

“A”

"Corporations Act 2001 (Cwlth)"

A Company Limited by Shares

CONSTITUTION

OF

MEDIGARD LIMITED ACN 090 003 044

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INDEX TO CONSTITUTION

1.	REPLACEABLE RULES	1
2.	INTERPRETATION.....	1
3.	REGISTERED OFFICE.....	3
4.	SHARE CAPITAL	3
5.	ISSUE OF SHARES.....	3
6.	CALLS	4
7.	PREFERENCE SHARES.....	4
8.	CONVERTIBLE SECURITIES	5
9.	PARTICIPATION OF DIRECTORS IN SHARE ISSUE.....	5
10.	ACCEPTANCE OF CONSTITUTION BY SHAREHOLDER	5
11.	VARIATION OF RIGHTS	5
12.	SHARES HELD UPON TRUST	5
13.	SHAREHOLDING STATEMENTS AND CERTIFICATES.....	6
14.	LIEN ON SHARE	6
15.	SALE OF SHARES SUBJECT TO LIEN	7
16.	CALLS ON SHARES	8
17.	FORFEITURE OF SHARES.....	9
18.	TRANSFER OF SHARES.....	11
19.	TRANSMISSION OF SHARES	13
20.	REGISTER OF MEMBERS.....	14
21.	ALTERATION OF CAPITAL.....	14
22.	REDUCTION OF CAPITAL.....	15
23.	MEETINGS	15
24.	QUORUM AT MEETINGS	16
25.	CHAIRMAN AT MEETINGS	16
26.	CONDUCT OF GENERAL MEETINGS	16
27.	ADJOURNMENTS AND POSTPONEMENT OF MEETINGS	17
28.	VOTING RIGHTS OF MEMBERS.....	17
29.	POLL	18
30.	CASTING VOTE	19
31.	PROXIES	19
32.	POWERS OF ATTORNEY.....	21

33.	APPOINTING INSTRUMENT TO BE DEPOSITED WITH COMPANY	21
34.	REVOCATION AND INVALIDITY OF INSTRUMENTS	22
35.	NUMBER OF DIRECTORS.....	22
36.	QUALIFICATION OF DIRECTORS, ALTERNATE DIRECTORS AND ASSOCIATE DIRECTORS....	22
37.	VACATION OF OFFICE OF DIRECTOR	22
38.	APPOINTMENT AND REMOVAL OF DIRECTORS.....	23
39.	OFFICES OF PROFIT IN COMPANY	23
40.	TERM OF OFFICE OF DIRECTORS	24
41.	REMUNERATION OF DIRECTORS	25
42.	DIRECTORSHIPS IN OTHER COMPANIES	26
43.	ALTERNATE DIRECTORS.....	26
44.	ASSOCIATE DIRECTORS	27
45.	MANAGING DIRECTOR.....	27
46.	DIRECTORS' MEETINGS.....	28
47.	CHAIRMAN OF DIRECTORS.....	30
48.	DEFECTIVE APPOINTMENT OF DIRECTORS	30
49.	DELEGATION TO COMMITTEES OF DIRECTORS	30
50.	MINUTES OF MEETINGS	30
51.	GENERAL POWERS OF DIRECTORS	31
52.	BORROWING POWERS OF DIRECTORS	31
53.	INTERESTED DIRECTORS.....	32
54.	DIRECTORS' INTERESTS	32
55.	DIRECTORS' MATERIAL PERSONAL INTERESTS	32
56.	DIRECTORS' FINANCIAL BENEFITS.....	33
57.	LOCAL MANAGEMENT.....	33
58.	ATTORNEYS FOR COMPANY	34
59.	EXECUTION OF DOCUMENTATION BY COMPANY.....	34
60.	BILLS OF EXCHANGE.....	34
61.	SECRETARY.....	34
62.	PUBLIC OFFICER	35
63.	RESERVES.....	35
64.	DIVIDENDS.....	36
65.	ELECTION TO FOREGO CASH DIVIDENDS	37
66.	DIVIDENDS IN SPECIE	38
67.	EMPLOYEE BONUSES AND EMPLOYEE SCHEME	38
68.	CAPITALISATION OF PROFITS.....	39
69.	ACCOUNTS.....	39
70.	DIRECTORS REPORT	40
71.	DISTRIBUTION OF ACCOUNTS.....	40
72.	INSPECTION OF BOOKS OF ACCOUNT.....	40
73.	ACCOUNTS CONCLUSIVE.....	41
74.	AUDIT	41

75.	BUY-BACK ARRANGEMENTS.....	41
76.	SALE OF LESS THAN MINIMUM HOLDING	41
77.	FRACTIONAL ENTITLEMENTS AND DIFFICULTIES.....	44
78.	TAKEOVER APPROVAL PROVISIONS	44
79.	NOTICE TO HOLDERS LESS THAN A MINIMUM HOLDING	45
80.	CONFIDENTIAL INFORMATION	47
81.	NOTICES	47
82.	OVERSEAS SHAREHOLDERS	49
83.	INDEMNITY AND LIABILITY OF DIRECTORS AND OTHER OFFICERS	49
84.	RESTRICTED SECURITIES	50
85.	WINDING UP	50
86.	SUPPLY OF DOCUMENTATION TO EXCHANGE	51
87.	SALE OF MAIN UNDERTAKING	51
88.	LISTING AND SCH BUSINESS RULES.....	51

CONSTITUTION
OF
MEDIGARD LIMITED ACN 090 003 044

1. REPLACEABLE RULES

The provisions of the *Corporations Act 2001 (Cwlth)* relating to a company's internal management which are described as replaceable rules do not apply to the Company except insofar as they are repeated in this Constitution.

2. INTERPRETATION

2.1 In this Constitution, unless a contrary intention appears:

“**Article**” means a provision of this Constitution as amended or added to from time to time;

“**business days**” has the meaning ascribed in the Listing Rules.

“**capital**” or “**share capital**” means the capital for the time being issued or authorised to be raised for the purposes of the Company.

“**CHESS**” has the meaning ascribed in the SCH Business Rules.

“**CHESS holding**” has the meaning ascribed in the SCH Business Rules.

“**Commission**” means the Australian Securities Commission.

The “**Company**” means Medigard Limited.

“**Constitution**” means this Constitution as amended or added to from time to time and a reference to the Memorandum and Articles of Association of the Company as in existence prior to the commencement of the *Review Act* shall be taken to be a reference to this Constitution;

“**debenture**” means debenture stock, bonds, notes and other securities and obligations of a corporation whether constituting a charge on its assets or not.

“**Debt Securities**” includes unsecured notes, unsecured deposit notes, mortgage debentures, mortgage debenture stock, debentures, debenture stock and convertible unsecured notes as those terms are defined from time to time in the Listing Rules.

“**Directors**” or “**the Board**” means the whole or any number of the Directors of the Company for the time being assembled at a meeting of Directors, being not less than a quorum, or such one or more of them as shall have authority to act for the Company.

“**Director**” means any person acting as a Director, howsoever called.

“**dividend**” includes distribution of profit by way of a bonus issue of shares.

“**Equity Securities**” means shares (including preference shares), stock, stock units, units, and rights to or options to subscribe for any of the foregoing.

“**Exchange**” means Australian Stock Exchange Limited ACN 008 624 691.

“**Executive Director**” includes any person retained by the Company in an executive capacity and an employee of the Company or of a subsidiary of the Company who is also a Director.

“Home Branch” means a branch of the Exchange designated as such by the Exchange for administrative purposes.

“Issuer Sponsored” has the meaning ascribed in the SCH Business Rules.

“joint holders” means two or more persons holding any share in the capital of the Company, whatever their interest may be in that share.

“Law” means the *Corporations Act 2001 (Cwlth)* and/or any statutory modification amendment or re-enactment thereof for the time being in force or any later Act relating to Companies and for the time being in force in lieu thereof in the place of incorporation of the Company and a reference to a particular provision of the Law is a reference to that provision as so modified, amended or re-enacted or contained in any such later Act.

