an aggregate sum has been Paid up equal to not less than one tenth (1/10th) of the total sum Paid up on all such shares conferring such right.
- (d) The demand for a poll may be withdrawn by the person or any of the persons making it at any time prior to the declaration of the result where it is carried out.
- (e) Unless a poll is so demanded and the demand is not withdrawn, a declaration by the chairman that a resolution has, on a show of hands, (including by a count of votes received in the form of Electronic Records), been carried or carried unanimously or by a particular majority or not carried by a particular majority or lost shall be final and conclusive, and an entry to that effect in the minute book of the Company shall be conclusive evidence of the fact without proof of the number or proportion of votes recorded for or against such resolution.
- (f) If an amendment proposed to any resolution under consideration is ruled out of order by the chairman of the meeting, the proceedings on the resolution shall not be invalidated by any error in the ruling.

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## 47 Procedure for Polls

- (a) A poll demanded on the election of a chairman, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken in such manner and either forthwith or at such time (being not later than three (3) months after the date of the demand) and place as the chairman shall direct. It shall not be necessary (unless the chairman otherwise directs) for notice to be given of a poll.
- (b) The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded and it may be withdrawn at any time before the close of the meeting or the taking of the poll, whichever is the earlier.
- (c) On a poll, votes may be cast either personally or by proxy or by attorney and (where the Shareholder is a body corporate) by its representative(s) (including by way of Electronic Records).

- (d) A person entitled to more than one vote on a poll need not use all their votes or cast all the votes the person uses in the same way.
- (e) If a poll is duly demanded, the result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

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## **48 No Casting Vote**

In the case of an equality of votes at a general meeting, whether on a show of hands or on a poll, the chairman of such meeting shall not be entitled to a second or casting vote and the resolution shall fail.

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## **49 Representation and Voting of Shareholders**

Subject to these Bye-Laws, and any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of Shareholders or classes of Shareholders each Shareholder (entitled to attend and vote) may attend and vote in person or by proxy, or by attorney and (where the Shareholder is a body corporate) by its representative(s). Where a Shareholder which is a body corporate has appointed a representative, it shall for the purposes of these Bye-Laws be deemed present in person;
- (b) on a show of hands (including where voting is by way of electronic means):
  - (i) subject to paragraphs (ii) and (iii), each Shareholder present has one vote;
  - (ii) where a Shareholder has appointed more than one person as representative, proxy or attorney for the Shareholder, none of the representatives, proxies or attorneys is entitled to vote; and
  - (iii) where a person is entitled to vote because of paragraph (i) in more than one capacity, that person is entitled only to one vote; and
- (c) on a poll or a count of votes received in the form of Electronic Records, every Shareholder, whether in person or by proxy having the right to vote at the meeting:
  - (i) has one vote for each fully paid share held; and
  - (ii) for each other share held, has a vote in respect of the share which carries the same proportionate value as the proportion of the amount Paid up or agreed to be considered as Paid up on the total issue price of that share at the time the poll is taken bears to the total issue price of the share one vote.

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## 50 Shareholders of Unsound Mind

A Shareholder who:

- (a) is a patient for any purpose of any statute or applicable law relating to mental health; or
- (b) in respect of whom an order has been made by any Court having jurisdiction for the protection or management of the affairs of persons incapable of managing their own affairs,

may vote, whether on a show of hands or on a poll, by the Shareholder's receiver, committee, curator bonis or other person in the nature of a receiver, committee or curator bonis appointed by such Court and such receiver, committee, curator bonis or other person may vote on a poll by proxy, and may otherwise act and be treated as such Shareholder for the purpose of general meetings.

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## 51 Restriction on Voting Rights – Unpaid Amounts

No Shareholder (who is otherwise entitled to vote) shall, unless the Directors otherwise determine, be permitted to vote at any general meeting unless all calls or other sums presently payable by the Shareholder in respect of shares in the Company have been paid.

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## 52 Objections to Qualification to Vote

- (a) If:
  - (i) any objection is raised to the qualification of any voter;
  - (ii) any votes have been counted which ought not to have been counted or which might have been rejected; or
  - (iii) any votes are not counted which ought to have been counted,

the objection or error shall not vitiate the decision of the meeting or adjourned meeting on any resolution unless the same is raised or pointed out at the meeting or, as the case may be, the adjourned meeting at which the vote objected to is given or tendered or at which the error occurs.

- (b) Any objection or error shall be referred to the chairman of the meeting and shall only vitiate the decision of the meeting on any resolution if the chairman decides that the same may have affected the decision of the meeting. The decision of the chairman on such matters shall be final and conclusive.

# PROXIES AND CORPORATE REPRESENTATIVES

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## 53 Form of Proxy

- (a) Any Shareholder may appoint a standing proxy or (if a corporation) representative(s) by:
  - (i) depositing at the Registered Office or the office of the Stapled Security Registrar:
    - (A) an instrument appointing a proxy, signed by the appointor (or the appointor's attorney authorised by the appointor in writing); or
    - (B) if a corporation an instrument appointing representative(s), signed by an officer of the corporation or an attorney or other person authorised by the corporation; or
  - (ii) if the relevant notice of meeting provides details for electronic submission of a proxy or (if a corporation) an authorisation, submitting electronically the proxy or authorisation in accordance with the details for electronic submission contained in the notice of meeting,

and such proxy or authorisation shall be valid for all general meetings and adjournments thereof or, resolutions in writing, as the case may be, until notice of revocation is received at the Registered Office or the office of the Stapled Security Registrar. Where a standing proxy or authorisation exists, its operation shall be deemed to have been suspended at any general meeting or adjournment thereof at which the Shareholder is present or in respect to which the Shareholder has specially appointed a proxy or representative(s).

- (b) The Directors may from time to time require such evidence as they shall deem necessary as to the due execution and continuing validity of any such standing proxy or authorisation and the operation of any such standing proxy or authorisation shall be deemed to be suspended until such time as the Directors determine that they have received the requested evidence or other evidence satisfactory to them.
- (c) Instruments of proxy shall be in any common form or in such other form as the Directors may approve (including electronic form) and the Directors may send out with the notice of any meeting or any written resolution forms of instruments of proxy for use at that meeting or in connection with that written resolution. The instrument of proxy shall be deemed to confer authority to demand or join in demanding a poll and to vote on any amendment of a written resolution or amendment of a resolution put to the meeting for which it is given as the proxy thinks fit. The instrument of proxy shall unless the contrary is stated therein be valid as well for any adjournment of the meeting as for the meeting to which it relates.

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## **54 Lodgement and electronic submission of Proxies**

Subject to the provisions of this Bye-Law, (i) the instrument appointing a proxy or a representative (together with such other evidence as to its due execution as the Directors may from time to time require); or (ii) (if the relevant notice of meeting provides details for electronic submission of a proxy or (if a corporation) an authorisation), any such electronically submitted proxy or authorisation, shall be received electronically at, or delivered (including by facsimile or other electronic means) to the Registered Office or office of the Stapled Security Registrar (or at such place as may be specified in the notice convening the meeting or in any notice of any adjournment or, in either case or the case of a written resolution, in any document sent therewith) at least 48 hours prior to the holding of the relevant meeting or adjourned meeting at which the person named in the instrument or authorisation or such electronically submitted proxy or authorisation proposes to vote or, in the case of a poll taken subsequently to the date of a meeting or adjourned meeting, before the time appointed for the taking of the poll, or, in the case of a written resolution, prior to the effective date of the written resolution and in default the instrument of proxy or authorisation or any such electronically submitted proxy or authorisation shall not be treated as valid.

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## **55 Validity of Proxies**

- (a) A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or unsoundness of mind of the principal, or revocation of the instrument of proxy or of the authority under which it was executed, provided that no intimation in writing of such death, insanity or revocation shall have been received by the Company at the Registered Office (or such other place as may be specified for the delivery of instruments of proxy in the notice convening the meeting or other documents sent therewith) one hour at least before the commencement of the meeting or adjourned meeting, or the taking of the poll, or the day before the effective date of any written resolution at which the instrument of proxy is used.
- (b) Subject to the Companies Act and the Australian Listing Rules, the Directors may at their discretion waive any of the provisions of these Bye-Laws related to proxies or authorisations and, in particular, may accept such verbal or other assurances as they think fit as to the right of any person to attend and vote on behalf of any Shareholder at general meetings or to sign written resolutions.

## **APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**

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### **56 Appointment of Directors**

- (a) Unless otherwise determined by the Company by Resolution, the number of Directors (not including Alternate Directors) shall not exceed a maximum of five (5) Directors unless an increase in the maximum number of Directors is approved by Shareholders in accordance with Bye-Law 46(a), but in any event shall not be less than four (4) Directors.
- (b) A Director shall not require a share qualification.

- (c) No more than two (2) Directors at any one time may be resident in the same jurisdiction (other than Bermuda). No person shall be appointed to be a Director if it would cause a majority of Directors to be resident for tax purposes in a jurisdiction other than Bermuda.
- (d) Subject to paragraph (g), at every annual general meeting, one third (1/3rd) of the Directors or, if their number is not a multiple of three, then the number nearest to, but not less than, one third (1/3rd), must retire from office. A Director must not hold office (without re-election) past the third (3rd) annual general meeting after which the Director was elected or re-elected, or for three (3) years, whichever is longer. Any Director who retires (whether under this Bye-Law or otherwise) at a general meeting and seeks re-election at the meeting retains office until the dissolution or adjournment of the meeting. The Directors to retire under this Bye-Law are the Directors or Director longest in office since last being elected. As between Directors who were elected on the same day the Directors to retire are (in default of agreement between them) determined by ballot. The length of time a Director has been in office is calculated from the Director's last election or appointment. A retiring Director is eligible for re-election.
- (e) There must be an election of Directors at each annual general meeting of the Company.
- (f) Except for:
  - (i) a person who is eligible for re-election under Bye-Law 56(h); or
  - (ii) a person recommended for election by the Directors,
 a person is not eligible for election as a Director at a general meeting of the Company unless:
  - (iii) a written consent to nomination signed by the person and a Shareholder has been lodged at the Registered Office at least 35 Business Days before the relevant general meeting; and
  - (iv) the Board has determined prior to the relevant general meeting that the nominee meets the criteria, including the Independence Criteria where relevant, published by the Company in its corporate governance reporting from time to time.
- (g) The Company may by Resolution determine that one or more vacancies in the Directors appointed by the Company shall be deemed casual vacancies for the purposes of these Bye-Laws. Without prejudice to the power of the Company by Resolution in pursuance of any of the provisions of these Bye-Laws to appoint any person to be a Director, the Directors, so long as a quorum of Directors remains in office, shall have power at any time and from time to time to appoint any individual to be a Director so as to fill a casual vacancy.
- (h) A Director appointed by the Directors to fill a casual vacancy may hold office only until the next annual general meeting of the Company and is then eligible for election at that meeting but is not to be taken into account in determining the number of Directors who are to retire by rotation at that meeting.

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## 57 Removal of Directors

- (a) The Company may in a Special General Meeting called for that purpose remove a Director, provided notice of any such meeting shall be served upon the Director concerned not less than 14 Clear Days before the meeting and he shall be entitled to be heard at that meeting.
- (b) A Director can only be removed at a Special General Meeting by a Special Resolution of the holders of the Ordinary Shares. Any vacancy created by that removal may be filled at the meeting by the election of another Director in his or her place by Resolution or, in the absence of any such election by the Company, by the Directors.

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## 58 Resignation and Disqualification of Directors

Subject to Bye-Law 57, the office of a Director shall be vacated upon the happening of any of the following events:

- (a) If a Director resigns the Director's office by notice in writing delivered to the Registered Office or tendered at a meeting of the Directors;
- (b) If a Director becomes of unsound mind or a patient for any purpose of any statute or applicable law relating to mental health and the Directors resolves that the Director's office is vacated;
- (c) If a Director becomes bankrupt under the laws of any country or compounds with the Director's creditors;
- (d) If a Director is prohibited by law from being a Director;
- (e) If a Director ceases to be a Director by virtue of the Companies Act or is removed from office pursuant to these Bye-Laws;
- (f) If a Director is absent for more than six (6) consecutive months without the permission of the other Directors from meetings of the Directors held during that period and the Directors resolve that the Director's office be vacated;
- (g) If having been resident outside a jurisdiction for tax purposes at the time of appointment the Director becomes resident for tax purposes in a jurisdiction, other than Bermuda, causing a majority of Directors to be resident for tax purposes in that jurisdiction; or
- (h) If an Independent Director ceases to meet the Independence Criteria.

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## 59 Alternate Directors

- (a) Subject to Bye-Law 59(b), a Director may appoint and remove his or her own Alternate Director.
- (b) A Director who is resident for tax purposes outside a jurisdiction may not appoint a person who is resident for tax purposes in a jurisdiction, other than Bermuda, to act as an Alternate Director if to do so would cause a majority of Directors to be resident for tax purposes in that jurisdiction.