“Listing Rules” or **“LR”** means the Listing Rules of the Exchange and any other rules of the Exchange which are applicable while the Company be admitted to the Official List of the Exchange, each as amended or replaced from time to time, except to the extent of any expressed written waiver by the Exchange.

“Managing Director” means any person appointed as such pursuant to Article 45 and includes any Acting Managing Director.

“Marketable Parcel” means marketable parcel as defined in the Listing Rules.

“Meeting” means a meeting of members comprising either an annual general meeting or extraordinary general meeting duly convened or a meeting of members of any class of shares.

“member” means a person who is registered for the time being as a shareholder or stockholder in the Register of the Company, including his personal representatives and assigns.

“month” means calendar month.

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

“paid or paid up” means amounts paid and does not include amounts credited as paid or paid up.

“person”, and words importing **“persons”** means partnerships, associations, corporations and companies.

“Prime Rate” means in relation to any interest made payable on any sum under this Constitution, the Australian Savings Bonds Rate as specified from time to time by the Reserve Bank of Australia.

“Proper SCH transfer” has the meaning ascribed in Section 9 of the Law.

“Register” means the Register of members kept pursuant to the Law and, where appropriate, shall include branch registers.

“related corporation” has the meaning ascribed in Section 50 of the Law.

“Review Act” means the *Company Law Review Act 1997*;

“representative” means a person authorised pursuant to Section 250D of the Law to act as a representative of a body corporate.

“Restricted Securities” has the meaning ascribed in the Listing Rules.

“SCH Business Rules” means the business rules of the SCH.

“SCH Register” means the facilities established by the SCH to record holdings of securities of the Company in accordance with the SCH Business Rules.

“SCH - regulated transfer” has the meaning ascribed in Section 9 of the Law.

“Secretary” means any person appointed to perform the duties of Secretary of the Company and includes the Acting Secretary where appropriate.

“securities” has the meaning ascribed in Section 9 of the Law.

“Securities Clearing House” or **“SCH”** means any securities clearing house approved by the Commission in Australia.

“shares” means shares in the capital of the Company, and shall include stock except where a distinction between shares and stock is expressed or implied.

“State” means the State of Queensland.

“In Writing or Written” means printing, typewriting and all other means of representing or reproducing words in visible form.

- 2.2 Terms used in this Constitution and not defined in Article 2.1 shall have the meaning ascribed to them in the Law or the Listing Rules, as the case may be.
- 2.3 Words importing the singular include the plural and vice versa.
- 2.4 Words importing the masculine include the feminine and the neuter and vice versa.
- 2.5 The index, headings and references to provisions of the Listing Rules and the SCH Business Rules hereto shall not affect the construction of this Constitution.
- 2.6 The Listing Rules and the SCH Business Rules will only apply in the interpretation of this Constitution at times when the Company's shares are listed for quotation on the ASX.

3. REGISTERED OFFICE

The Office of the Company shall be at such place as the Directors shall from time to time appoint.

4. SHARE CAPITAL

The Company shall have no nominal capital.

5. ISSUE OF SHARES

- 5.1 Subject to the provisions of this Constitution shares issued or to be issued in the capital of the Company shall be under the control of the Directors who may issue allot or otherwise dispose of the same to such person or persons on such terms and conditions and with such rights and privileges attached thereto and at such times as the Directors may think fit.
- 5.2 Any allotment of securities in the Company and dispatch of certificates (or list of allotments to the member's uncertificated account, as the case may be) shall take place in the manner prescribed in the Listing Rules.
- 5.3 Subject to the Listing Rules, the Company shall not issue ordinary shares which would have the effect of the Company having more than one class of ordinary shares on issue.

[See LR 6.2].

6. **CALLS**

The Directors may give to any person the call of any shares during such time and for such consideration as the Directors may think fit.

7. **PREFERENCE SHARES**

7.1 Subject to the Law and without prejudice to any special rights previously conferred on the holders of any existing shares or classes of shares the Directors may issue any share or shares:

- (a) with a preferential deferred or qualified right to dividends, or in the distribution of assets of the Company, or both;
- (b) with a special or qualified right of voting or without a right of voting; or
- (c) with any other special privileges or advantages over or equally with any shares previously issued or then about to be issued,

subject to any conditions or provisions and on such terms as the Directors shall determine. Any preference share may be issued on the terms that it is or at the option of the Company is liable to be redeemed.

7.2 If at any time the capital of the Company includes preference shares, the holders of such preference shares shall have the same rights as the holders of ordinary shares as regards the right to receive notices, reports and balance sheets and profit and loss accounts and the right to attend at Meetings of the Company.

[See LR 6.7].

7.3 Preference shareholders shall have no voting rights at any meeting of the Company save and except in the following circumstances:

- (a) during a period which a dividend (or part of a dividend) in respect of the preference share is in arrears;
- (b) on a proposal to reduce the capital of the Company;
- (c) on a resolution to approve the terms of a buy-back agreement;
- (d) on a proposal that affects rights attaching to preference shares;
- (e) on a proposal to wind up the Company;
- (f) on a proposal sanctioning a sale of the undertaking of the Company; or
- (g) during the winding up of the Company.

[See LR 6.3]

7.4 Preference shareholders shall be entitled to a dividend determined in accordance with the Listing Rules.

[See LR 6.5].

7.5 Preference shareholders shall also be entitled to a return of capital in preference to the holders of ordinary shares in the Company when the Company is wound up.

[See LR 6.6]

8. CONVERTIBLE SECURITIES

Without prejudice to any of the powers of the Directors conferred by this Article, the Directors may create and issue any Equity Securities or Debt Securities (hereinafter in this paragraph called "convertible securities") on terms that they are or may become convertible into ordinary shares of the Company and on such other terms as the Directors may decide, and at any time thereafter the Directors may issue shares to the holders of convertible securities pursuant to the terms of issue thereof.

9. PARTICIPATION OF DIRECTORS IN SHARE ISSUE

A Director of the Company or any person who would be regarded for the purposes of Division 2 of Part 1.2 of the Law as being an associate of any Director or any other person may only participate (directly or indirectly) in an issue by the Company of shares or options or other securities with rights of conversion to equity subject to the Listing Rules.

[See Chapter 10 of LR's generally].

10. ACCEPTANCE OF CONSTITUTION BY SHAREHOLDER

A person who becomes a shareholder agrees to observe and perform the provisions of the Constitution of the Company and any regulations or by-laws which may be made thereunder.

11. VARIATION OF RIGHTS

11.1 If at any time the share capital is divided into different classes of shares, preference capital (other than redeemable preference capital) shall not be repaid, and the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) shall not, whether or not the Company is being wound up, be varied without:

- (a) the consent in writing of the holders of 75% of the issued shares of that class; or
- (b) the sanction of a special resolution passed at a separate General Meeting of the holders of the shares of that class.

11.2 At any such Meeting the quorum shall be persons holding or representing by proxy 25% of the nominal amount of the varied issued shares of the class, but otherwise the provisions of this Constitution dealing with Meetings shall apply.

11.3 Any holders of shares of that class present in person or by proxy at such Meeting may demand a poll.

11.4 The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally therewith PROVIDED THAT any issue of securities ranking in priority to, or any conversion of existing securities to securities ranking equally or in priority to an existing class of preference shares shall be deemed a variation of the rights attached to that existing class of preference shares.

11.5 The rights conferred upon the holders of the shares of any class shall be deemed to be varied by any special resolution to alter Article 11.

12. SHARES HELD UPON TRUST

Except as required by law or under the SCH Business Rules, no person shall be recognised by the Company as holding any share non-beneficially, and the Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future, or partial interest in any share or unit of a share or (except only as by this Constitution or by

law otherwise provided or under an order of a court of competent jurisdiction) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

13. **SHAREHOLDING STATEMENTS AND CERTIFICATES**

13.1 Subject to Articles 13.2 and 13.5, every person whose name is entered as a member in the Register shall be entitled to be issued either a holding statement or share certificate (as the case may be) issued in accordance with the Law, the Listing Rules and the SCH Business Rules, but in respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one holding statement or certificate, and delivery of a holding statement or certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

13.2 If a share certificate shall become worn out or be defaced lost or destroyed then subject to Section 1089 of the Law and on such indemnity being given as the Directors may require and such other steps being taken (including advertising) as the Directors think necessary, it may be renewed on payment of such fee (not exceeding the fee prescribed for that purpose by the Law) as the Directors may determine.

13.3 The Company shall register all proper SCH transfers, paper-based registrable transfer forms, split certificates, renunciations and transfer forms, issue certificates and transmission receipts, effect conversions between subregisters and mark or note transfer forms without charge, except where the issue of certificates is to replace those lost or destroyed.

[See LR8.14].

13.4 The Company shall issue within five (5) business days a certificate in replacement of a certificate already issued only if:

- (a) the certificate to be replaced is received by the Company for cancellation and is cancelled; or
- (b) satisfactory evidence has been received by the Company that the certificate previously issued has been lost or destroyed and has not been pledged, sold or otherwise disposed of. A certificate issued to replace a certificate which has been lost or destroyed shall be clearly endorsed "issued in lieu of lost or destroyed certificate".

[See LR8.8].

13.5 Notwithstanding the provisions of this Article 13, the Company shall not be required to issue a certificate for shares held by a member and may cancel a certificate without issuing a certificate in lieu thereof where the non-issue of a certificate:

- (a) is permitted by the Law;
- (b) is permitted by the Listing Rules; or
- (c) is permitted by the SCH Business Rules.

13.6 The provisions of the Listing Rules and the SCH Business Rules shall regulate the manner in which the Company deals with the delivery up and cancellation of certificates for the purposes of converting the securities to an SCH register.

14. **LIEN ON SHARE**

14.1 Subject to the provisions of the SCH Business Rules:

- (a) the Company shall have a first and paramount lien and charge for unpaid calls and unpaid instalments (and reasonable interest and expenses thereon) due in respect of

the specific shares registered in the name of each member in respect of which such calls or instalments is or are due and unpaid respectively and upon the proceeds of sale of such shares;

[See LR6.13].

- (b) without in any way limiting the provisions of Article (a) hereof, a lien which the Company has in respect of any share in the Company shall extend to any dividends from time to time declared in respect of such shares;

[See LR6.13].

- (c) the Directors may at any time declare any share to be wholly or in part exempt from the provisions of this Article; and
- (d) unless a contrary intention is expressly shown, the registration of a transfer shall operate as a waiver of the Company's lien (if any) on a share, PROVIDED THAT notwithstanding any such waiver, the transferor shall remain liable to pay to the Company all money which, at the date of registration of the transfer, was payable by him to the Company in respect of the share, but such liability shall cease if and when the Company receives payment of all money outstanding in respect of the share.

14.2 The Company shall be entitled to take all reasonable steps considered necessary under the SCH Business Rules to protect its rights to any lien or charge created hereunder.

15. **SALE OF SHARES SUBJECT TO LIEN**

15.1 The Company may sell in such manner as the Directors think fit, any shares on which the Company has a lien, but no sale shall be made unless:

- (a) a sum in respect of which the lien exists is presently payable; and
- (b) a notice in writing stating and demanding payment of such sum as is presently payable has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or bankruptcy; and
- (c) a period of fourteen (14) days has elapsed since the giving of the notice.

15.2 To give effect to any such sale the Directors may authorise some person to effect a transfer of the shares sold to the purchaser thereof. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale. The purchaser shall be deemed to hold the share free from all calls, instalments, interest and expenses due prior to such purchase.

15.3 Unless the Directors do not require production to effect the transfer the holder of the certificate of any share sold under this Article shall be bound to deliver the certificate to the Directors and if he fails to do so the Company may, without prejudice to any of the Company's rights against such holder, cancel the said share certificate.

15.4 The proceeds of the shares sold shall be received by the Company and applied after payment of all expenses in or towards payment and the residue, if any, shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

16. CALLS ON SHARES

16.1 The Directors may from time to time make calls upon the members in respect of any money which remains unpaid on their shares and which is not by any prospectus or the conditions of allotment thereof made payable at fixed times.

16.2 A member shall pay the amount of any call made on him to the persons and at the times and places nominated by the Directors and a call may be required to be paid in instalments.

16.3 Subject to the Listing Rules or the SCH Business Rules (as the case may be) each member upon whom a call is to be made shall be given a notice that number of business days as specified in the Listing Rules from time to time before the due date for payment, and such notice shall state:

- (a) the name of the shareholder;
- (b) the number of shares held by him;
- (c) the amount of the call;
- (d) the due date for payment;
- (e) the consequences of non-payment of the call;
- (f) the last day for trading of the shares on which the call is to be made (which shall be the business day prior to the due date for payment);
- (g) the last day for acceptance at the office of the Register of lodgments of transfers of the shares on which the call is to be made (which shall be no earlier than that number of business days prior to the due date for payment as specified in the Listing Rules);
- (h) any taxation deductions applicable, and how they may be applied for;
- (i) the latest available market sale price on the Exchange of the shares on which the call is being made before the date of issue of the call notice;
- (j) the highest and lowest sale price on the Exchange of the shares on which the call is being made during three (3) months immediately preceding the date of issue of the call notice and the respective dates of those sales;
- (k) the latest available market sale price on the Exchange of the shares on which the call is being made immediately before the announcement to the Exchange that it is intended to make a call; and
- (l) where the Company has quoted shares that are (or would be if fully paid) in the same class as the shares on which the call is being made, the information required by Articles (i), (j) and (k) if the shares the subject of the Call were fully paid.

[See App6A, para 5.1 of LR's].

16.4 The Company shall immediately notify the Exchange of any call to be made to the share capital of the Company.

[See LR3.10.2].

16.5 Notwithstanding anything contained in Article 16.3 hereof, the Directors may by notice in writing to the members revoke the call at any time before payment of such call.

- 16.6 A call shall be deemed to have been made at the time when a resolution of the Directors authorising the call was passed.
- 16.7 The joint holders of a share shall be jointly and severally liable to pay all instalments and calls in respect of such share, and such several liability shall be enforceable against the estate of any deceased joint holder.
- 16.8 If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at the rate of ONE PER CENT (1%) per annum in excess of the "Prime Rate" but the Directors shall be at liberty to waive payment of that interest wholly or in part, or may accept payment of same by instalments.
- 16.9 On the trial or hearing of any action or suit by the Company against any member for the recovery of any money payable on any allotment of shares or due under any call or instalment or in respect of any share it shall be sufficient to prove that the name of the member sued is entered in the Register as the holder or one of the holders of the shares in respect of which the debt accrued, that the resolution making the allotment or call is duly recorded in the minute book and that the notice of such allotment or call was duly given to such member, and the proof of these matters shall be conclusive evidence of the debt and it shall not be necessary to prove the appointment of the Directors who made the allotment or call or that a quorum was present at the meeting of Directors at which the allotment or call was made, or any other matter whatsoever.
- 16.10 Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date shall for the purposes of this Constitution be deemed to be a call duly made 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 this Constitution as to payment of interest and expenses, forfeiture, lien or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.
- 16.11 The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
- 16.12 The Directors may if they think fit receive from any member willing to advance the same all or any part of the money uncalled and unpaid upon any shares held by him. The Directors may pay interest upon all or any part of the monies so advanced until the same would but for the advance become payable. Interest shall be paid at such rate as the Directors and the member making the advance shall agree. No money so received shall be received subject to repayment or shall be claimable by any member but the Directors may repay the whole or any part of such money upon giving the member at least one (1) month's notice. Amounts paid on shares and advanced calls shall not confer the right to participate in profits.