- (c) An Independent Director may not appoint a person to act as an Alternate Director unless that person meets the Independence Criteria.
- (d) Any appointment or removal of an Alternate Director by a Director shall be effected by depositing a notice of appointment or removal with the Secretary at the Registered Office, signed by such Director, and such appointment or removal shall become effective on the date of receipt by the Secretary. The office of Alternate Director shall continue until the date on which the relevant Director ceases to be a Director.
- (e) An Alternate Director may also be a Director in his or her own right and may act as alternate to more than one Director.
- (f) An Alternate Director shall be entitled to receive notices of all meetings of Directors or committee of Directors, to attend, be counted in the quorum and vote at any such meeting at which any Director to whom the Alternate Director is alternate is not personally present, and generally to perform all the functions of any Director to whom the Alternate Director is alternate in the Director's absence.
- (g) Every person acting as an Alternate Director shall (except as regards powers to appoint an alternate and remuneration) be subject in all respects to the provisions of these Bye-Laws relating to Directors and shall alone be responsible to the Company for their own acts and defaults and shall not be deemed to be the agent of or for any Director for whom he or she is alternate. An Alternate Director shall not be entitled to receive from the Company in respect of his appointment as alternate Director any remuneration except such part (if any) of the remuneration otherwise payable to his appointor as such appointor may by notice in writing to the Company from time to time direct. Every person acting as an Alternate Director shall have one vote for each Director for whom they act as alternate (in addition to the Alternative Director's own vote if also a Director). The signature of an Alternate Director to any resolution in writing of the Directors or a committee of the Directors shall, unless the terms of the Alternate Director's appointment provides to the contrary, be as effective as the signature of the Director or Directors to whom the Alternate Director is alternate.

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## **60 Director's Fees and Additional Remuneration and Expenses**

- (a) Until otherwise determined by the Company by Resolution, there shall be paid to the Directors (other than the Alternate Directors) such fees for their services in the office of Director, as the Directors may determine (though not exceeding in the aggregate an annual sum of US\$500,000 or such larger amount as the Company may by Resolution decide) divided between the Directors as they may determine or, failing such determination, equally. Directors' fees shall be deemed to accrue from day to day and shall be distinct from and additional to any remuneration or other benefits which may be paid or provided to any Director pursuant to any other provision of these Bye-Laws.
- (b) Each Director may be paid his or her reasonable travel, hotel and incidental expenses in attending and returning from meetings of the Directors or committees constituted pursuant to these Bye-Laws or

general meetings and shall be paid all expenses properly and reasonably incurred by him in the conduct of the Company's business or in the discharge of his or her duties as a Director.

- (c) Any Director who, by request, goes or resides abroad for any purposes of the Company or who performs services which in the opinion of the Directors go beyond the ordinary duties of a Director may be paid such extra remuneration (whether by way of salary, commission, participation in profits or otherwise) as the Directors may determine, and such extra remuneration shall be in addition to any remuneration provided for by or pursuant to any other Bye-Law. If the Australian Listing Rules require, any change in remuneration under this Bye-Law shall not be effective until approved by Resolution of the Shareholders entitled to vote thereon.

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## 61 Directors' Interests

- (a) A Director may hold any other office or place of profit with the Company (except that of auditor) in conjunction with his or her office of Director for such period and upon such terms as the Directors may determine, and may be paid such extra remuneration therefor (whether by way of salary, commission, participation in profits or otherwise) as the Directors may determine, and such extra remuneration shall be in addition to any remuneration provided for by or pursuant to any other Bye-Law.
- (b) A Director other than an Independent Director may act as an individual or for the Director's firm in a professional capacity for the Company (otherwise than as auditor) and the Director or the Director's firm (as the case may be) shall be entitled to remuneration for professional services as if the Director were not a Director.
- (c) Subject to the provisions of the Companies Act and the Australian Listing Rules, a Director may notwithstanding the Director's office be a party to, or otherwise interested in, any transaction or arrangement with the Company or in which the Company is otherwise interested; and be a Director or other officer of, or employed by, or a party to any transaction or arrangement with, or otherwise interested in, any body corporate promoted by the Company or in which the Company is interested. The Directors may also cause the voting power conferred by the shares in any other company held or owned by the Company to be exercised in such manner in all respects as they think fit, including the exercise thereof in favour of any resolution appointing the Directors or any of them to be directors or officers of such other company, or voting or providing for the payment of remuneration to the directors or officers of such other company.
- (d) So long as a Director, where necessary declares the nature of his or her interest at the first opportunity at a meeting of the Directors or by writing to the Directors as required by the Companies Act, a Director shall not by reason of the Director's office be accountable to the Company for any benefit which the Director derives from any office or employment to which these Bye-Laws allow the Director to be appointed or from any transaction or arrangement in which these Bye-Laws allow the Director

to be interested, and no such transaction or arrangement shall be liable to be avoided on the ground of any interest or benefit.

- (e) Subject to the Companies Act and any further disclosure required by it, a general notice to the Directors by a Director or officer declaring that the Director is a director or officer or has an interest in a person and is to be regarded as interested in any transaction or arrangement made with that person, shall be a sufficient declaration of interest in relation to any transaction or arrangement so made.

## **POWERS AND DUTIES OF THE DIRECTORS**

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### **62 Powers of the Directors**

- (a) Subject to the provisions of the Companies Act, these Bye-Laws and the Company's Memorandum, the Directors shall manage the business of the Company and may pay all expenses incurred in promoting and incorporating the Company and may exercise all the powers of the Company which are not by the Companies Act or these Bye-Laws, required to be exercised by the Company in general meeting. No alteration of these Bye-Laws or the Memorandum and no act of the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that alteration had not been made or the act of the Company had not occurred. The powers given by this Bye-Law shall not be limited by any special power given to the Directors by these Bye-Laws and a meeting of the Directors at which a quorum is present shall be competent to exercise all the powers, authorities and discretion for the time being vested in or exercisable by the Directors.
- (b) The Directors may exercise all the powers of the Company to borrow money and to mortgage or charge all or any part of the undertaking, property and assets (present and future) and uncalled capital of the Company and to issue debentures and other securities, whether outright or as collateral security for any debt, liability or obligation of the Company or of any other persons.
- (c) All cheques, promissory notes, drafts, bills of exchange and other instruments, whether negotiable or transferable or not, and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Directors shall from time to time by resolution determine.
- (d) The Directors on behalf of the Company may provide benefits, whether by the payment of gratuities or pensions or otherwise, for any person including any Director or former Director who has held any executive office or employment with the Company or with any body corporate which is or has been a subsidiary or affiliate of the Company or a predecessor in the business of the Company or of any such subsidiary or affiliate, and to any member of a Director's family or any person who is or was dependent on him, and may contribute to any fund and pay premiums for the purchase or provision of any such gratuity, pension or other benefit, or for the insurance of any such person.
- (e) Subject to the Australian Listing Rules, the Directors may cause the Company to enter into any agreement, arrangement or transaction with

an associate or related party of the Company. No such agreement, arrangement or transaction will be avoided merely because an associate or related party of the Company is a party and the associate or related party will not be liable to account to the Company for any profit or benefit derived in respect of the agreement, arrangement or transaction and may retain such profits or benefits for its own account.

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## **63 Appointment of Attorney**

The Directors may by power of attorney appoint any company, firm or person or any fluctuating body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretion (not exceeding those vested in or exercisable by the Directors under these Bye-Laws) and for such period and subject to such conditions as it may think fit, and any such power of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney and of such attorney as the Directors may think fit, and may also authorise any such attorney to sub delegate all or any of the powers, authorities and discretion vested in him.

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## **64 Delegation of the Director's Powers**

The Directors may entrust to and confer upon any Director, officer or, without prejudice to the provisions of this Bye-Law, other person, not being a person whose residence for tax purposes would cause the Company to be resident for tax purposes outside Bermuda, including the Adviser, any of the powers exercisable by the Directors upon such terms and conditions (including as to further delegation) with such restrictions as they think fit, and either collaterally with, or to the exclusion of, their own powers, and may from time to time revoke or vary all or any of such powers but no person dealing in good faith and without notice of such revocation or variation shall be affected thereby.

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## **65 Committees and other delegates**

- (a) The Directors may delegate any of their powers, authorities and discretions to committees, consisting of such person or persons (whether a member or members of its body or not) as they think fit. Any committee so formed shall, in the exercise of the powers, authorities and discretions so delegated, and in conducting its proceedings conform to any regulations which may be imposed upon it by the Directors. If no regulations are imposed by the Directors the proceedings of a committee with two or more members shall be, as far as is practicable, governed by the Bye-Laws regulating the proceedings of the Directors.
- (b) The Directors may from time to time appoint the Adviser, the Registrar, the Stapled Securities Registrar, custodians, managers, investment advisors, or such other person or persons as they think fit, subject to any regulatory requirement which imposes a compulsory obligation on the Company to appoint any such persons in the absence of an exemption therefrom.

## MANAGING DIRECTOR

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### 66 Appointment of a Managing Director

- (a) The Directors may from time to time appoint one of their number to be managing Director (who may bear that title or any other title determined by the Company) and may likewise remove any Director appointed and appoint another in that Director's place. Any Director appointed as managing Director shall cease to be managing Director when he or she ceases to hold office as a Director.
- (b) The Directors may confer on and withdraw from any managing Director and any person appointed to executive office under Bye-Law 66(a), any of the powers exercisable under these Bye-Laws by the Directors as they think fit and on any conditions they think expedient but the conferring of powers by the Directors does not exclude the exercise of those powers by the Directors.
- (c) The remuneration and conditions of appointment of the managing Director and any person appointed to executive office under Bye-Law 66(a) shall be determined by the Directors.

## PROCEEDINGS OF THE DIRECTORS

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### 67 Proceedings

- (a) The Directors may meet for the despatch of business, adjourn and otherwise regulate their meetings as they think fit.
- (b) Questions arising at any meeting shall be determined by a majority of votes.
- (c) In the case of an equality of votes the chairman shall have a second or casting vote.
- (d) A Director may, and the Secretary on the requisition of a Director shall, at any time summon a meeting of the Directors.
- (e) Notice of a meeting of the Directors shall be deemed to be duly given to a Director if it is given personally or sent by mail, facsimile, electronic mail or other mode of representing or reproducing words in a legible and non transitory form at the Director's last known address or any other address given by the Director to the Company for this purpose. A Director may waive notice of any meeting either prospectively or retrospectively.
- (f) The Resident Representative (if any) shall, upon delivering written notice of an address for the purposes of receipt of notice, to the Registered Office, be entitled to receive notice of, attend and be heard at, and to receive minutes of all meetings of the Directors.
- (g) The chairman or president (if one is so appointed) or if not present the deputy chairman or vice president (if there is one so appointed) shall preside as chairman at every meeting of the Directors. If at any meeting the relevant person is not present within five (5) minutes after the time appointed for holding the meeting, or is not willing to act as chairman,

the Directors present may choose one of their number to be chairman of the meeting.

- (h) The meetings and proceedings of any committee, consisting of two (2) or more members shall be governed by the provisions contained in these Bye-Laws for regulating the meetings and proceedings of the Directors so far as the same are applicable and are not superseded by any regulations imposed by the Directors.
- (i) A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors or by all the members of a committee for the time being shall be as valid and effectual as a resolution passed at a meeting of the Directors or, as the case may be, of such committee duly called and constituted, provided that no such resolution shall be valid or effective if its signature in any one or more jurisdictions would cause the Company to become resident for tax purposes in a jurisdiction other than Bermuda.

Such resolution may be contained in one document or in several documents in the like form each signed by one or more of the Directors or members of the committee concerned.

- (j) All acts done by the Directors or by any committee or by any person acting as a Director or member of a committee or any person duly authorised by the Directors or any committee, shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Director or member of such committee or person acting as aforesaid or that they or any of them were disqualified or had vacated their office, be as valid as if every such person had been duly appointed and was qualified and had continued to be a Director, member of such committee or person so authorised, provided that the defect is not that the Director was resident for tax purposes in a jurisdiction where such residence would cause the Company to be resident for tax purposes in a jurisdiction other than Bermuda.
- (k) All meetings of the Directors shall take place at such location or locations which would not cause the Company to be resident for tax purposes in a jurisdiction other than Bermuda.

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## 68 Quorum at Meetings

- (a) The quorum necessary for the transaction of the business of the Directors shall be two (2) directors entitled to vote and a majority of the Directors present at the meeting must not be resident or located in a single jurisdiction other than Bermuda. An Alternate Director who is not himself a Director shall, if his appointor is not present, be counted in the quorum.
- (b) Unless the Directors determine otherwise, the quorum need only be present at the time the meeting commences.
- (c) Any Director who ceases to be a Director at a meeting of the Directors may continue to be present and to act as a Director and be counted in the quorum until the termination of the meeting if no other Director objects and if otherwise a quorum of Directors would not be present.

- (d) A Director who to his or her knowledge is in any way, whether directly or indirectly, interested in a contract or proposed contract, transaction or arrangement with the Company and has complied with the provisions of the Companies Act and these Bye-Laws with regard to disclosure of the Director's interest (an **Interested Director**) shall be entitled to vote in respect of any contract, transaction or arrangement in which he or she is so interested if:
- (i) the Interested Director declares the nature of his or her interest at the first opportunity at a meeting of the Directors or by writing to the Directors as required by the Companies Act;
  - (ii) the Interested Director's interest is not personal; and
  - (iii) all other Directors are satisfied that the Interested Director's interest does not compromise that Director's ability to act in the best interest of the Company,
- and if so, the Interested Director's vote shall be counted.
- (e) So long as a quorum of Directors remains in office, the continuing Directors may act notwithstanding any vacancy in their number but, if no such quorum remains, the continuing Directors or a sole continuing Director may act only for the purpose of calling a general meeting.