17. **FORFEITURE OF SHARES**

- 17.1 If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the Directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him (herein called "Call Notice") requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.
- 17.2 The Call Notice shall:
- (a) name a further day (not earlier than the expiration of fourteen (14) days or ten (10) business days, whichever period shall be the greater, from the date of the Call Notice) on or before which the payment required by the Call Notice is to be made; and

- (b) state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call is made or the instalment is payable will be liable to be forfeited.
- 17.3 If the requirements of any such Call Notice as aforesaid are not complied with, any share in respect of which the Call Notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- 17.4 When any share is so forfeited, notice of the forfeiture shall be given to the member in whose name it stood immediately prior to the forfeiture and an entry of forfeiture with the date thereof shall forthwith be entered in the Register.
- 17.5 Any shares forfeited in accordance with the terms of this Article shall be re-issued, sold or otherwise disposed of in accordance with the provisions of the Law and in accordance with the provisions of the Listing Rules.
- 17.6 A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay and shall forthwith pay to the Company all money which, at the date of forfeiture, was payable by him to the Company in respect of the shares (together with interest at the rate of ONE PER CENT (1%) per annum in excess of the Prime Rate from the date of forfeiture on the money for the time being unpaid if the Directors think fit to enforce payment of such interest), but his liability shall cease if and when the Company receives payment in full of all such money in respect of the shares.
- 17.7 In the event of any share being forfeited and sold the residue of the proceeds of such sale after the satisfaction of the moneys due and unpaid in respect of such share and accrued interest and expenses incurred by the Company in relation to the forfeiture shall be held in trust until paid to the member in whose name such share stood immediately prior to the forfeiture or to his executors administrators or assigns, or as he directs. The Company shall make such payment within five (5) business days of the receipt of the relevant share certificate.
- 17.8 The Directors may at any time before any forfeited share is sold or otherwise disposed of with the consent of the member in whose name the share stood immediately prior to the forfeiture annul the forfeiture upon such terms and conditions as they shall think fit.
- 17.9 A statutory declaration in writing that the declarant is a Director or the Secretary of the Company, that the call or instalment paid in respect of any share was made or was due, that the Call Notice was duly served, that default in payment of the call or instalment was made and that a share in the Company has been duly forfeited by a resolution of the Directors to that effect on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and of the title of the Company to dispose of same.
- 17.10 The Directors may accept a surrender of any share by way of compromise of any question as to the holder being properly registered in respect thereof. Any shares so surrendered may be disposed of in the same manner as forfeited shares.
- 17.11 The Company may receive the consideration, if any, given for a forfeited share or a surrendered share on any sale or disposition thereof and the Directors may authorise some person to transfer the share to the person to whom the share is sold or disposed of and he shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, surrender

or disposal of the share. The remedy of any person aggrieved by any such sale or disposal shall lie in damages only against the Company.

17.12 To the extent that it may be necessary, the Directors are hereby authorised to do all acts and to take all reasonable steps to effect the sale of any shares the subject of this Article 17 in any manner required or permitted by the Listing Rules or the SCH Business Rules.

18. TRANSFER OF SHARES

18.1 (a) The Company may participate in any computerised or electronic system for market settlement, securities transfer and registration conducted in accordance with the Law, the Listing Rules and the SCH Business Rules.

(b) If the Company participates in a system of the kind referred to in Article (a), then notwithstanding any other provision of this Constitution, the Company shall comply with and give effect to the SCH Business Rules.

18.2 Subject to the provisions of this Article and the Law, securities in the Company may be transferred as follows:

(a) in the case of an SCH-regulated transfer, in any manner required or permitted by the Listing Rules or the SCH Business Rules; and

(b) in other cases, in the following form, or in common form (or in any form approved or adopted by the Exchange, or in any form approved by the Directors) or as near thereto as circumstances will permit:

MEDIGARD LIMITED ACN 090 003 044

I, _____ of _____

in consideration of the sum of _____

paid to me by _____ of _____

hereby transfer to the said _____ the _____ shares numbered _____

to _____ inclusive standing in my name in the Register of members to hold the same unto the said _____ absolutely subject to the conditions upon which I held the same immediately before the execution hereof. And I the said _____ hereby agree to take the said shares subject to such conditions.

Signed the _____ day of _____ 2008

(Signatures of transferor and transferee)

18.3 In the case of all non-SCH-regulated transfers, the following provisions shall apply:

(a) when a share to be transferred is not distinguished by a separate number, the instrument of transfer shall specify the total number of shares to be transferred and when a share to be transferred is distinguished by a separate number, the instrument of transfer shall, in addition to specifying the total number of shares to be transferred, specify the distinguishing number or numbers of the shares being transferred;

(b) the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the Register in respect thereof;

(c) no fee shall be charged by the Company for the registration of a transfer of a share;

- (d) every instrument of transfer shall be left at the Office for registration accompanied by the following:
 - (i) the certificate of the share to be transferred;
 - (ii) such other evidence to be transferred and such other evidence as the Directors may reasonably require to prove the title of the transferor or his right to transfer the share, the due execution of the transfer and the due compliance with the requirements of any law;
- (e) notwithstanding Article (d), if, in accordance with the Law:
 - (i) a certificate covering shares to be transferred has not been issued by the Company; and
 - (ii) the instrument of transfer covering such share is not required to be accompanied by a certificate,

the instrument of transfer left at the Office for registration need not be accompanied by such a certificate;

- (f) every instrument of transfer shall be presented to the Company duly stamped, or certified in accordance with the provisions of Part 7.13 Division 3 of the Law that stamp duty has been or will be paid. The Directors may require production of evidence that the provisions of any other Commonwealth or State statute imposing a tax or duty on the transfer have been complied with;
- (g) the instrument of transfer, when registered, shall be retained by the Company for such period as may be required by law, after which it may be destroyed at any time. Any instrument of transfer which the Directors shall decline to register shall be returned to the person lodging it, except in the case of fraud;
- (h) the Company shall dispatch within five (5) business days or such other time as provided by the Listing Rules after the day of lodgement of a registrable transfer of securities of the Company a certificate in respect of such securities and a balance certificate for any remainder. Where a marking is made against a certificate, the Company, in the absence of instructions to the contrary, shall dispatch to the seller of those securities or if so instructed, to the lodging broker within five (5) business days or such other time as laid down by the Listing Rules from the date of the last marking, a balance certificate for the number of securities against which no marking has been made;

[See App8A of the LR's].

- (i) where an instrument of transfer of shares is signed by a member or his attorney, and the member was of unsound mind at the time he executed the transfer or the power of attorney under which such transfer was signed, or subsequently became of unsound mind, the Company shall be under no liability for registering as a member of the transferee of such shares, PROVIDED THAT the Company had no notice of such unsoundness of mind at the time of the registration of the transfer.

18.4 Except as required by law and subject to Articles 18.5 and 84.1, the Company shall not refuse to register or fail to register or give effect to any transfer of shares in registrable form lodged with the Company PROVIDED ALWAYS that the Directors may, notwithstanding the foregoing, refuse to register any transfer or seek to apply a holding lock to prevent a proper SCH transfer where permitted to do so by the Listing Rules or the SCH Business Rules, as the case may be.

[See LR8.10].

- 18.5 Notwithstanding Article 18.4 hereof, the Company shall not refuse, prevent, delay or in any way interfere with the registration of a proper SCH transfer.

[See LR8.10].

- 18.6 If, in the exercise of the rights conferred by Article 18.4 hereof, the Directors refuse to register a transfer of shares or apply a holding lock, the Company shall give to the lodging party written notice of the refusal and the precise reasons therefore within five (5) business days after the date on which the transfer was lodged with the Company.

[See LR8.10].

19. **TRANSMISSION OF SHARES**

- 19.1 In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the Company as having any title to his interest in the shares but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.
- 19.2 Any person becoming entitled to a share in consequence of the death or bankruptcy or liquidation of a member may, upon such evidence being produced as may from time to time properly be required by the Directors and subject as hereinafter provided, elect either to be registered himself as holder of the share or, subject to the provisions of this Constitution, the Listing Rules and the SCH Business Rules (as the case may be) with respect to the transfer of shares, or effect a transfer of the shares but the Directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by that member before his death or bankruptcy or liquidation.
- 19.3 Any person lawfully administering the estate of a member under the provisions of any law relating to mental health or any law relating to the administration of estates of patients or infirm persons shall subject to the provisions set out in Article 19.2 have the same rights as are set out therein.
- 19.4 If a person, pursuant to Article 19.2 or 19.3, elects to be registered himself as the holder of any share he shall deliver or send to the Company a notice in writing signed by him stating that he so elects.
- 19.5 If a person, pursuant to Article 19.2 or 19.3, elects to transfer the share to another person, he shall testify his election by executing in favour of that person a transfer of the share or effecting an SCH regulated transfer of the share to that person (as the case may be).
- 19.6 All limitations, restrictions and provisions of this Constitution relating to the right to transfer and the registration of transfers of shares (including SCH-regulated transfers) shall be applicable to any notice of transfer referred to in Article 19.4 or 19.5 respectively as if the member who has died or has become bankrupt or has gone into liquidation or whose estate is being administered as set out in Article 19.3 has signed such notice of transfer.
- 19.7 Where the registered holder of any share dies or becomes bankrupt his personal representative or the assignee of his estate, as the case may be, shall upon the production of such evidence as may from time to time be properly required by the Directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt and where two or more persons are jointly entitled to any share in consequence of the death of

the registered holder they shall, for the purposes of this Constitution, be deemed to be joint holders of the share.