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## 69 Meetings by Technology

- (a) Each Director, on becoming a Director (or on the adoption of these Bye-Laws), consents to the use of the following technology for calling or holding a Directors' meeting:
- (i) video;
  - (ii) telephone;
  - (iii) electronic mail;
  - (iv) any other technology which permits each Director to communicate with every other Director; or
  - (v) any combination of the technologies described in the above paragraphs.
- A Director may withdraw the consent given under this Bye-Law in accordance with the law.
- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors.
- (c) The participating Directors shall, for the purpose of every provision of these Bye-Laws concerning meetings of the directors, be taken to be assembled together at a meeting and to be present at that meeting.
- (d) All proceedings of those Directors conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were

present, provided that a communication shall not be made or meeting chaired from a place which would cause the Company to be resident for tax purposes outside Bermuda and such meeting shall only be validly held if all Directors participating in such meeting and who speak at such meeting are located in such place or places as would not cause the Company to be resident for tax purposes outside Bermuda.

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## 70 Minutes

- (a) The Directors shall cause minutes to be made and books kept for the purpose of recording:
  - (i) all appointments of officers made by the Directors;
  - (ii) the names of the Directors and other persons (if any) present at each meeting of the Directors and of any committee; and
  - (iii) of all proceedings at meetings of the Company, of the holders of any class of shares in the Company, and of committees appointed by the Directors or the Shareholders.
- (b) Shareholders shall only be entitled to see the Register of Directors and Officers, the Register, the financial information provided for in Bye-Law 83 and the minutes of meetings of the Shareholders. The disclosure of any other information to a Shareholder or to Shareholders may only be authorised by resolution of the Directors, except that a Director appointed by a Shareholder may disclose information to that Shareholder without a resolution of the Directors.

## OTHER OFFICERS

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### 71 Officers

- (a) Without prejudice to Bye-Law 72, the Board may appoint such officers as the Directors deem appropriate who may or may not be Directors, provided that the residency for tax purposes of such one or more of them shall not cause the Company to be resident for tax purposes outside Bermuda, and shall be elected by the Directors as soon as possible after the statutory meeting.
- (b) Any person elected or appointed pursuant to this Bye-Law shall hold office for such period and upon such terms as the Directors may determine and the Directors may revoke or terminate any such election or appointment. Any such revocation or termination shall be without prejudice to any claim for damages that such officer may have against the Company or the Company may have against such officer for any breach of any contract of service between that person and the Company which may be involved in such revocation or termination. Save as provided in the Companies Act or these Bye-Laws, the powers and duties of the officers of the Company shall be such (if any) as are determined from time to time by the Directors.
- (c) Where a meeting of the Directors is held and the chairman (if there is one appointed):

- (i) is not present at the time appointed for the holding of the meeting; or
- (ii) is present but does not wish to chair the meeting,

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

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## **72 Secretary and Resident Representative**

- (a) The Secretary and, if required, the Resident Representative, shall be appointed by the Directors at such remuneration (if any) and upon such terms as they may think fit and any Secretary and Resident Representative so appointed may be removed by the Directors.
- (b) The duties of the Secretary and the duties of the Resident Representative shall be those prescribed by the Companies Act together with such other duties as shall from time to time be prescribed by the Directors.
- (c) A provision of the Companies Act or these Bye-Laws requiring or authorising a thing to be done by or to a Director and the Secretary shall not be satisfied by it being done by or to the same person acting both as Director and as, or in the place of, the Secretary.

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## **SEALS AND EXECUTING DOCUMENTS**

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### **73 The Seal and its Use**

- (a) The Company may adopt a Seal in such form as the Directors may determine. The Directors may also adopt one or more duplicate Seals for use in or outside Bermuda.
- (b) A Seal may, but need not, be affixed to any deed, instrument, share certificate or document, and if the Seal is to be affixed thereto, it shall be attested by the signature of (i) any Director, or (ii) any Officer, or (iii) the Secretary, or (iv) any person authorised by the Board for that purpose.
- (c) A Seal shall only be used by authority of the Directors or of a committee constituted by the Directors.

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## **DIVIDENDS, INTEREST AND RESERVES**

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### **74 Powers to Declare Dividends and Pay Interest**

- (a) The Directors may from time to time declare cash dividends or distributions, subject to these Bye-Laws and in accordance with the Companies Act, to be paid to the holders of Ordinary Shares in accordance with their respective rights and priorities of their classes or series of shares (as the case may be) including such interim dividends as appear to the Directors to be justified by the position of the Company.
- (b) The Directors, in their discretion, may determine that any dividend shall be paid in cash or shall at the request of any relevant Shareholder be satisfied in paying up in full shares or debentures in the Company to be

issued to the Shareholders or credited as fully paid or at the request of any relevant Shareholder partly in one way and partly the other. The Directors may also pay any fixed cash dividend which is payable on any shares of the Company half yearly or on such other dates, whenever the position of the Company, in the opinion of the Directors, justifies such payment.

- (c) Except insofar as the rights attaching to, or the terms of issue of, any share otherwise provide all dividends or distributions may be declared and paid according to the amounts Paid up on the shares in respect of which the dividend or distribution is paid.
- (d) No dividend, distribution or other moneys payable by the Company on or in respect of any share shall bear interest against the Company.

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## **75 Deduction of Unpaid Amount**

The Directors may deduct from any dividend, distribution or other moneys payable to a Shareholder by the Company on or in respect of any shares all sums of money (if any) presently payable by the Shareholder to the Company on account of calls or otherwise in respect of shares in the Company.

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## **76 Payment of Distributions**

- (a) Any dividend, interest or other money payable in cash in respect of shares may be paid, at the sole risk of the intended recipient:
  - (i) by cheque sent in the mail directed to:
    - (A) the address of the Shareholder as shown in the Register or, in the case of joint holders, to the address shown in the Register as the address of the joint holder first named in that register; or
    - (B) to any other address as the Shareholder or joint holders in writing directs or direct; or
  - (ii) by electronic funds transfer to an account with a bank or other financial institution nominated by the Shareholder and acceptable to the Company; or
  - (iii) by any other means determined by the Directors; orotherwise disposed of according to law.
- (b) Subject to the Companies Act, all dividends unclaimed may be invested or otherwise used by the Directors for the benefit of the Company until claimed.
- (c) All dividends unclaimed after a period of 6 years from the date of declaration of such dividend shall be automatically forfeited and shall revert to the Company.
- (d) All distributions other than distributions in kind will be made in dollars.

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## 77 Dividend Plans

The Directors may, subject to and in accordance with the terms on which the Ordinary Shares are part of a Stapled Security, establish, maintain, suspend, reinstate, amend and terminate one or more dividend plans (including the establishment of rules) under which Shareholders may elect with respect to some or all of their shares (subject to the rules of the relevant plan):

- (a) to reinvest in whole or in part dividends paid or payable or which may become payable by the Company to the Shareholder in cash by subscribing for shares in the capital of the Company and/or Securities; and
- (b) to be issued with shares and/or Securities instead of being paid a dividend or part of a dividend.

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## 78 Distributions in Kind

- (a) The Directors may also, subject to these Bye-Laws and in accordance with the Companies Act, in addition to their other powers, on a recommendation from the Adviser, pay or satisfy any dividend or distribution wholly or in part by the distribution of specific assets, including Paid up shares or debentures of any other company.
- (b) Where any difficulty arises in regard to such distribution or dividend the Directors may settle it as they think expedient. In particular, the Directors may:
  - (i) authorise any person to sell and transfer any fractions or may ignore fractions altogether;
  - (ii) may fix the value for distribution or dividend purposes of any such specific assets and may determine that cash payments shall be made to any Shareholders upon the footing of the values so fixed in order to secure equality of distribution; and
  - (iii) may vest any such specific assets in trustees as may seem expedient to the Directors,

provided that such dividend or distribution may not be satisfied by the distribution of any partly paid shares or debentures of any company without the sanction of a Resolution.

- (c) If a distribution of specific assets to, or at the direction of, a particular Member or Members is not lawful or, is in the Directors' opinion, impracticable the Directors may make a cash payment to the Member or Members on the basis of the cash amount of the dividend instead of the distribution of specific assets.
- (d) In each case where specific assets are to be transferred to Members (or a nominee on behalf of Members), each Member authorises the Adviser:
  - (i) to act as their agent to agree to obtain the specific assets; and
  - (ii) where the specific asset is a share or an interest in a share in a company, to agree to become a member of that company.

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## 79 Sale Facility

- (a) Subject to the Companies Act and the Australian Listing Rules, the Directors or the liquidator of the Company (as the case may be) shall be entitled to invoke the procedures in Bye-Laws 79(b) and 79(c) in respect of any Non-Australasian Shareholder, if it is proposed to distribute property in the form of securities or interests in managed investment schemes under Bye-Laws 78 or 88 or Staple Other Interests to Ordinary Shares or Stapled Securities.
- (b) On the date of a proposed distribution of property or the Stapling Commencement Date (**Transfer Date**):
- (i) each Non-Australasian Shareholder will have transferred to the Cashout Bank:
- (A) in respect of a distribution of property in the form of securities or managed investment interests, the securities or managed investment interests that they would have been entitled to receive under the distribution; or
- (B) in respect of the Other Interests to be Stapled to Ordinary Shares or Stapled Securities, the unencumbered beneficial and legal title to all Ordinary Shares or Stapled Securities (as applicable) registered in their name on that date,
- (**Transfer Securities**);
- (ii) the Cashout Bank will become the legal and beneficial owner of the Transfer Securities under Bye-Law 79(b)(i) without need for any further act by the Non-Australasian Shareholder. For the avoidance of doubt, the
- (iii) Cashout Bank will not be acting as trustee, custodian, nominee or agent in respect of the Transfer Securities (whether for the purpose of distributions to be paid on those Transfer Securities or any sale or transfer of those Transfer Securities or otherwise).
- (c) The Directors or liquidator of the Company (as applicable) must procure, to the extent they are able to, that the Cashout Bank:
- (i) (i) on, or as soon as reasonable practicable after the Transfer Date, sells the Transfer Securities (including, in the context of the Stapling of new Other Interests, those Other Interests); and
- (ii) pays or arranges for the payment of the Transfer Security Price to Non-Australasian Shareholders within 30 days of the Transfer Date in consideration for the Transfer Securities transferred under Bye-Law 79(b)(i). The Cashout Bank's obligation to make such payment will be satisfied upon payment of the Transfer Security Price to the Company's registry, for payment to the relevant Non-Australasian Shareholder within 30 days of the Transfer Date.

- (d) The Company, the Directors and the liquidator of the Company shall have no liability of any nature whatsoever to Shareholders arising, directly or indirectly, from the Directors or liquidator (as the case may be) doing or refraining from doing any act (including the execution of a document) pursuant to or in connection with the distribution of property in the form of securities or interests in managed investment schemes under Bye-Laws 78 or 88, or the implementation of the Sale Facility provided for in Bye-Laws 79(b) and 79(c).

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## **80 Reserves**

- (a) The Directors may, before recommending or declaring any dividend or distribution, set aside such sums as they think proper as reserves which shall, at the discretion of the Directors, be applicable for any purpose of the Company to which the profits or gains of the Company may be properly applied.
- (b) Pending the application under paragraph (a) the reserves may, at the Director's discretion, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit.
- (c) The Directors may, without placing them to any reserve, carry forward any sums which they may think it prudent not to distribute.

## **CAPITALISATION OF PROFITS**

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### **81 Capitalisation of Profits**

- (a) The Company may, upon the recommendation of the Directors, from time to time resolve:
  - (i) to capitalise all or any part of any amount for the time being standing to the credit of any reserve or fund which is available for distribution or to the credit of any share premium account or any capital redemption reserve fund; and
  - (ii) that such amount be set free for distribution in any of the ways mentioned in Bye-Law 81(b) amongst the Shareholders or any class of Shareholders who would be entitled thereto if distributed by way of dividend and in the same proportions.
- (b) The ways in which a sum referred to in Bye-Law 81(a) may be applied for the benefit of Shareholders are:
  - (i) in or towards paying up amounts for the time being unpaid on any shares in the Company held by Shareholders;
  - (ii) in payment up in full of unissued shares, debentures or other obligations of the Company, to be allotted and distributed credited as fully paid amongst the Shareholders; or
  - (iii) partly in one way and partly in the other.

- (c) Where any difficulty arises in regard to any distribution under this Bye-Law, the Directors may settle the same as they think expedient. In particular, the Directors may authorise any person to sell and transfer any fractions or may resolve that the distribution should be as nearly as may be practicable in the correct proportion but not exactly so or may ignore fractions altogether, and may determine that cash payments should be made to any Shareholders in order to adjust the rights of all parties, as may seem expedient to the Directors. The Directors may appoint any person to sign on behalf of the persons entitled to participate in the distribution any contract necessary or desirable for giving effect thereto and such appointment shall be effective and binding upon the Shareholders.

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## 82 Record Dates

Notwithstanding any other provisions of these Bye-Laws, the Directors may fix any date as the record date for any dividend, distribution, allotment or issue and for the purpose of identifying the persons entitled to receive notices of general meetings. Any such record date may be on or at any time before or after any date on which such dividend, distribution, allotment or issue is declared, paid or made or such notice is despatched.

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## 83 Accounting Records

- (a) The Directors shall cause to be kept accounting records sufficient to give a true and fair view of the state of the Company's affairs and to show and explain their transactions, in accordance with the Companies Act and the Australian Listing Rules.
- (b) The records of account shall be kept at the Registered Office or at such other place or places as the Directors think fit, and shall at all times be open to inspection by the Directors. If the records of account are kept at some place outside Bermuda, there shall be kept at an office of the Company in Bermuda such records as will enable the Directors to ascertain with reasonable accuracy the financial position of the Company at the end of each three month period.
- (c) No Shareholder (other than an officer of the Company or the Adviser) shall have any right to inspect any accounting record or book or document of the Company except as conferred by law or authorised by the Directors or by Resolution or as agreed between the Shareholder and the Company in writing.
- (d) A copy of every balance sheet and statement of income and expenditure, including every document required by law to be annexed thereto, which is to be laid before the Company in general meeting, together with a copy of the Auditors' report, shall be sent to each person entitled thereto in accordance with the requirements of the Companies Act. For the avoidance of doubt such documents may be delivered by way of publication on a website provided that each Shareholder is notified of the address of the web site, the place on the website where the document may be found and how the document may be accessed on the website in which case such documents will be deemed to have been delivered.

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## 84 Audit

Save and to the extent that an audit is waived in the manner permitted by the Companies Act, Auditors shall be appointed and their duties regulated in accordance with the Companies Act, these Bye-Laws, any other applicable law and such requirements not inconsistent with the Companies Act as the Directors may from time to time determine.

## NOTICES

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### 85 Notices Generally

- (a) Any Shareholder who has not left at or sent to the Registered Office, a place of address or an electronic mail address (for registration in the Register) at or to which all notices and documents of the Company may be served or sent is not entitled to receive any notice.
- (b) A notice may be given by the Company to any Shareholder by:
  - (i) serving it on the Shareholder personally;
  - (ii) sending it by mail to the Shareholder or leaving it at the Shareholder's address as shown in the Register or the address supplied by the Shareholder to the Company for the giving of notices;
  - (iii) serving it in any manner contemplated in this Bye-Law 85(b) on a Shareholder's attorney as specified by the Shareholder in a notice given under Bye-Law 85(c);
  - (iv) fax to the fax number supplied by the Shareholder to the Company for the giving of notices; or
  - (v) transmitting it electronically to the electronic mail address given by the Shareholder to the Company for giving notices.
- (c) A Shareholder may, by written notice to the Secretary left at or sent to the Registered Office, require that all notices to be given by the Company or the Directors be served (as permitted by Bye-Law 85(b)) on the Shareholder's attorney at an address specified in the notice.
- (d) Notice to a Shareholder whose address for notices is outside Bermuda shall be sent by airmail or to the electronic mail address given by the Shareholder or in such other manner as shall be permitted by the Australian Listing Rules.
- (e) Where a notice is sent by mail, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected:
  - (i) in the case of a notice of a meeting, on the day after the date of its posting; and
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

- (f) Where a notice is sent by fax or electronic means, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.
- (g) A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a Shareholder:
  - (i) by serving it on the person personally;
  - (ii) by sending it by mail addressed to the person by name or by the title of representative of the deceased or assignee of the bankrupt or by any like description at the address (if any) within Bermuda supplied for the purpose by the person;
  - (iii) if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred;
  - (iv) by sending a fax to the fax number supplied by the person to the Company;
  - (v) if such a fax number has not been supplied, to the fax number to which the notice might have been sent if the death or bankruptcy had not occurred; or
  - (vi) by transmitting it to the electronic mail address supplied by the person to the Company.
- (h) For the purposes of these Bye-Laws, messages by way of facsimile or other electronic means purporting to come from a holder of shares or, as the case may be, a Director or Alternate Director, or, in the case of a corporation which is a holder of shares from a director or the secretary thereof or a duly appointed attorney or duly authorised representative(s) thereof for it and on its behalf, shall in the absence of express evidence to the contrary available to the person relying thereon at the relevant time be deemed to be a document or instrument in writing signed by such holder or Director or Alternate Director in the terms in which it is received.

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## **86 Notices of General Meeting**

- (a) Notice of every general meeting shall be given:
  - (i) in the manner authorised by Bye-Law 85(b);
  - (ii) subject to Bye-Law 85(b), to every Shareholder and to each Director;
  - (iii) to every person entitled to a share in consequence of the death or bankruptcy of a Shareholder who, but for death or bankruptcy, would be entitled to receive notice of the meeting; and
  - (iv) to the auditor to the Company (if any).
- (b) No other person is entitled to receive notice of general meetings.

## JOINT HOLDERS

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### 87 Joint Holders

Where two (2) or more persons are registered as the holders of any shares, they are considered to hold the shares as joint tenants with benefits of survivorship subject to the following provisions:

**(a) Number of holders**

the Company is not bound to register more than three (3) persons as the holders of the shares;

**(b) Liability for payments**

the joint holders of the shares are liable severally as well as jointly in respect of all payments which ought to be made in respect of the shares;

**(c) Death of joint holder**

on the death of any one of the joint holders, the remaining joint holders are the only persons recognised by the Company as having any title to the shares but the Directors may require evidence of death and the estate of the deceased joint holder is not released from any liability in respect of the shares;

**(d) Power to give receipt**

any one of the joint holders may give a receipt for any dividend, bonus or return of capital payable to the joint holders;

**(e) Notices and certificates**

only the person whose name stands first in the Register as one of the joint holders of the shares is entitled, if the Company determines to issue certificates for shares, to delivery of a certificate relating to the shares or to receive notices from the Company and any notice given to that person is considered notice to all the joint holders; and

**(f) Votes of joint holders**

any one of the joint holders may vote at any meeting of the Company either personally or by properly authorised representative, proxy or attorney, in respect of the shares as if that joint holder was solely entitled to the shares. If more than one of the joint holders are present personally or by properly authorised representative, proxy or attorney, only the vote of the joint holder whose name appears first in the Register counts.

## WINDING UP

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### 88 Winding Up

- (a) If the Company shall be wound up, the liquidator may, with the sanction of a Special Resolution and any other sanction required by the Companies Act, divide amongst the Shareholders in specie or in kind the whole or any part of the assets of the Company (whether they shall

consist of property of the same kind or not) and may for such purposes set such values as the liquidator deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the holders of different classes of shares.

- (b) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trust for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no Shareholder shall be compelled to accept any shares or other assets upon which there is any liability.

## INDEMNITY

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### 89 Indemnity & Insurance

- (a) Subject to the proviso below, every Director, officer of the Company and member of a committee constituted under Bye-Law 65 and any Resident Representative (each an **Indemnified Person**) shall be indemnified out of the funds of the Company against all liabilities, loss, damage or expense (including but not limited to liabilities under contract, tort and statute or any applicable foreign law or regulation and all reasonable legal and other costs and expenses properly payable) incurred or suffered by his actual or purported execution and/or discharge of his duties, power, or office and the indemnity contained in this Bye-Law shall extend to any person acting as a Director, officer, committee member or Resident Representative in the reasonable belief that he has been so appointed or elected notwithstanding any defect in such appointment or election PROVIDED ALWAYS that the indemnity contained in this Bye-Law shall not extend to any matter which would render it void pursuant to the Companies Act.
- (b) Each Indemnified Person shall be indemnified out of the funds of the Company against all liabilities incurred by him as such an Indemnified Person in defending any proceedings, whether civil or criminal, in which judgment is given in his favour, or in which he is acquitted, or in connection with any application under the Companies Act in which relief from liability is granted to him by the court.
- (c) The Company may advance funds of the Company to each Indemnified Person for the costs, charges and expenses incurred by such Indemnified Person in defending any proceedings, whether civil or criminal, arising out of his actual or purported execution and/or discharge of his duties, powers or office during the periods of his appointment PROVIDED ALWAYS that this advance shall be repaid forthwith if any allegation of fraud or dishonesty is proved against him.
- (d) To the extent that any Indemnified Person is entitled to claim an indemnity pursuant to these Bye-Laws in respect of amounts paid or discharged by him, the relative indemnity shall take effect as an obligation of the Company to reimburse the person making such payment or effecting such discharge.
- (e) The Company may purchase and maintain insurance for the benefit of each Indemnified Person against any liability incurred by such Indemnified Person in the applicable capacity thereunder in respect of any loss arising or liability attaching to them and in respect of which he

is entitled to be indemnified under this Bye-Law subject to the proviso in Bye-Law 89(a).

## MISCELLANEOUS

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### 90 Amalgamation

Any resolution proposed for consideration at any general meeting to approve the amalgamation of the Company with any other company, wherever incorporated, shall require the approval of a simple majority of votes cast at such meeting and the quorum for such meeting shall be that required in Bye-Law 41(b) and a poll may be demanded in respect of such resolution in accordance with the provisions of Bye-Law 47.

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### 91 Alteration of Bye-Laws

No Bye-Law may be amended, rescinded or altered and no new Bye-Laws may be made other than by a Special Resolution.

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### 92 Transfer by way of Continuation

If the Company is permitted in accordance with the provisions of the Companies Act, the Company shall, subject to the provisions thereof, have the power to register by way of continuation as a body corporate under the laws of any jurisdiction outside Bermuda and to be discontinued in Bermuda.

## REGISTERS

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### 93 Register of Shareholders

- (a) The Secretary shall enter or procure the entry in the Register of the particulars required by the Companies Act, and the Register shall be kept in such manner as to show at all times the Shareholders of the Company for the time being and the shares respectively held by them.
- (b) Subject to the provisions of the Companies Act, if the Directors consider it necessary or appropriate, the Company may establish and maintain a Branch Register at such location outside Bermuda as the Directors think fit and while the issued share capital of the Company is, with the consent of the Directors, listed on the ASX, the Company shall keep a Branch Register in Australia accordingly.
- (c) The Register and the Branch Register shall be open to the public on all weekdays except those days designated as public holidays in the relevant territory where the Register or Branch Register is held and in the case of the Branch Register on any other day on which the ASX shall declare and publish as not being a Business Day.

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### 94 Stapled Security Register

- (a) The Directors shall maintain or cause to be maintained a Stapled Security Register of holders of Ordinary Shares which records the names

of the Shareholders, the number of Ordinary Shares held, the number of Aust Shares and/or Other Interests held by the members to which each Shareholder's Ordinary Shares are Stapled and any additional information required by the Australian Listing Rules or determined from time to time by the Directors.

- (b) Prior to the date the Ordinary Shares are Unstapled, the Stapled Security Register (as defined in Schedule 2) will be deemed to be separate to the register of members of the Company.

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## **95 Register of Directors and Officers**

- (a) The Secretary or, if appointed, the Registrar, shall establish and maintain at the Registered Office or elsewhere in Bermuda a register of the Directors and Officers of the Company as required by the Companies Act.
- (b) The register of Directors and Officers shall be open to inspection in the manner prescribed by the Companies Act between 10:00 a.m. and 12:00 noon on every Business Day.

## **REGISTERED OFFICE**

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### **96 Registered Office**

The Registered Office shall be at such place in Bermuda as the Directors shall from time to time appoint.

## **RESTRICTED SECURITIES**

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### **97 Restricted Securities**

Notwithstanding any other provisions of these Bye-Laws:

- (a) Restricted Securities may not be disposed of during the escrow period except as permitted by the Australian Listing Rules or ASX;
- (b) subject to the Operating Rules in respect of CHES Approved Securities, the Company shall refuse to acknowledge a disposal (including registering a transfer), of Restricted Securities during the escrow period except as permitted by the Australian Listing Rules or ASX; and

in the event of a breach of the Australian Listing Rules in relation to shares which are Restricted Securities, the member holding the shares in question shall cease to be entitled to any distributions and to any voting rights in respect of those shares for so long as the breach subsists.

## **SMALL HOLDINGS**

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### **98 Small Holdings**

- (a) This Bye-Law 98 applies while the shares are Officially Quoted.

(b) Subject to the provisions of this Bye-Law 98, the Company may in its discretion from time to time sell or redeem any shares held by a Member that is a Small Holder without request by the Small Holder.

(c) In this Bye-Law 98:

**Divestment Notice** means a notice given under Bye-Law 98(d) to a Small Holder or a New Small Holder;

**Market Value** in relation to a Share means the closing price on SEATS of the Share;

**New Small Holder** is a Member who is the holder or a joint holder of a New Small Holding;

**New Small Holding** means a holding of Shares created after the date on which Bye-Law 98 came into effect by the transfer of a parcel of Shares the aggregate Market Value of which at the time a proper transfer was initiated or a paper based transfer was lodged, was less than a marketable parcel of Shares as provided under the Australian Listing Rules;

**Relevant Period** means the period specified in a Divestment Notice under Bye-Law 98(e);

**Relevant Shares** are the Shares specified in a Divestment Notice;

**Shares** for the purposes of Bye-Law 98 are shares in the Company all of the same class;

**Small Holder** is a Member who is the holder or a joint holder of a Small Holding; and

**Small Holding** means a holding of Shares the aggregate Market Value of which at the relevant date is less than a marketable parcel of Shares as provided under the Australian Listing Rules.

(d) If the Directors determine that a Member is a Small Holder or a New Small Holder the Company may give the Member a Divestment Notice to notify the Member:

(i) that the Member is a Small Holder or a New Small Holder, the number of Shares making up and the Market Value of the Small Holding or New Small Holding and the date on which the Market Value was determined;

(ii) that the Company intends to sell the Relevant Shares in accordance with this Bye-Law 98 after the end of the Relevant Period specified in the Divestment Notice;

(iii) if the Member is a Small Holder, that the Member may at any time before the end of the Relevant Period notify the Company in writing that the Member desires to retain the Relevant Shares and that if the Member does so the Company will not be entitled to sell the Relevant Shares under that Divestment Notice; and

(iv) after the end of the Relevant Period the Company may for the purpose of selling the Relevant Shares that are in a CS Facility

holding initiate a holding adjustment to move those Relevant Shares from that CS Facility holding to an Issuer Sponsored Holding or certificated holding.

If the Operating Rules of a CS Facility apply to the Relevant Shares, the Divestment Notice must comply with those Operating Rules.