19.8 Until a person entitled by transmission to any shares has proved his title to the Directors as aforesaid, the Company may retain any dividend or bonus declared on such shares.

19.9 The provisions of this Article 19 shall be expressly subject to the operation of the SCH Business Rules to any securities registered at a Securities Clearing House.

20. REGISTER OF MEMBERS

20.1 Subject to Sections 168, 169 and 1302 of the Law, the Listing Rules and the SCH Business Rules, the transfer books and the Register shall be kept by the Secretary under the control of the Directors and may be closed during such time as the Directors think fit.

20.2 The Directors shall immediately notify the Exchange of any intention to fix a record date and the reason therefor, stating the record date, which shall be that number of business days specified from time to time in the Listing Rules or the SCH Business Rules, and the address of share registries at which documents will be accepted for registration until 5:00pm on the record date or in the case of a proper SCH transfer, until such later time on the record date as may be permitted by the SCH Business Rules.

[See LR3.20 and App3A & 7A of LR's].

20.3 The Directors shall immediately notify the Exchange of any intention to fix a record date to determine entitlements to a reduction of capital or share premium stating the record date, which shall be that number of business days after lodgment of the relevant Court Order with the Commission specified in the Listing Rules.

[See App7A, paras 5, 6 & 7 of LR's].

20.4 In the event of there being at any one time more than three (3) persons jointly holding securities in the Company, the Directors shall only record the first three (3) persons in the register and the names of all other holders shall be disregarded for the purposes of registration.

21. ALTERATION OF CAPITAL

21.1 The Company in Meeting may from time to time by ordinary resolution:

(a) increase the share capital by such number as the resolution shall prescribe;

(b) consolidate and divide all or any of its share capital into shares of larger number ;

(c) subdivide its shares or any of them into shares of a smaller number PROVIDED ALWAYS 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; or

(d) 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 or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled.

21.2 Subject to the provisions of this Constitution and to a resolution passed in accordance with Article 21.1, new shares created by an increase in the capital of the Company may be issued by the Directors with or without any special conditions, preferences or priority either as to dividends or capital or both and with any other special rights or advantages. In the absence of any special conditions or rights, such new shares when issued shall be held upon the same conditions as if they had been ordinary shares in the original capital, and

shall be subject to the provisions of this Constitution that relate to ordinary shares in the Company.

22. REDUCTION OF CAPITAL

22.1 Subject to Article 11 hereof, the Company may by special resolution reduce its share capital or any capital account in any manner and with, and subject to, any incident, authority or consent required by law.

22.2 The Directors may do all the things necessary and expedient to obtain the confirmation of any reduction of capital which the Company desires to effect.

23. MEETINGS

23.1 An annual general Meeting of the Company shall be held in accordance with the provisions of the Law.

23.2 The Directors shall convene a Meeting of the Company:

(a) on the requisition of a majority of Directors;

(b) on the requisition of such other person as shall be entitled to requisition such Meeting under the law; or

(c) upon the Board so resolving,

and the Directors shall comply with any provisions of the Law with respect to the convening of such Meetings.

23.3 Subject to the provisions of the Law relating to special resolutions, special notice and agreements for shorter notice, fourteen (14) days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of the Meeting and, except as provided by Article 23.4, the general nature of the business to be transacted at the Meeting shall be given to such persons as are entitled to receive such notices from the Company pursuant to this Constitution.

23.4 It is not necessary for a notice of annual general Meeting to state that the business to be transacted at the Meeting includes the declaring of a dividend, the consideration of accounts and the reports of the Directors and Auditors, the election of Directors in the place of those retiring by rotation or otherwise or the appointment and fixing of the remuneration of the Auditors.

23.5 The accidental omission to give the notice required by this Constitution to any of the members or the non-receipt of such notice by any member shall not invalidate any resolution passed at a Meeting or adjournment thereof.

23.6 The Company shall immediately give the Home Branch a copy of all documents it intends to give to persons entitled to receive those documents from the Company in respect of every Meeting.

[See LR3.17].

23.7 Every notice given to such persons as are entitled to receive such notices from the Company pursuant to the provisions of this Constitution shall be accompanied by a form of proxy in a form substantially in accordance with this Constitution. The form of proxy shall be blank as far as the person primarily to be appointed as proxy is concerned.

[See LR14.2]

24. QUORUM AT MEETINGS

- 24.1 No business shall be transacted at any Meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- 24.2 The Company may hold a Meeting at two (2) or more venues using any form of technology which gives the members a reasonable opportunity to participate.
- 24.3 Subject to Article 24.4 three (3) members present in person shall be a quorum.
- 24.4 If within fifteen minutes from the time appointed for the Meeting a quorum is not present, the Meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, but no notice of such adjournment shall be required to be given to the members. If at the adjourned Meeting a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting shall be proceeded with whatever may be the number of members present, and those members present shall be deemed to constitute a quorum.
- 24.5 In this Article "member" includes a person attending as a proxy, attorney, or as a representative of a corporation which is a member.

25. CHAIRMAN AT MEETINGS

- 25.1 The Chairman of Directors or in his absence the Deputy Chairman (if any) shall be entitled to take the chair at every Meeting.
- 25.2 The Directors shall be entitled to elect a Director or any other person as Chairman for all or part of any Meeting.
- 25.3 If there be no Chairman of Directors or Deputy Chairman, or if at any Meeting neither the Chairman of Directors nor the Deputy Chairman shall be present within fifteen (15) minutes after the time appointed for holding such Meeting, or shall be willing to act, the members present shall choose another Director as Chairman. If no other Director shall be present, or if all the Directors present decline to act, then the members shall choose one (1) of their number to be Chairman.

26. CONDUCT OF GENERAL MEETINGS

- 26.1 The Chairman shall at any time prior to, at or during a Meeting determine;
- (a) the conduct of the Meeting ;
 - (b) the security arrangements to apply to the Meeting ; and
 - (c) the procedures to be adopted at the Meeting.
- 26.2 The Chairman or any person acting with the Chairman's authority may at any meeting;
- (a) require any person wishing to attend to comply with any search or other security arrangements ;
 - (b) refuse access to the Meeting to any person who does not comply with the security arrangements;
 - (c) refuse access to the Meeting to any person who possesses a recording or broadcasting device ;
 - (d) refuse access to the Meeting to any person who possess any item or chattel considered to be dangerous, offensive or disruptive to the Meeting.

26.3 At any Meeting the Chairman may if it is considered necessary or desirable for the proper and orderly conduct of the Meeting ;

- (a) stop debate or discussion on any business, resolution, motion or question ; and
- (b) if appropriate, require the business, resolution, motion or question to be voted on by the Members.

26.4 A Director shall be entitled to attend and speak at any Meeting.

27. **ADJOURNMENTS AND POSTPONEMENT OF MEETINGS**

27.1 Subject to Article 27.2 the Chairman may:

- (a) with the consent of any Meeting at which a quorum is present adjourn the Meeting from time to time and from place to place;
- (b) without the consent of any Meeting, adjourn the Meeting from time to time and from place to place where it appears the facilities are inadequate to enable all persons to attend and be heard at the Meeting, it is impossible for him to maintain order or to enable the conduct of a poll.