- (e) For a Divestment Notice given to a Small Holder, the Relevant Period must be at least six weeks from the date the Divestment Notice was given. For a Divestment Notice given to a New Small Holder, the Relevant Period must be at least seven days from the date the Divestment Notice was given.
- (f) At the end of the Relevant Period the Company is entitled to sell on-market or in any other way determined by the Directors:
  - (i) the Relevant Shares of a Member who is a Small Holder, unless that Member has notified the Company in writing before the end of the Relevant Period that the Member desires to retain the Relevant Shares, in which event the Company must not sell those Relevant Shares under that Divestment Notice; and
  - (ii) the Relevant Shares of a Member who is a New Small Holder.
- (g) The Company is not bound to sell any Relevant Shares which it is entitled to sell under this Bye-Law 98 but unless the Relevant Shares are sold within six weeks after the end of the Relevant Period the Company's right to sell the Relevant Shares under the Divestment Notice relating to those Shares lapses and it must notify the Member to whom the Divestment Notice was given accordingly.
- (h) To effect the sale and transfer by the Company of Relevant Shares of a Member, the Member appoints the Company and each Director and Secretary jointly and severally as the Member's attorney in the Member's name and on the Member's behalf to do all acts and things which the Company considers necessary or appropriate to effect the sale or transfer of the Relevant Shares and, in particular:
  - (i) to initiate a holding adjustment to move the Relevant Shares from a CS Facility holding to an Issuer Sponsored Holding or a certificated holding; and
  - (ii) to execute on behalf of the Member all deeds instruments or other documents necessary to transfer the Relevant Shares and to deliver any such deeds, instruments or other documents to the purchaser.
- (i) A statement in writing by or on behalf of the Company under this Bye-Law 98 is (in the absence of manifest error) binding on and conclusive against a Member. In particular, a statement that the Relevant Shares specified in the statement have been sold in accordance with this Part is conclusive against all persons claiming to be entitled to the Relevant Shares and discharges the purchaser from all liability in respect of the Relevant Shares.
- (j) The Company must register the purchaser of Relevant Shares as the holder of the Relevant Shares transferred to the purchaser under this

Bye-Law. The purchaser is not bound to see to the application of any money paid as consideration. The title of the purchaser to the Relevant Shares transferred to the purchaser is not affected by any irregularity or invalidity in connection with the actions of the Company under this Part.

- (k) Subject to Bye-Law 98(l), where:
- (i) Relevant Shares of a Member are sold by the Company on behalf of the Member under this Bye-Law; and
  - (ii) the certificate for the Relevant Shares (unless the Company is satisfied that the certificate has been lost or destroyed or the Relevant Shares are Uncertificated Securities) has been received by the Company,
- the Company must, within 60 days of the completion of the sale, send the proceeds of sale to the Member entitled to those proceeds by sending a cheque payable to the Member through the post to the address of the Member shown in the Register, or in the case of joint holders, to the address shown in the Register as the address of the Member whose name first appears in the Register. Payment of any money under this Bye-Law is at the risk of the Member to whom it is sent.
- (l) In the case of a sale of the Relevant Shares of a New Small Holder in accordance with this Part, the Company is entitled to deduct and retain from the proceeds of sale, the costs of the sale as determined by the Company. In any other case, the Company or a purchaser must bear the costs of sale of the Relevant Shares. The costs of sale include all stamp duty, brokerage and government taxes and charges (except for tax on income or capital gains of the Member) payable by the Company in connection with the sale and transfer of the Relevant Shares.
- (m) The remedy of a Member to whom this Bye-Law applies, in respect of the sale of the Relevant Shares of that Member is expressly limited to a right of action in damages against the Company to the exclusion of any other right, remedy or relief against any other person.
- (n) Unless the Directors determine otherwise, where a Divestment Notice is given to a New Small Holder in accordance with this Part, then despite any other provision in this Bye-Law, the rights to receive payment of dividends and to vote attached to the Relevant Shares of that Member are suspended until the Relevant Shares are transferred to a new holder or that Member ceases to be a New Small Holder. Any dividends that would, but for this Bye-Law, have been paid to that Member must be held by the Company and paid to that Member within 60 days after the earlier of:
- (i) the date the Relevant Shares of that Member are transferred; and
  - (ii) the date that the Relevant Shares of that Member cease to be subject to a Divestment Notice.
- (o) If it is a requirement of the Australian Listing Rules, the Company must not give a Small Holder more than one Divestment Notice in any 12 month period (except as contemplated by Bye-Law 98(p)).

- (p) From the date of the announcement of a takeover bid for the Shares until the close of the offers made under the takeover bid, the Company's powers under this Part to sell Relevant Shares of a Member cease. After the close of the offers under the takeover bid, the Company may give a Divestment Notice to a Member who is a Small Holder or a New Small Holder, despite Bye-Law 98(o) and the fact that it may be less than 12 months since the Company gave a Divestment Notice to that Member.

## PAYMENTS BY THE COMPANY

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### 99 Payments by the Company

- (a) Bye-Law 99(b) applies if any law imposes or purports to impose any immediate or future or possible liability on the Company to make any payment, or empowers any government or taxing authority or government official to require the Company to make any payment, in respect of any shares held either jointly or solely by any Shareholder or in respect of any transfer of those shares or in respect of any interest, dividends, bonuses or other money due or payable or accruing due or which may become due or payable to the Shareholder by the Company on or in respect of any shares or for or on account or in respect of any Shareholder, whether because of:
- (i) the death of the Shareholder;
  - (ii) the non-payment of any income tax or other tax by the Shareholder;
  - (iii) the non-payment of any estate, probate, succession, death, stamp or other duty by the Shareholder or a personal representative of that Shareholder or by or out of the Shareholder's estate;
  - (iv) any assessment of income tax against the Company in respect of interest or dividends paid or payable to the Shareholder; or
  - (v) any other act or thing.
- (b) In each case referred to in Bye-Law 99(a):
- (i) the Company is to be fully indemnified from all liability by the Shareholder or the Shareholder's personal representative and by any person who becomes registered as the Shareholder on the distribution of the deceased Shareholder's estate;
  - (ii) the Company has a lien or charge on the shares for all money paid by the Company in respect of the shares under or because of any law;
  - (iii) the Company has a lien on all dividends, bonuses and other money payable in respect of the shares registered in the Register as held either jointly or solely by the Shareholder for all money paid or payable by the Company in respect of the shares under or in consequence of any law, together with interest at a rate the Directors may determine from the date of payment to the date of repayment, and may deduct or set off against any dividend,

bonus or other money payable any money paid or payable by the Company together with interest;

- (iv) the Company may recover as a debt due from the Shareholder or the Shareholder's personal representative, or any person who becomes registered as the Shareholder on the distribution of the deceased Shareholder's estate, any money paid by the Company under or in consequence of any law which exceeds any dividend, bonus or other money then due or payable by the Company to the Shareholder together with interest at a rate the Directors may determine from the date of payment to the date of repayment; and
  - (v) except in the case of a proper CS Facility transfer, the Company may, if any money is paid or payable by the Company under any law, refuse to register a transfer of any shares by the Shareholder or the Shareholder's personal representative until the money and interest is set off or deducted or, in case the money and interest exceeds the amount of any dividend, bonus or other money then due or payable by the Company to the Shareholder, until the excess is paid to the Company. The power to refuse to register a transfer does not extend to a proper CS Facility transfer which is purported to be effected while a holding lock is in place.
- (c) Nothing in Bye-Law 99(a) and Bye-Law 99(b) affect any right or remedy which any law confers on the Company and any right or remedy is enforceable by the Company whether against the Shareholder or the Shareholder's personal representative.

# Schedule 1 - Rights attaching to preference shares

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## 1 Terms of preference shares

The Company may issue preference shares under Bye-Law 6 of the Bye-Laws on the following terms:

- (a) each preference share confers on the holder a right to receive a preferential dividend at the rate and on the basis decided by the Directors under the terms of issue;
- (b) in addition to the preferential dividend, each preference share may participate with the ordinary shares in profits if, and to the extent that, the Directors decide under the terms of issue;
- (c) the preferential dividend is cumulative unless, and to the extent that, the Directors decide otherwise under the terms of issue;
- (d) each preference share confers on its holder:
  - (i) the right to the preferential dividend in priority to the payment of any dividend on any other class of shares; and
  - (ii) the right in a winding up or 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 the date of redemption; and
    - (B) any amount paid on the share;
- (e) unless otherwise decided by the Directors under the terms of issue, a preference share does not confer on its holder any right to participate in the profits or property of the Company except as set out in this schedule;
- (f) to the extent that the Directors decide under the terms of issue, a preference share may confer a right to a bonus issue or capitalisation of profits in favour of holders of those shares only;
- (g) a preference share does not entitle its holder to vote at any general meeting of the Company except:
  - (i) 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;
  - (ii) on a resolution to approve the terms of a buy back agreement;
  - (iii) during a period in which a dividend or part of a dividend on the share is in arrears;
  - (iv) during the winding up of the Company; and
  - (v) in any other circumstance the Directors determine at the time of issue; and
- (h) each preference share confers on its holder the same rights as those conferred by the Bye-Laws upon the holders of Ordinary Shares in relation to receiving notices of general meetings, reports, balance sheets and accounts and of attending and being heard at all general meetings of the Company.

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## **2 Foreign Currency**

Where any amount is payable by the Company to the holder of a preference share in a currency other than Australian dollars, and the amount is not paid when due or the Company has commenced winding up, the holder may give notice to the Company requiring payment of an amount in Australian dollars equal to the foreign currency amount calculated by applying the reference rate on the date of payment for the sale of the currency in which the payment is to be made for Australian dollars. Reference rate means the rate applicable in the market and at the time determined by the Directors before allotment of those preference shares and specified in the terms of issue for those preference shares.

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## **3 Conversion to Ordinary Shares**

A preference share which, in accordance with its terms of issue, may be converted into an Ordinary Share will, at the time of conversion and without any further act, have the same rights as a fully paid Ordinary Share and rank equally with other fully paid Ordinary Shares on issue. This is subject to the terms of issue of the preference share in relation to entitlement to ordinary dividends paid after conversion. In addition, the terms of issue of the preference share may provide for the issue of additional Ordinary Shares on conversion as determined by the Directors.

# Bye-Laws of Macquarie Atlas Roads International Limited

## Schedule 2 - Stapling Provisions

The following provisions take effect on and from the Stapling Commencement Date if determined by the Issuer and, if so determined, apply unless and until they cease to apply in accordance with the relevant Constituent Document.

On and from the Stapling Commencement Date:

- (a) the Stapling Provisions apply and the relevant Constituent Document is to be read subject to the Stapling Provisions; and
- (b) subject to any specific provision to the contrary in the articles or bye-laws of the Issuer's Constitution the Stapling Provisions prevail over all other provisions of the relevant Constituent Document including any that are expressed to prevail over others, except where this would result in a breach of the Corporations Act, the Australian Listing Rules or any other law.

The Stapling Provisions apply to the Issuer in respect of its respective Stapled Entity and its Attached Securities. Unless the contrary intention appears, in this schedule a reference to a clause is a reference to a clause of this schedule.

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## 1 Definitions and Interpretation

### 1.1 Definitions

Unless the contrary intention appears, in this schedule capitalised terms not defined have the same meaning as in the Bye-Laws.

**Accession Deed** means the deed of that name between each Issuer and:

- (a) the responsible entity of any new trust; or
- (b) any issuer of a New Attached Security,

by which that person accedes to the Co-operation Deed.

**Application Price** means:

- (a) in respect of a Share, the application price for the Share;
- (b) in respect of any Other Attached Security, the application price for the Other Attached Security; and
- (c) in respect of a Stapled Security, the application price for a Stapled Security calculated in accordance with this schedule.

**Approved Valuer** means any person, independent of the Issuer, who is duly qualified to conduct a valuation.

**ASIC** means the Australian Securities and Investments Commission or any replacement or successor authority.

**Attached Securities** means any Securities an identical number of which are from time to time Stapled together to form a Stapled Security but does not include any Unstapled Security.

**Aust Share** means an ordinary share in the capital of MQA Australia.

**Bermuda Share** means an ordinary share in the capital of the Company.

**Bye-Laws** means the Bye-Laws of the Company and includes any amendment or replacement of it.

**Company** means Macquarie Atlas Roads International Limited, a company incorporated in Bermuda 43828.

**Constituent Documents** means the constituent documents of a Stapled Entity and at the Stapling Commencement Date means the MQA Australia Constitution and the Bye-Laws.

**Co-operation Deed** means the deed of that name between MQA Australia and the Company, and as amended from time to time.

**Corporate Action** means any issues, bonus and rights issues, placements and redemptions and buy-backs of an Attached Security.

**Defaulted Attached Security** means a partly paid Attached Security on which an instalment is due and payable but unpaid or in respect of which, a valid call has been made but has not paid in the time specified in the call.

**Defaulted Stapled Security** means a Stapled Security where one or more Attached Securities is a Defaulted Attached Security.

**Designated Foreign Investor** means a Foreign Investor in respect of whom the Issuer has made a determination in accordance with clause 9(b) of this schedule.

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**First Notice** has the meaning given in clause 5.3(a) of this schedule.

**First Offer Document** means the first prospectus issued in relation to the Stapled Securities.

**Foreign Investor** means an Investor whose address on the Register is in a place other than Australia, and such other jurisdictions (if any) as the Issuer may determine.

**Group** means the Stapled Entities and any Subsidiary of a Stapled Entity.

**Intra-Group Loan** means any of the actions set out in clause 12.6 of this schedule.

**Investor** means a person entered in the Register as a holder of a Stapled Security.

**Issuer:**

- (a) in the context of the MQA Australia Constitution, means MQA Australia;
- (b) in the context of the Bye-Laws, means the Company; and
- (c) in the context of the Constituent Document of any other Attached Security, means the issuer of the Attached Security.