27.2 Any poll duly demanded on the election of a Chairman of a Meeting, or on any question of adjournment, shall be taken at the Meeting without adjournment.

27.3 No business shall be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place.

27.4 When a Meeting is adjourned for fourteen (14) days or more, seven (7) days' notice shall be given of the place, date and time of the adjourned Meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at such adjourned Meeting.

27.5 Save as provided in Article 27.4 it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned Meeting.

27.6 The Directors may postpone any Meeting from time to time by giving notice to all members of the place, date and time of the postponed Meeting but it shall not be necessary to specify in such notice the nature of the business to be transacted at the postponed Meeting.

28. **VOTING RIGHTS OF MEMBERS**

28.1 Subject to this Constitution, a holder of ordinary shares in the Company shall be entitled to be present at any Meeting, and to vote in respect of ordinary shares held by him. Any member present at any Meeting may decline to vote on any question put to that Meeting, but shall not by so doing be considered absent from the Meeting.

28.2 Unless otherwise provided in this Constitution every member present in person or by proxy or by attorney or in the case of a body corporate or representative appointed pursuant to Section 250D of the Law shall be entitled:

- (a) on a show of hands, to one vote; and

[See LR6.8]

- (b) subject to Article 28.7, on a poll, to one vote for each share of which he is the holder.

[See LR6.9].

- 28.3 Except where otherwise provided by the Law or this Constitution, every question to be decided by any Meeting shall be decided by a majority on a show of hands by persons present who are members, or proxies or attorneys entitled to act pursuant to this Constitution, or representatives appointed pursuant to Section 250D of the Law, unless immediately on the declaration of the result of the show of hands a poll be directed by the Chairman of the Meeting, or demanded in the manner provided in Article 29.
- 28.4 Unless a poll is demanded, a declaration by the Chairman that a resolution has in a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the Meeting is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 28.5 Where any persons are registered as joint holders of a share any one of such persons may vote at any Meeting either personally or by proxy or representative in respect of such share as if he were solely entitled thereto and if more than one joint holder is present at any Meeting personally or by proxy attorney or representative the senior of such persons shall alone be entitled to vote in respect of the jointly held share. Seniority shall be determined by the order in which the names of the holders stand in the Register.
- 28.6 A member holding shares in respect of which all sums due and payable to the Company have not been paid shall not be entitled to attend and vote at Meetings in respect of such shares PROVIDED ALWAYS that if such member also holds shares in respect of which no sums are due and payable to the Company then he shall be entitled to attend Meetings and vote in respect thereof as if such shares were the only shares held by him.
- 28.7 Where a poll is demanded, a member holding partly paid shares shall be entitled, for each share, to a fraction of a vote equivalent to the proportion which the amount paid up (not credited) bears to the total issue price for the share.
- [See LR6.9].
- 28.8 A member who is of unsound mind or whose personal estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his Committee or by the Public Trustee or by such other person as properly has the management of his estate, and such Committee, Public Trustee or other person may vote by proxy or attorney.
- 28.9 No objection shall be raised to the qualification of any voter except at the Meeting or adjourned Meeting at which the vote objected to is given or tendered, and every vote not disallowed at such Meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chairman of the Meeting, whose decision shall be final and conclusive.

29. **POLL**

- 29.1 Subject to this Constitution, a poll may be demanded by:
- (a) not less than five (5) members having the right to vote at the Meeting present in person or by proxy, attorney or representative;
 - (b) by any one (1) or more members present in person or by proxy, attorney or representative holding in the aggregate not less than 10% of the total voting rights of all the members having the right to vote at the Meeting; or
 - (c) by any one (1) or more members present in person or by proxy, attorney or representative holding shares conferring a right to vote at the Meeting, being shares on which an aggregate sum has been paid up equal to not less than 5% of the total sum paid up on all the shares conferring that right.

- 29.2 Any poll demanded under this Constitution shall be taken at such time and place and in such manner as the Chairman of the Meeting shall direct and subject to Article 27.2 shall be taken either at once, or after an interval or adjournment, and the result of the polls shall be deemed to be the resolution of the Meeting at which the poll was demanded.
- 29.3 The demand of a poll shall not prevent the continuance of a Meeting for the transaction of any business other than the question upon which the poll has been demanded.
- 29.4 The demand of a poll may be withdrawn at any Meeting before the conduct of such poll.

30. CASTING VOTE

The person in the chair at a Meeting shall not in the case of an equality of votes on a show of hands or on a poll have a second or casting vote.

31. PROXIES

- 31.1 Any person who is entitled to attend and vote at any Meeting of the Company may appoint not more than two (2) other persons (whether members or not) as his proxy or proxies to attend and vote at the Meeting on his behalf.
- 31.2 A proxy appointed to attend and vote at a Meeting on behalf of a member shall have the same right as the member to speak at the Meeting.
- 31.3 A member may instruct his proxy or proxies to vote for or against any specific resolution submitted to a Meeting at which such proxy or proxies are present.

[See LR14.2.1].

- 31.4 Where a member appoints two (2) proxies, the appointment shall be of no effect unless each proxy is appointed to represent a specified portion of that member's voting rights.
- 31.5 Notwithstanding anything to the contrary contained in this Constitution, if a member appoints one (1) proxy only, that proxy shall be entitled to vote on a show of hands, but if a member appoints two (2) proxies, neither proxy shall be entitled to vote on a show of hands.
- 31.6 (a) If a member appoints one (1) proxy only, that proxy shall be entitled on a poll to one (1) vote for each share held by his appointor.
- (b) If a member appoints two (2) proxies, each proxy shall be entitled on a poll to that percentage of the votes attached to the shares held by his appointor as is specified in the instrument of appointment.
- 31.7 Where a proxy and a member who appointed such proxy both attend at the Meeting or adjourned Meeting, or on the taking of a poll:
- (a) where the proxy is appointed to represent the whole of a member's voting rights - the member shall not be entitled to speak or vote at the Meeting or adjourned Meeting or to vote on the poll, as the case may be, unless notice in writing of the revocation of the instrument appointing such proxy shall have been received at the place for deposit of proxies or by the Chairman before the Meeting or adjourned Meeting or the poll is taken;
- (b) where the proxy is appointed for a specified portion of that member's voting rights only -the member shall be entitled to speak or vote at the Meeting or adjourned Meeting or to vote on the poll as if the shares or the portion of shares in respect of which the member has not appointed a proxy were the only shares held by him PROVIDED THAT in this case the proxy shall not be entitled to vote on a show of hands.

- 31.8 The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney duly authorised in writing or if such appointor is a corporation, properly executed by the corporation under the Law.
- 31.9 Notwithstanding anything to the contrary herein contained:
 - (a) where a share or shares is or are jointly held, the instrument appointing a proxy may be signed by the joint holders of such share or shares or by any one or more of them;
 - (b) where more than one person is entitled by transmission pursuant to Article 19 to a share or shares in the Company, the instrument appointing a proxy may be signed by all the persons so entitled or any one or more of them.
- 31.10 The instrument appointing a proxy shall be duly stamped in accordance with any law for the time being in force with respect to the assessment of stamp duty on proxies.
- 31.11 A proxy shall not remain in force for a period of more than three (3) months from the date thereof, unless such proxy is incorporated in a power of attorney.
- 31.12 Every instrument of proxy whether for a specified Meeting or otherwise shall be in the following form or in any other form which the Directors may approve:

MEDIGARD LIMITED ACN 090 003 044

"I, _____ of _____
 hereby appoint _____ of _____
 or _____
 (a) _____ of _____
 in respect of _____ per cent of my voting rights in the Company;
 and
 (b) _____
 in respect of _____ per cent of my voting rights in the Company
 and

or failing him or them, the Chairman of the Meeting as my proxy or proxies to vote for me and on my behalf at the General Meeting (or Annual General Meeting as the case may be) of the Company to be held on the _____ day of _____ 2008 and at any adjournment thereof.

This form is to be used * in favour of the resolution
 * against

Signed this _____ day of _____ 2008

.....

Signature of Shareholder/stockholder

*(Strike out whichever is not desired or is inapplicable)

- To be inserted if desired.

[See LR14.2.2].

31.13 Any instrument appointing a proxy which is entitled to be used at a Meeting at which any resolution is proposed to be passed shall clearly indicate that the holder of the proxy is entitled to vote for or against such resolution as directed by the member or failing such direction, at the discretion of the holder of the proxy.

32. **POWERS OF ATTORNEY**

32.1 Any member may by power of attorney appoint an attorney to attend and act and vote at any Meetings of the Company on behalf of such member and as his or its proxy without any special appointment other than such power of attorney.

32.2 Such attorney shall be appointed in writing under the hand and seal of the member and attested by one (1) witness, or if the appointor is a corporation, properly executed by the corporation under the Law.

32.3 An attorney so appointed as aforesaid may, within the limits of his power of attorney, whether himself as a member of the Company or not, appoint in writing as proxy on behalf of the appointor, a person (whether a member of the Company or not) who shall be deemed to be the proxy of such appointor.

32.4 Any attorney so appointed as aforesaid, whether himself a member of the Company or not, may on behalf of his appointor, within the limits of his power of attorney, sign any consent which the appointor would under this Constitution be required or entitled to sign.

32.5 Any attorney so appointed as aforesaid and any substitute attorney or proxy appointed thereunder may attend and take part in the proceedings of and vote at all Meetings of the Company (or any Meeting of any class of shareholders in the Company of which such member is a member) so long as the power of attorney shall remain in force in the same manner as the member himself could do if he were personally present. If the power of attorney is expressed to be given for value, the votes of the attorney or substitute attorney or proxy appointed thereunder shall take precedence over the votes of the member or of any other proxy appointed by or claiming under the member.

33. **APPOINTING INSTRUMENT TO BE DEPOSITED WITH COMPANY**

33.1 The following instruments shall be deposited at the Office or at such other place within the State as is specified for that purpose:

- (a) any instrument appointing a proxy pursuant to Article 31, together with the power of attorney or other authority, if any, under which it is signed;
- (b) any power of attorney pursuant to Article 32; or
- (c) any certificate appointing a representative of a body corporate in accordance with Section 250D of the Law.

33.2 Any such instrument shall be forwarded to the Company not less than forty-eight (48) hours before the time for holding the Meeting or adjourned Meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than forty-eight (48) hours before the time appointed for the taking of the poll.

33.3 Any instrument which is not deposited with the Company in the manner and within the time provided in this Article shall not be treated as valid.

33.4 A copy of any of the instruments referred to in Article 33.1 may be deposited at the Office PROVIDED THAT such copy has been certified as being a true and correct copy by either a Justice of the Peace, Solicitor or Notary Public.

34. REVOCATION AND INVALIDITY OF INSTRUMENTS

A vote given in accordance with the terms of the instrument appointing a proxy, attorney or representative shall be valid, subject to Article 31 hereof, notwithstanding;

34.1 the death of the principal;

34.2 the unsoundness of mind of the principal;

34.3 the winding up or dissolution of the principal, if a corporate body;

34.4 the revocation of the instrument or the power of attorney under which the instrument was executed,

PROVIDED THAT no intimation in writing of any such event shall have been received at the place for deposit of proxies or by the Chairman before the Meeting or the adjourned Meeting takes place or the poll is taken.

35. NUMBER OF DIRECTORS

35.1 The Company may from time to time by resolution passed at a Meeting increase or reduce the number of Directors.

35.2 Unless and until the Company shall otherwise resolve the number of Directors shall be not less than three (3) nor more than nine (9).

36. QUALIFICATION OF DIRECTORS, ALTERNATE DIRECTORS AND ASSOCIATE DIRECTORS

36.1 Every Director shall be a natural person.

36.2 There is no requirement for a Director to hold in his name shares or stock of the Company.

36.3 It shall not be necessary for an Alternate Director or Associate Director to hold any shares in the Company.

37. VACATION OF OFFICE OF DIRECTOR

37.1 The office of the Director shall become vacant if the Director:

(a) ceases to be a Director by virtue of the Law;

(b) becomes prohibited from being a Director by reason of any order made under the Law;

(c) becomes bankrupt or suspends payment or makes any arrangement or composition with his creditors generally;

(d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

- (e) resigns his office pursuant to Article 37.2 PROVIDED THAT in the case of an Executive Director holding office as such for a fixed term such resignation and vacation of office shall be without prejudice to any claims that the Company may have against him for any breach of any contract of service between him and the Company;
 - (f) for a continuous period of more than six (6) months is absent without the permission of the Directors from Meetings of the Directors held during that period, PROVIDED THAT attendance by his Alternate shall be deemed to be attendance by the Director for the purposes of this paragraph;
 - (g) is removed from office pursuant to Article 8; or
 - (h) fails to pay any call within four (4) weeks from the date such call is made payable.
- 37.2 A Director may resign from office upon giving one (1) month's notice in writing to the Company of his intention to do so. Such resignation shall take effect upon the expiration of such notice, or its earlier acceptance by the Board.

38. APPOINTMENT AND REMOVAL OF DIRECTORS

- 38.1 The Directors may at any time and from time to time appoint any other person qualified in accordance with Article 6 as a Director, either to fill a casual vacancy or as an addition to the Board but so that the total number of Directors shall not at any time exceed the maximum number for the time being allowed under this Constitution.
- 38.2 Any Director appointed under Article 38.1 shall hold office only until the next following annual general Meeting of the Company, and shall then be eligible for re-election but shall not be taken into account in determining the Directors who are to retire by rotation at that Meeting.
- [See LR14.4].
- 38.3 Subject to the provisions of the Law, the Company at a Meeting may by resolution:
- (a) remove any Director before the expiration of his term of office;
 - (b) appoint another qualified person as a Director; or
 - (c) remove any Director before the expiration of his office and appoint another qualified person in his stead.
- 38.4 Any appointment of a Director proposed pursuant to Articles 38.3(b) or 38.3(c) shall be subject to prior notice having been given under Article 40.13 hereof.
- 38.5 A person appointed pursuant to Article 38.3(b) shall hold office subject to Article 40.
- 38.6 Any person appointed or re-elected pursuant to Article 38.3(c) shall hold office only during such time as the Director in whose place he is appointed or, in the case of re-election, the re-elected Director himself would have continued to hold office had he not been removed pursuant to this Article.

39. OFFICES OF PROFIT IN COMPANY

- 39.1 Subject to the provisions of the Law, any Director may hold any other office or place of profit under the Company or in connection with the Company's business save and except that of Auditor.
- 39.2 A Director shall be entitled to such terms as to remuneration and otherwise as the Directors may decide and pursuant to Article 41 hereof.

39.3 No person being a partner or employer or employee of any Auditor of the Company shall be eligible to be appointed or elected as Director or Alternate Director of the Company.

40. TERM OF OFFICE OF DIRECTORS

40.1 At each annual general Meeting of the Company, one-third of the Directors for the time being (or if their number is not a multiple of three (3) then the number nearest to but not exceeding one-third) shall retire from office PROVIDED THAT a Director must not hold office beyond the third annual general Meeting following that Director's appointment or three (3) years, whichever is longer.

[See LR's 14.4 & 14.5].

40.2 The Directors to retire pursuant to Article 40.1 shall be determined according to the length of time each Director has spent in office, with those having spent the longest time in office retiring.

40.3 As between two (2) or more who have been in office an equal length of time, the Directors to retire shall, in default of agreement between them, be determined by lot.

40.4 The length of time a Director has been in office shall be computed from his last election or appointment where he has previously vacated office.

40.5 Notwithstanding anything to the contrary in this Constitution a Director (other than a Managing Director) shall not continue in office for a period in excess of three (3) consecutive years or until the third annual general Meeting following his appointment, whichever is the longer, without submitting himself for re-election.

40.6 A retiring Director shall retain office until the conclusion of the Meeting at which his successor is elected.

40.7 A retiring Director shall be eligible for re-election.

40.8 The Company at any Meeting at which any Directors retire in the manner provided for in this Article may elect a like number of persons to fill in the vacancies left by the retiring Directors, and subject to Article 40.13 may also fill any other vacancies.