**Listed** means being admitted to the official list of ASX as defined in the Australian Listing Rules and **Listing** has a corresponding meaning.

**MQA Australia** means Macquarie Atlas Roads Limited (ACN 141 075 201).

**MQA Australia Constitution** means the constitution of MQA Australia and includes any amendment or replacement of it.

**New Attached Security** has the meaning given in clause 7(a) of this schedule.

**Officially Quoted** means quotation on the official list of the ASX, including when quotation is suspended for a continuous period of not more than 60 days, all times during that period of suspension.

**Other Attached Security** means in respect of:

- (a) a Share, an identical number of each Attached Security other than a Share; or
- (c) any New Attached Security, an identical number of each Attached Security other than a New Attached Security.

**Other Issuer** means:

- (a) in respect of MQA Australia, each Issuer other than MQA Australia;
- (b) in respect of the Company, each Issuer other than the Company; and
- (c) in respect of the issuer of any New Attached Security, each Issuer other than the issuer of the New Attached Security.

**Register** means the register of Investors kept by the Stapled Entities under clause 6 of this schedule and the Corporations Act.

**Registered** means to be recorded in the Register.

**Registrar** means the person appointed to maintain the Register.

**Reorganisation** means the consolidation, division or conversion of the Attached Securities in the ratio determined by the Issuer from time to time. **Reorganise** is to be construed accordingly.

**Reserve Price** has the meaning given in clause 5.7(h) of this schedule.

**Restapling** has the meaning given in clause 8.3 of this schedule.

**Restricted Securities** has the meaning given in the Australian Listing Rules.

**Sale Consideration** means the average price (net of transaction costs including applicable brokerage, stamp duty and other taxes or charges) at which those Stapled Securities held by the Sale Nominee are sold under the Sale Facility, multiplied by the number of Stapled Securities held and sold by the Sale Nominee for the relevant Designated Foreign Investor.

**Sale Facility** means the facility under which Designated Foreign Investors are required to transfer their existing Stapled Securities to the Sale Nominee on the basis that the Sale Nominee is entered in the Register in respect of those Stapled Securities, and will receive the New Attached Securities pursuant to the Stapling and sell the resultant Stapled Securities for cash to pay the Sale Consideration to the relevant Designated Foreign Investor.

**Sale Nominee** means a financial services licensee appointed by the Issuer to carry out the role described in clauses 9(c) and (d) of this schedule.

**Sale Record Date** means the date determined by the Issuers as being the record date for the transaction under which the New Attached Securities are to be Stapled.

**Securities** means Ordinary Shares and Aust Shares and, if the Company determines, Other Interests.

**Small Holding** means a holding of securities which comprises less than a marketable parcel as provided in the Australian Listing Rules.

**Stapled Entity** means an Australian or overseas company, trust, corporation or managed investment scheme whose Securities are Attached Securities and who has executed the Accession Deed and at the Stapling Commencement Date means MQA Australia and the Company.

**Stapling Commencement Date** means the most recent date on which the Issuer determines that the Stapling of Attached Securities commences.

**Stapled Security** means the stapled security created by the Stapling together of the Attached Securities.

**Stapled Security Price** has the meaning given in clause 3.1(a) of this schedule.

**Stapled Security Register** means the register of Stapled Security holders.

**Stapled Security Registrar** means the registrar appointed by the Directors to administer the Stapled Security Register as required by the Operating Rules and includes any temporary or assistant registrar so appointed.

**Stapling** means the linking together of Securities so that on Attached Security may not be transferred or otherwise dealt with without the Other Attached Securities and so that the Attached Securities are quoted on ASX jointly as a “Stapled Security” or such other term as ASX permits. **Stapled** has a corresponding meaning.

**Stapling Matter** has the meaning given in clause 2.3 of this schedule.

**Subsidiary** of an entity means a company which is a subsidiary of the first entity within the meaning of Part 1.2 Div 6 of the Corporations Act or another entity which is controlled by the first entity within the meaning of control under section 50AA of the Corporations Act.

**Trading Day** has the same meaning as in the Australian Listing Rules.

**Transaction Documents** means all regulatory, structuring, operational, finance and ancillary documents required to effect and maintain the listing of the Stapled Entities and the official quotation of the Stapled Securities and to achieve the investment objectives of the Group from time to time, and any amending or supplemental agreements to those documents and any other document that the Issuer and the Other Issuers consider necessary or desirable for or in connection with the Listing of the Stapled Entities and the Official Quotation of the Stapled Securities and the achievement of the investment objectives of the Group from time to time and includes without limitation the Co-operation Deed.

**Transfer** has the meaning given in clause 7(d) of this schedule.

**Unstapled Security** means a Security which is no longer Stapled.

**Unstapling** means the process that results in the Attached Securities no longer being Stapled to each other. **Unstapled** has a corresponding meaning.

**Unstapling Event** means one or more of the following events:

- (a) a special resolution of the members of each Stapled Entity is passed to Unstaple the Stapled Securities;
- (b) Stapling becomes unlawful or prohibited under the Australian Listing Rules; or
- (c) a winding-up is commenced in respect of a Stapled Entity.

## 1.2 Interpretation

Unless the contrary intention appears, the interpretation provisions in Bye-Law 2 of the Bye-Laws apply to this schedule.

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## 2 Stapling - general intention

### 2.1 Stapled Securities - general intention

The Attached Securities are intended to be Stapled to form a Stapled Security from the Stapling Commencement Date. Subject to clause 8 of this schedule it is intended that:

- (a) the holders of one Attached Security will be identical to the holders of each Other Attached Security;
- (b) as far as the law permits, the Attached Securities shall be treated as one security;
- (c) the number of each Attached Security on issue at any time must equal the number of each Other Attached Security on issue;
- (d) no transfer of an Attached Security is to occur without each Other Attached Security being transferred at the same time from the same transferor to the same transferee; and
- (e) no Attached Security is to be issued unless each Other Attached Security is issued at the same time to the same person.

## **2.2 Transaction Documents**

Without limiting the Constituent Documents, the Issuer is authorised to enter into the Transaction Documents and to perform its obligations under the Transaction Documents.

## **2.3 Stapling matters**

- (a) The rights and obligations attaching to each Attached Security are set out in the relevant Constituent Document.
- (b) Without limiting the Constituent Documents or the Corporations Act, each Investor by subscribing for, taking a transfer of, or otherwise acquiring a Stapled Security will be taken to have consented to each provision in the Constituent Documents, including without limitation:
  - (i) the Stapling of the Attached Securities;
  - (ii) any Reorganisation of the Attached Securities (subject to an Ordinary Resolution if required by the Constituent Document);
  - (iii) the disposal of any Defaulted Stapled Securities;
  - (iv) the disposal of any Small Holding of Stapled Securities;
  - (v) the restrictions on Stapled Securities that are Restricted Securities;
  - (vi) the Stapling of New Attached Securities to the Stapled Securities;
  - (vii) the Investor becoming a member of any new Stapled Entity and being bound by the Constituent Documents for any New Attached Security;
  - (viii) the Unstapling of one or more Attached Securities;
  - (ix) the Restapling of an Unstapled Security;
  - (x) the Unstapling of the Stapled Securities; and

(xi) the disposal of Stapled Securities of a Designated Foreign Investor in accordance with clause 9;

(each a “**Stapling Matter**”).

(c) To effect any Stapling Matter, each Investor irrevocably appoints the Issuer as the Investor’s:

(i) agent and attorney in the Investor’s name and on the Investor’s behalf to do all acts and things and execute all documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect any Stapling Matter; and

(ii) proxy to vote at any meeting in favour of any resolution to effect a Stapling Matter.

(d) Without limiting clause 2.3(c) or any provision of a relevant Constituent Document, to effect the Stapling of a New Attached Security to the Stapled Securities under clause 7, each Investor irrevocably appoints the Issuer as the Investor’s agent and attorney in the Investor’s name and on the Investor’s behalf to:

(i) agree to obtain any New Attached Security;

(ii) apply any distributions, redemption proceeds or other payments to obtain a New Attached Security;

(iii) where a New Attached Security comprises shares or an interest in shares or interests in a company or managed investment scheme, to agree to become a member of that company or managed investment scheme; and

(iv) to do all acts and things and execute all applications, transfers, withdrawals and any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the Transfer of the New Attached Security to the Investor under clause 7.

(e) Without limiting clause 2.3(c), to effect the disposal of Stapled Securities held by or on behalf of a Designated Foreign Investor under clause 9, each Designated Foreign Investor irrevocably appoints the Issuer as that Investor’s agent and attorney in the Investor’s name and on the Investor’s behalf to:

(i) receive and apply the Amounts referred to in clause 9(c)(i) in the manner contemplated in clause 9;

(ii) execute applications or transfers in relation to the Transfer of any New Attached Security;

(iii) execute transfers of any Stapled Securities which are to be the subject of the Sale Facility; and

(iv) do all acts and things and execute any other documents which the Issuer, in consultation with each Other Issuer, considers necessary, desirable or reasonably incidental to effect the

disposal of the Stapled Securities of the Designated Foreign Investor under clause 9 of this schedule.

- (f) The Issuer may:
  - (i) appoint (and revoke the appointment of) one or more substitute attorneys to exercise one or more of the powers given to the Issuer in relation to any Stapling Matter; and
  - (ii) do all acts and things and execute all documents under this clause 2.3 without needing further authority or approval from an Investor and may do so even if it has an interest in the outcome of such exercise.
- (g) Each Investor acknowledges and recognises that the exercise of the powers given to the Issuer under clauses 2.3(e), 2.3(f), 9 and 10 may cause individual Investors considerable disadvantage (including possible adverse financial and taxation consequences) but each Investor acknowledges that such a result is necessary to enable the requirements of clause 9 (Designated Foreign Investor) to be met.
- (h) To the maximum extent permitted by law, the Issuer has no liability to any Investor or any Stapled Entity, and a Stapled Entity has no liability to any Investor, for any loss or disadvantage incurred by an Investor as a result, whether directly or indirectly, of the Issuer exercising its powers in relation to any Stapling Matter.

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### **3 Dealings in Stapled Securities**

#### **3.1 Stapling**

- (a) Subject to clause 7, on and from the Stapling Commencement Date:
  - (i) each Attached Security must be Stapled to each Other Attached Security to form a Stapled Security;
  - (ii) the Issuer must not:
    - (A) offer an Attached Security for subscription or sale unless an offer is made at the same time and to the same person for each Other Attached Security for issue or sale;
    - (B) offer an Attached Security for subscription or sale unless the terms of that offer require each offeree to subscribe for or buy each Other Attached Security;
    - (C) accept an application for an Attached Security if the applicant does not at the same time apply for the Other Attached Securities or if the Other Attached Securities will not be issued to the applicant at the same time as the issue of the Attached Securities to the applicant;
    - (D) issue or sell an Attached Security to any person unless each Other Attached Security is also issued or sold to the same person at the same time;

- (E) issue any rights or options to acquire an Attached Security unless corresponding rights or options to acquire each Other Attached Security are issued at the same time and to the same person;
  - (F) without the prior written consent of each Other Issuer, issue any Security or class of Security other than an Attached Security or any right or option to acquire any such Attached Security; and
  - (G) permit a reinvestment by Investors in an Attached Security unless at the same time the Investor acquires each Other Attached Security which when issued or acquired are Stapled to the Attached Security. The Issuer may make provisions governing the amount of the reinvested dividends/distributions to be used to subscribe for or acquire the Attached Security and the amount to be used to subscribe for or acquire the Other Attached Securities having regard to the application price of the Attached Securities.
- (b) Each Attached Security issued after the Stapling Commencement Date must be Stapled to each Other Attached Security immediately upon the date of issue of each Attached Security.

### 3.2 Dealings in Attached Securities

- (a) **(No Unstapling):** On and from the Stapling Commencement Date, the Issuer must not:
- (i) do any act, matter or thing (including registering any transfer of any Attached Security); or
  - (ii) refrain from doing any act, matter or thing, if it would result directly or indirectly in any Attached Security no longer being Stapled to form a Stapled Security, other than in accordance with clause 8 of this schedule.
- (b) **(Attached Securities)** Subject to clause 8 of this schedule, on and from the Stapling Commencement Date, the Issuer must not:
- (i) cancel, buy-back or redeem an Attached Security unless at the same time there is a corresponding cancellation, buy-back or redemption of each Other Attached Security;
  - (ii) implement a Reorganisation Proposal involving an Attached Security unless at the same time there is a corresponding implementation of a Reorganisation Proposal involving each Other Attached Security;
  - (iii) register any transfer of an Attached Security to any person unless each Other Attached Security is also transferred to the Same Person at the same time in a single instrument of transfer of Stapled Securities.

- (c) **(Exercise options)** The Issuer must not permit an Investor to exercise any rights or options to acquire an Attached Security unless the Investor exercises the corresponding rights or options to acquire each Other Attached Security at the same time.
- (d) **(Request for holding lock)** The Issuer must not request any applicable CS Facility Operator or the Registrar, as the case may be, to apply a holding lock to prevent a transfer of an Attached Security from being registered on the CS Facility's sub register or registered on an issuer-sponsored sub register, as the case may be, unless a corresponding request is made in respect of each Other Attached Security.
- (e) **(Disposal)** The Issuer must not dispose of a Defaulted Attached Security unless at the same time each Other Attached Security is also disposed of in the same manner and to the same person.
- (f) **(Small Holdings)** The Issuer must not dispose of a Small Holding of an Attached Security unless at the same time the Small Holding of each Other Attached Security is also disposed of in the same manner and to the same person. A Small Holding must be disposed of in accordance with the Australian Listing Rules and the Constituent Documents.
- (g) **(Designated Foreign Investors)** The Issuer must not dispose of, or cause the disposal of, an Attached Security of a Designated Foreign Investor unless at the same time each Other Attached Security of that Designated Foreign Investor is also disposed of in the same manner and to the same person.
- (h) **(Compliance with law):** The Issuer is not obliged to effect a buy-back, cancellation, redemption, transfer or issue or other Corporate Action in a manner inconsistent with any constitutional, contractual or fiduciary obligation or law by which it is bound, or if it does not have any necessary consent or approval.

### **3.3 Consistency with the Constituent Documents**

The Issuer must use every reasonable endeavour to procure that each Attached Security is dealt with under the Constituent Document of their respective Stapled Entity in a manner consistent with the provisions relating to Stapled Securities in the Constituent Documents of each other Stapled Entity.

### **3.4 Joint quotation as Stapled Securities**

Until all Attached Securities are Unstapled in accordance with provisions of this schedule, the Issuer must use reasonable endeavours to ensure that each Stapled Security which is Officially Quoted continues to be jointly Officially Quoted as a Stapled Security.

### **3.5 Joint certificates or joint holding statements**

Subject to the Corporations Act, the Issuer may procure that joint certificates or joint holding statements are issued to evidence the holding of Stapled Securities comprising Attached Securities and Other Attached Securities.

### 3.6 Stapling and separate entities

Notwithstanding any other provision of this schedule each Stapled Entity will remain as separate legal entities and will be separately admitted to the official list of ASX notwithstanding that the Attached Securities are jointly quoted on ASX as Stapled Securities.

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## 4 Allocation of Application Price

### 4.1 Apportionment of Application Price

(a) Unless otherwise agreed between the Issuers, the Application Price for a Stapled Security (“**Stapled Security Price**”) will be allocated between the Application Price of the Attached Securities as follows:

(i) first, to the Application Price of any Attached Security that is an interest in a trust, being an amount which reflects the net assets (adjusted for the net market value of its investments) of the Stapled Entity which is a trust immediately prior to the issue of the Stapled Security. If there is more than one Stapled Entity which is a trust, then such amounts to be allocated between those trusts in the ratio that the net assets (adjusted for the net market value of its investments) of each relevant trust immediately prior to the issue or acquisition of the Stapled Security bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of those trusts at the end of the relevant period immediately prior to the issue of the Stapled Security;

(ii) second, to the Application Price of any Attached Security not covered by clause (i), being the lesser of:

(A) any balance remaining after the allocation in clause (i);  
or

(B) an amount which reflects the net assets (adjusted for the net market value of their investments) of the relevant Stapled Entities immediately prior to the issue of the Stapled Security;

such amounts to be allocated between the relevant Stapled Entities in the ratio that the net assets (adjusted for the net market value of its investments) of each relevant Stapled Entity at the end of the relevant period immediately prior to the issue of the Stapled Security bears to the amount of the aggregate net assets (adjusted for the net market value of their investments) of those Stapled Entities at the end of the relevant period immediately prior to the issue of the Stapled Security.

(b) Where an option to acquire a Stapled Security is issued after the Stapling Commencement Date, the allocation of the issue price of the option must be determined in the same manner as under clause 4.1(a).

(c) The allocation of the Application Price for a Stapled Security under this clause 4.1 must be consistent for each Stapled Security issued or transferred to each Investor at the same time.

## 4.2 Application Price if reinvestment applies

- (a) If the amount to be reinvested in additional Stapled Securities results in a fraction of a Stapled Security, the money representing the fraction will be held for future reinvestment in the Stapled Entities at the next time that reinvestment is to occur, in such proportions as the Issuers may determine on behalf of the relevant Investor.
- (b) Whenever money is held on behalf of an Investor for future reinvestment the money so held may in the discretion of the Issuer be aggregated and on each occasion on which the aggregated amount reaches the Application Price of a Stapled Security be applied in the subscription or transfer of a Stapled Security for the Investor.

## 4.3 Redemption or buy back

In the case of a redemption or buy back of Stapled Securities, the allocation of the price between Stapled Securities is to be based on the respective fair values of the Attached Securities as determined by agreement between the Issuer and any Other Issuer immediately prior to the redemption or buy back of the Stapled Security.

## 4.4 Price consistent

Each allocation determined under clause 4 of this schedule must be consistent for each Attached Security issued, redeemed, bought back or sold to or from each Investor at the same time.

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# 5 Calls and disposal

## 5.1 Payment of Application Price by instalments

The Issuer may determine at any time in consultation with each Issuer of Other Attached Securities that any Stapled Securities to be offered for sale or subscription is to be offered on terms that the Application Price is payable by instalments of such amounts and at such times as the Issuers determine (including by a single instalment).

## 5.2 Variation or waiver of terms and conditions

Subject to the Corporations Act, where Stapled Securities are offered for sale or subscription on terms and conditions determined and set out in accordance with Bye-Law 7 of the Bye-Laws, those terms and conditions may be varied or compliance with them waived only with the consent of the Issuer. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Stapled Securities were offered for sale or subscription.

## 5.3 Notice of instalments

- (a) Subject to the Australian Listing Rules, Investors holding partly paid Attached Securities must be given at least 30 Business Days' notice (but not more than 40 Business Days' notice) of the time and date each instalment is due to be paid ("**the First Notice**").
- (b) The First Notice must contain such other information as is required by the Australian Listing Rules and at least 4 Business Days before the date

each instalment is due to be paid, a second notice must be sent to all new Investors and those Investors whose holding has changed since the First Notice which must include any changes that have occurred in the information given in the First Notice because of a change in the holding.

#### **5.4 Payment of instalments**

- (a) The payment of an instalment in respect of an Attached Security may be revoked or postponed by the Issuer.
- (b) Subject to the Australian Listing Rules an instalment shall be deemed to be due on the date determined by the Issuer.
- (c) Subject to the Australian Listing Rules the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to an Investor, shall not invalidate the instalment being due.
- (d) Subject to the Corporations Act, the Australian Listing Rules and clause 5.2 of this schedule any liability of an Investor in respect of any monies unpaid on an Investors' partly paid Attached Securities may be extinguished in full or in part by the Issuer.
- (e) Subject to the Australian Listing Rules any instalment which, by the terms of issue of the Attached Security, becomes payable on issue of the partly paid Attached Security or at any date fixed by or in accordance with such terms of issue shall be deemed to be an instalment of which the Investors have received notice in accordance with clause 5.3 of this schedule. In the case of non-payment, all the provisions of this schedule as to payment of interest, disposal or otherwise shall apply as if such notice had been given.

#### **5.5 Failure to pay instalments**

- (a) If an Investor does not pay an instalment on a partly paid Attached Security by its due time for payment then interest is payable by the Investor on the unpaid amount from (and including) the date payment was due to (but excluding) the time of payment at a rate per annum equal to BBSW plus 3%. Interest is calculated daily. Accrued interest is payable monthly. Accrued unpaid interest will be added to the amount owing and will itself bear interest at a rate per annum equal to BBSW plus 3% until paid in full. Subject to clause 5.2 of this schedule, payment of that interest may be waived in whole or part.
- (b) If an Investor fails to pay in full any instalment due on any partly paid Attached Security on or by the day specified for payment, subject to clause 5.3 of this schedule and during such time as the instalment or any part of the instalment remains unpaid, a notice may be given to that Investor requiring payment of so much of the instalment as is unpaid, any interest owing under clause 5.5(a) and all reasonable expenses incurred by the Issuer as a result of the non-payment.
- (c) The notice must specify a further time and day (not earlier than 10 days from the date of the notice) on or by which the payment as required by the notice is to be made.

- (d) The notice must also state that in the event of non payment on or by that specified time and day, the Defaulted Stapled Securities will be liable to be sold.

## 5.6 If requirements of any notice not complied with

If the requirements of any notice issued under clause 5.5 are not complied with:

- (a) any partly paid Attached Security in respect of which the notice has been given (together with the Other Attached Securities) may at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and expenses owing), be disposed of by the Issuer so determining; and
- (b) subject to the Australian Listing Rules, the Corporations Act and this schedule, all voting rights, entitlements to the distribution of income and other rights in connection with any partly paid Attached Security and the Other Attached Securities in respect of which the notice has been given are suspended until reinstated by the Issuer.

## 5.7 Disposal of Defaulted Attached Securities

- (a) If any Defaulted Attached Security is offered for sale pursuant to this clause 5.7 then the Issuer must procure that each Other Attached Security is also offered for sale with the result that the whole Stapled Security is offered for sale.
- (b) For the avoidance of doubt Attached Securities may be sold pursuant to this clause 5 even if they are fully paid in circumstances where there is default in payment of a call on a Defaulted Attached Security.
- (c) A Defaulted Attached Security (together with the Other Attached Securities) may be disposed of by the Issuer or their agent, at a price determined by the Issuer and in accordance with any applicable ASIC relief.
- (d) Any offer of Defaulted Attached Securities which are to be sold pursuant to clause 5.7(c) must be accompanied by a contemporaneous and corresponding offer of the Other Attached Securities, which offer is capable of acceptance only if the recipient acquires an identical number of Defaulted Attached Securities and the Other Attached Securities.
- (e) Subject to the Australian Listing Rules and the conditions of any applicable ASIC relief<sup>1</sup>, the Issuer or their agent may sell or otherwise dispose of Defaulted Stapled Securities:
  - (i) in the ordinary course of trading on ASX; or
  - (ii) by private treaty or public auction.
- (f) The sale of Defaulted Stapled Securities will be on the basis that the person to whom the Defaulted Stapled Securities are sold (“**Transferee**”) is not liable to pay the outstanding call (but may be liable for all future calls). The Issuer may assign its rights under this clause 5 to a person who underwrites the payment of the call.

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<sup>1</sup> ASIC Instrument of Relief 05/26.

- (g) At any time before a sale or disposition of Defaulted Stapled Securities the Issuer may cancel the sale or disposition upon such terms as the Issuer thinks fit.
- (h) Without limiting clause 5.7(c) the Issuer may set a reserve price for a Defaulted Stapled Security at any auction subject to and in accordance with any applicable ASIC Relief (“**Reserve Price**”).
- (i) If the Issuer or their agent are unable to sell the Defaulted Stapled Securities for a price not less than the Reserve Price then the Issuer may sell or otherwise dispose of the Defaulted Stapled Securities. The Issuer is not obliged to offer the Defaulted Stapled Securities that have not been sold at auction to Investors before disposing of the Defaulted Stapled Securities.

## **5.8 Evidence of enforcement**

A statement signed by a duly authorised officer of the Issuer that a Defaulted Stapled Security has been duly disposed of on a date stated therein is conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the Defaulted Stapled Security.

## **5.9 Consideration for sold Defaulted Stapled Securities**

- (a) Where a Defaulted Stapled Security is sold, the Issuer nominated by each Other Issuer by agreement may:
  - (i) receive the consideration, if any, given for a Defaulted Stapled Security; and
  - (ii) execute a transfer of such Defaulted Stapled Security in favour of the Transferee.
- (b) Where a Defaulted Stapled Security is offered for sale under this clause 5, the obligations of the Issuer are subject to the requirements of any applicable law, the Australian Listing Rules, any consent or other approval from any necessary authority and any other terms of the relevant Constituent Document.
- (c) The Issuer must then Register the Transferee as holder of that Stapled Security. On registration the Transferee is not obliged to ensure that any part of the money which the person has paid for the Stapled Security is paid to the former holder of the Stapled Security nor shall the person’s title to that Stapled Security be affected by any irregularity or invalidity in the proceedings in relation to the enforcement of lien or sale of that Stapled Security.

## **5.10 Deductions from consideration for Defaulted Attached Securities**

- (a) The proceeds of the sale of a Defaulted Stapled Security must be applied to pay:
  - (i) first, the expenses incurred by the relevant Issuer, its agents and assignees in respect of the sale;
  - (ii) then, any expenses necessarily incurred in respect of the enforcement of the Issuer’s rights;

- (iii) then, the calls on the Attached Securities that are due and unpaid; and
  - (iv) then, any unpaid interest on the call and any other amounts payable.
- (b) The Issuer may retain the amounts so deducted, but the balance remaining (if any) must be paid to the Investor whose Stapled Securities were sold. If there is a certificate that relates to the Attached Security or the Other Attached Security, the balance does not have to be paid until the Investor delivers the certificate to the relevant Stapled Entity.

#### **5.11 Holder of Defaulted Stapled Securities**

- (a) The holder of a Defaulted Stapled Security which has been sold under this clause 5 ceases to be an Investor and ceases to hold a right or interest in the Stapled Entities and in particular ceases to be a member of each Stapled Entity that is a company or a managed investment scheme.
- (b) The former Investor has no claims or demands against the Issuer in respect of a Defaulted Stapled Security that has been sold but remains liable to pay to the Issuer or any assignee of the Issuer all monies which at the date of sale were payable by the former Investor to the Issuer in respect of the sold Defaulted Stapled Security (including interest owing under clause 5.5 and expenses).
- (c) The former Investor's liability ceases if and when the Issuer or their assignee (if any) receive payment in full of all such money and, if applicable, interest in respect of the sold Defaulted Stapled Security.

#### **5.12 Liability of holder of Defaulted Stapled Securities to underwriter**

Where:

- (a) the Issuer has appointed an underwriter to underwrite the payment of a call in respect of any Stapled Securities;
- (b) in discharging its obligations, the underwriter has purchased Stapled Securities at a public auction or otherwise as contemplated by the relevant underwriting agreement at a price which is more than the Market Price of a Stapled Security (in respect of which the relevant call has been paid); and
- (c) the Issuer is liable or required to pay the underwriter in respect of each Stapled Security purchased in accordance with clause (b) of this clause an amount equal to the difference between the Market Price of a Stapled Security (in respect of which the relevant call has been paid) and the price paid by the underwriter for the Stapled Security,

then the former holder of the Stapled Securities that were disposed of to the underwriter is liable to the Issuer in respect of the relevant Defaulted Stapled Securities and may be sued for:

- (i) all monies payable by the Issuer to the underwriter as contemplated by clause 5.12(c) of this clause;
- (ii) interest (as provided under this schedule); and

- (iii) all costs incurred by the Issuer in procuring payment from the former Investor.

For the purposes of this clause, the *Market Price of a Stapled Security* (in respect of which the relevant call has been paid) is the weighted average price at which such Stapled Securities traded on the ASX over the five Business Days immediately preceding the day of public auction, or, if there is no such price, then the last sale price of the Stapled Security on the ASX prior to that date.

### **5.13 Assignment of right of action**

The Issuer must ensure that where the Issuer is liable to the underwriter as contemplated by clause 5.12, the Issuer's liability to the underwriter may be satisfied by the assignment of the Issuer's right of action against the former Investor in full satisfaction of such liability of the Issuer to the underwriter.

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## **6 Single Register**

Subject to the Corporations Act, a single Register may be kept in which details of the holders of the Attached Securities and the Other Attached Securities are recorded.

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## **7 Power to add New Attached Securities**

- (a) Subject to clause 7(b), the Corporations Act and the Australian Listing Rules, the Issuer may at any time determine that a Security is an Attached Security ("**New Attached Security**") and cause it to be Stapled to the Stapled Securities. A determination under this clause 7 may be made on such terms and conditions as the Issuer considers appropriate.
- (b) A determination that a Security is a New Attached Security may only be made if:
  - (i) the New Attached Security is Officially Quoted or the ASX has indicated in writing that it will grant permission for the New Attached Security to be Officially Quoted;
  - (ii) ASX has indicated in writing that it will approve the addition of the New Attached Security to the Stapled Securities;
  - (iii) each Other Issuer (excluding the issuer of the New Attached Security) has agreed:
    - (A) to the Stapling of the New Attached Security to the Stapled Security; and
    - (B) that the Stapling of the New Attached Security is in the best interest of Investors as a whole and is consistent with the then investment objectives of the Group; and
  - (iv) the Constituent Documents of the New Attached Security will have provisions giving effect to the Stapling (including provisions in substantially the form of this schedule);

- (v) the issuer of the New Attached Security has agreed to enter into the Accession Deed;
  - (vi) where the New Attached Security is partly-paid, or approval from Investors is required to the transaction, approval of the members of each Stapled Entity has been obtained; and
  - (vii) the number of New Attached Securities to be allocated is identical to the number of Stapled Securities on issue.
- (c) The Issuer has power to do all things which it considers are necessary, desirable or reasonably incidental to give effect to the Stapling of the New Attached Securities to the Stapled Security under this clause 7.
  - (d) A New Attached Security may be transferred to an Investor by any means and in any manner, including but not limited to any combination of issue, sale, reduction of capital, distribution in kind or transfer (“**Transfer**”).
  - (e) A transfer of a New Attached Security made under this clause 7 shall be Registered in the Register as of the date title is transferred.
  - (f) It is not necessary for the Issuer to receive a transfer, instrument or certificate (if any) for a New Attached Security in order for that Issuer to Register the transfer of that New Attached Security. Such transfer shall be evidenced by, and shall have full effect from, its Registration by the relevant Issuer in the Register.

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## **8 Unstapling**

### **8.1 Procedure for Unstapling**

Subject to this clause 8, from the Stapling Commencement Date each Attached Security will remain Stapled to each other Attached Security for so long as the Stapled Securities remain on issue.

### **8.2 Unstapling an Attached Security**

- (a) Subject to this clause 8.2, the Corporations Act, the Australian Listing Rules and the relevant Constituent Documents, the Issuer may determine that one or more Attached Securities are to be Unstapled from the Stapled Security.
- (b) A determination under clause 8.2(a) may only be made:
  - (i) if the Stapled Securities are Officially Quoted, only if ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security or Securities from the Stapled Security and the remaining Attached Securities will remain Officially Quoted as a Stapled Security;
  - (ii) if the Unstapling is approved by the holders of the Attached Security to be Unstapled by Ordinary Resolution;

- (iii) if each Other Issuer has agreed:
  - (A) to the Unstapling of an Attached Security from the Stapled Security; and
  - (B) that the Unstapling of the Attached Security from the Stapled Security is not contrary to the interests of Investors as a whole and is consistent with the investment objectives of the Group; and
- (iv) if the Stapling Provisions will terminate in respect of the Attached Security which is to be Unstapled.
- (c) After the Unstapling, the references to the Unstapled Security will be removed from the Register.

### **8.3 Restapling**

If an Issuer determines that its Attached Securities are to be Unstapled under clause 8.2(a), this does not prevent the Issuer of the Unstapled Security subsequently determining that the Stapling Provisions should recommence in respect of that Unstapled Security (“**Restapling**”).

### **8.4 Unstapling the Stapled Securities**

- (a) Subject to clause 8.4(b), the Corporations Act, the Australian Listing Rules and the relevant Constituent Document, the Issuer must determine that an Attached Security will be Unstapled on the occurrence of an Unstapling Event affecting that Attached Security.
- (b) A determination under clause 8.4(a) may only be made if:
  - (i) ASX has indicated in writing that it will grant permission for the Unstapling of the Attached Security; and
  - (ii) each Other Issuer has agreed:
    - (A) to the Unstapling of the Attached Security; and
    - (B) that the Unstapling of the Attached Security is not contrary to the interest of Investors as a whole.
- (c) On and from any date determined under clause 8.4(a), the Issuer must procure that the Attached Security is Unstapled and that the Stapling Provisions cease to have effect in respect of that Attached Security.

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## **9 Designated Foreign Investors**

- (a) Without limiting clause 7(c), to enable the Issuer to give effect to the Stapling of New Attached Securities to the Stapled Securities under clause 7, the provisions of this clause 9 apply.
- (b) Subject to the Corporations Act as modified by any applicable ASIC Relief, the Issuer may determine that a Foreign Investor is a Designated Foreign Investor for the purposes of the Transfer of a New Attached Security where the Issuer reasonably considers that it would be

unreasonable to Transfer a New Attached Security to a Foreign Investor, having regard to:

- (i) the number of Foreign Investors in the foreign place;
  - (ii) the number and the value of New Attached Securities that may be Transferred to Foreign Investors in the foreign place; and
  - (iii) the cost of complying with legal requirements and the requirements of any relevant regulatory authority applicable to the Transfer of the New Attached Securities in the foreign place.
- (c) Despite anything to the contrary contained in the Constituent Documents, each Foreign Investor who is or becomes a Designated Foreign Investor consents and directs:
- (i) the Issuer to pay any distributions, redemption proceeds or other payments in respect of its Attached Security which are to be used to obtain a New Attached Security (“**Amounts**”) to the Sale Nominee;
  - (ii) the Sale Nominee to apply those Amounts to obtain a New Attached Security;
  - (iii) subject to clause 9(d) below, the Sale Nominee to then sell any Stapled Security to which the New Attached Security is Stapled; and
  - (iv) the Sale Nominee to pay the Sale Consideration to the relevant Designated Foreign Investor as soon as practicable after the sale of the relevant Stapled Security.
- (d) If a New Attached Security is to be Stapled to an existing Stapled Security, the Designated Foreign Investor agrees to transfer each existing Stapled Security they hold free of any Encumbrance to the Sale Nominee on or before the Sale Record Date so that the Sale Nominee:
- (i) is entered in the Register in respect of that Stapled Security as of the date title is transferred on the Sale Record Date; and
  - (ii) will receive the New Attached Security pursuant to the Stapling of the New Attached Security; and
  - (iii) will sell the resultant Stapled Security for cash to pay the Sale Consideration to the Designated Foreign Investor.
- (e) In respect of its Attached Securities, the Issuer:
- (i) must procure that each Designated Foreign Investor is paid the Sale Consideration to which that Designated Foreign Investor is entitled as soon as practicable after the sale of the relevant Stapled Security;
  - (ii) may take all steps to ensure that the Stapled Security held by the Designated Foreign Investor and to which a New Attached Security is to be Stapled, is transferred to the Sale Nominee before the Sale Record Date; and

- (iii) need not receive any transfer, instrument or certificate for existing Stapled Securities in order for the Issuer to Register the transfer of the existing Stapled Securities to the Sale Nominee. The transfer will be evidenced by, and has full effect from, its Registration by the relevant Issuer in the Register.
- (f) Unless otherwise agreed between the Manager and the Other Issuers, the amount received for a Security upon sale of a Stapled Security under clause 9(d)(iii) is the amount received on the sale of the Stapled Security less the fair value for the Other Attached Securities, as determined by the Manager.

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## **10 Duties and obligations of Parties**

### **10.1 Duties in relation to Stapling**

Despite any provision of the Constituent Documents, or any rule of law (but subject to the Corporations Act as modified by any applicable ASIC Relief)<sup>2</sup> while Stapling applies, in exercising any power or discretion, the Issuer may have regard to the interests of Investors as a whole and not only to the interests of the holders of the relevant Attached Securities considered separately.

### **10.2 Reference to power or discretion**

References in the Constituent Documents to the exercise of any powers or discretion includes the carrying out of the Issuer's functions and duties and identifying the Investor's rights and interests.

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## **11 Meetings of Investors**

### **11.1 Meetings**

While Stapling applies, meetings of holders of Attached Securities may be held in conjunction with meetings of holders of the Other Attached Securities. Subject to the Corporations Act, the Issuer may make such rules for the conduct of such meetings as the Issuer determines.

### **11.2 Representatives form while Stapling applies**

Subject to the Corporations Act, the form of proxy used to appoint a proxy to vote on behalf of an Investor in respect of an Attached Security may be the same form as they use to appoint a proxy in respect of the Other Attached Securities which they hold.

### **11.3 Other attendees**

The auditor of each Stapled Entity and the representatives of the Issuer may attend and speak at any meeting of Investors, or invite any other person to attend and speak at the meeting.

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<sup>2</sup> Case by case relief is usually sought from ASIC when stapling is proposed.

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## **12 General**

### **12.1 Interests**

- (a) A reference to the “Company” in article 11.13 (“Director’s Interests”) of the MQA Australia Constitution is also a reference to each Stapled Entity.
- (b) A reference to the “Company” in Bye-Law 60 (“Director’s Interests”) of the Bye-Laws is also a reference to each Stapled Entity.

### **12.2 Apportionment of fees**

The Issuer may agree with any Other Issuer to apportion fees payable under any Stapled Entity’s, or any Stapled Entity’s wholly owned subsidiary’s, constitution between the Stapled Entities as a whole. In default of any agreement, fees must be apportioned between the Stapled Entities in accordance with the proportion their net asset value (calculated in accordance with their respective constitutions) bears to the combined net asset value of all Stapled Entities.

### **12.3 Agreements as to allocation between Stapled Entities**

An Issuer may with all Other Issuers agree:

- (a) any allocation of assets, property, liability, expenses or remuneration between the Stapled Entities; and
- (b) any other matter between the Stapled Entities that the Issuers consider to be necessary or appropriate in connection with the Stapling.

### **12.4 Small Holdings**

A reference to a “Small Holding” in each Constituent Document is taken to be a reference a small holding of Stapled Securities.

### **12.5 Financial assistance**

Without limiting clause 12.2 of this schedule the Issuer may enter into loan arrangements (including Intra-Group Loans) with Other Issuers for the purpose of allocating capital raised under issues of Stapled Securities to the extent that this is required.

### **12.6 Intra-Group Loans**

Without limiting the Constituent Documents, the Issuer may enter into any agreement, document or arrangement with any Other Issuer, or do any other act, matter or thing at the request of any Other Issuer, in respect of any of the following:

- (a) lending money or providing financial accommodation from one Stapled Entity (or any of its Subsidiaries) to any other Stapled Entity (or any of its Subsidiaries) (including, for the avoidance of doubt, the lending of money to or from any entity jointly owned by any of the Stapled Entities);
- (b) guaranteeing any loan or other financing facility or financial accommodation of any Stapled Entity or Subsidiary, including providing

- any security or indemnity to any person providing the loan facility or financial accommodation;
- (c) entering into any covenant, undertaking, restraint, or pledge at the request of the Other Issuer including, without limitation, a negative pledge on the obtaining of financial accommodation or the provision of any guarantee or Security in connection with any financial accommodation;
  - (d) issuing redeemable preference shares or any other form of Securities to the Other Issuer;
  - (e) paying any costs or expenses incurred by any other Stapled Entity (or any of its Subsidiaries);
  - (f) entering into any joint borrowing or joint financial accommodation with any Other Issuer or Subsidiary and providing any guarantee, security, indemnities and undertakings in connection with the joint borrowing or other joint financial accommodation; and
  - (g) guaranteeing the obligations of or providing an indemnity or undertaking to a third party in respect of the obligations of any Stapled Entity or any Subsidiary.

## **12.7 Notice to other Stapled Entities**

On or before commencement of a winding up of a Stapled Entity, the Issuer must give each Other Stapled Entity written notice that the Stapled Entity is to be wound up.