40.9 The Company may at any Meeting fill a casual vacancy not filled by the Directors but that any Director so appointed shall remain in office only until the next following Meeting of the Company.

40.10 (a) A motion for the appointment of two (2) or more persons as Directors by a single resolution shall not be made unless a resolution that it be so made has been first agreed to by the Meeting without any vote being given against it.

(b) A resolution passed in contravention of this paragraph shall be void, whether or not it being so moved was objected to at the time.

(c) For the purposes of this paragraph a motion for approving a person's appointment or for nominating a person for appointment shall be treated as a motion for his appointment.

(d) Nothing in this paragraph shall apply to a resolution altering the Constitution of the Company.

(e) Nothing in this paragraph shall be deemed to prevent the election of two (2) or more Directors by ballot or poll.

- 40.11 If at any Meeting at which an election of Directors ought to take place, the offices of the retiring Directors or some of them are not filled, then the vacancy or vacancies so created shall be deemed to be a casual vacancy or casual vacancies and capable of being filled by the Directors pursuant to Article 38.1.
- 40.12 The Company may at any Meeting from time to time:
- (a) increase or reduce the number of Directors;
 - (b) alter the Directors' qualifications; and
 - (c) determine in what rotation such increased or reduced number is to go out of office.
- 40.13 Nominations for election to the office of Director shall be accepted not later than fifteen (15) business days before the date of a general Meeting at which Directors will be elected or re-elected.

[See LR14.3].

41. REMUNERATION OF DIRECTORS

- 41.1 Each Director shall be entitled to remuneration for his services from the date of his election or appointment to the Board.
- 41.2 The remuneration of the Directors (other than non-Executive Directors) shall be such sum as shall be determined by the Board PROVIDED THAT such remuneration shall not include a commission on or percentage of operating revenue.
- 41.3 The Directors shall also be entitled to be paid all reasonable travelling, hotel and other expenses incurred by them in attending and returning from meetings of the Directors of the Company or otherwise in connection with the business of the Company or in the execution of their duties as Directors.
- 41.4 The remuneration of non-Executive Directors shall be such sum (if any) as shall be determined by resolution of the Company and shall continue until altered by a subsequent resolution of the Company PROVIDED THAT such remuneration must be expressed as a fixed sum for each non-Executive Director.

[See LR10.17].

- 41.5 Notice of any proposed increase in the remuneration of the Directors, whether payable by the Company or any unlisted subsidiary of the Company, shall be given in the notice convening the Meeting at which the proposed increase is to be considered. Such notice shall specify the amount of the proposed increase and the maximum sum that may be paid.

[See LR10.17.1].

- 41.6 Except as provided in this Constitution, the Directors shall not without the prior consent of the Company given in Meeting have the power to fix or pay a salary or allowance for the Chairman of Directors as such in addition to the amount of remuneration for the Directors determined by the Company in Meeting. Notice of any proposed payment of such salary or allowance, or any proposed increase in same, (whether payable by the Company or any unlisted subsidiary of the Company) shall be given in the notice convening the Meeting at which the proposal is to be considered. Such notice shall specify the amount of the proposed salary, allowance or increase, and the maximum sum that may be paid.

41.7 Subject to the provisions of the Law a Director (other than a Managing Director or Executive Director), or his legal personal representatives or dependents shall be entitled to receive a payment in connection with the dying, retiring or ceasing to hold office of that Director, PROVIDED THAT:

- (a) the particulars of the proposed payment referred to above (together with such other particulars as are required by the Law to be disclosed) shall have been disclosed to, and approved by, the Company at a Meeting prior to the death, retirement or vacation of office of the Director;
- (b) the Director has not ceased to be a Director pursuant to the provisions of Articles 37.1(a) or 37.1(b).

42. DIRECTORSHIPS IN OTHER COMPANIES

Subject to this Constitution a Director of the Company may be or become a director of any other company, whether promoted by the Company or not, and no Director who is or becomes a director in another company shall be accountable for any benefits received as a director or member of such other company PROVIDED THAT a Director shall not, without the approval of the Directors of the Company accept, hold or retain the office of director of any other company which in the opinion of the Directors is for the time being in active competition with the Company.

43. ALTERNATE DIRECTORS

43.1 Subject to the provisions of Article 36, any Director may appoint any person to act as an Alternate Director in his place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or for any other reason he is unable to attend to his duties as a Director as follows:

- (a) with approval of a resolution of the Board; or
- (b) with the approval of a majority of the other Directors.

43.2 The following provisions shall apply to any such Alternate Director:

- (a) subject to this Constitution, he shall be entitled to receive notice of meetings of the Directors and to attend and vote thereat if the Director by whom he was appointed is not present;
- (b) where the Alternate Director is already a Director, he shall have a separate vote on behalf of the Director he is representing in addition to his own vote;
- (c) he shall be entitled to exercise all the powers (except the power to appoint an Alternate Director) and to perform all the duties of a Director, insofar as the Director by whom he was appointed has not exercised or performed them;
- (d) he shall ipso facto vacate his office as Alternate Director if the Director by whom he was appointed is removed or otherwise ceases to hold office for any reason;
- (e) he shall, whilst acting as an Alternate Director, be responsible to the Company for his own acts and defaults and shall not be deemed to be the agent of the Director by whom he was appointed;
- (f) he shall not be entitled to receive any remuneration from the Company as a Director except for special services which in the opinion of the Directors are outside the range of the ordinary duties of a Director;

- (g) he shall not be taken into account in determining the number of Directors but shall, if the Director by whom he was appointed is not present, be taken into account for the purpose of determining whether a quorum is present under Article 46.2;
 - (h) he may be removed or suspended from office by written notice, letter, facsimile, or other form of visible communication sent to the Company by the Director by whom he was appointed.
- 43.3 An instrument appointing an Alternate Director may be delivered to the Company by written notice, letter, facsimile or other form of visible communication and shall be retained by the Company and shall be substantially in the following form:

MEDIGARD LIMITED ACN 090 003 044

I, _____, a Director of _____ Limited in pursuance of the power contained in the Constitution of the Company hereby nominate of _____ to act as Alternate Director of the Company in my place and stead, and to exercise and discharge all my duties and to exercise all my authorities, prerogatives, privileges and powers as a Director of the Company during my absence (or my illness or my inability to act or attend as a Director, as the case may be).

Signed this _____ day of _____ 2008.

Signature

Witness

44. ASSOCIATE DIRECTORS

- 44.1 The Directors may from time to time subject to the provisions of Article 36 appoint any person to be an Associate Director and may at any time remove from office any person so appointed.
- 44.2 The Directors may define and limit from time to time the duties and powers of such Associate Directors and may fix their remuneration if any.
- 44.3 An Associate Director shall not be deemed to be a Director of the Company within the meaning of the Law or of this Constitution and he shall not be recognised in a quorum or exercise any of the powers which are by this Constitution conferred on the Directors or in any way share their responsibilities, but he may upon the invitation of the Directors attend those Meetings to which the invitation extends.

45. MANAGING DIRECTOR

- 45.1 The Directors may from time to time appoint one or more of their number to the position of Managing Director and/or Assistant Managing Director on such terms as they think fit and may from time to time remove him or them from office and appoint another in his or their place or places.
- 45.2 The term of office of a Managing Director shall not exceed five (5) years but he shall be eligible for re-appointment.

- 45.3 A Managing Director or Assistant Managing Director shall be subject to the same provisions as to resignation and removal as the other Directors of the Company and he shall ipso facto and immediately cease to be a Managing Director or Assistant Managing Director if he ceases to hold the office of Director from any cause, PROVIDED THAT:
- (a) where there is only one (1) Managing Director, he shall not be subject to the provisions of this Constitution as regards retirement by rotation, and he shall not be taken into account in determining the rotation or retirement of Directors; and
 - (b) where there is more than one (1) Managing Director, only one (1) Managing Director shall be entitled not to be subject to the provisions of this Constitution as regards retirement by rotation and shall not be taken into account in determining the retirement by rotation of Directors. As between any two (2) or more Managing Directors, in the absence of agreement between them, the Managing Director to whom the exemption in this Article (b) applies, shall be determined by lot.
 - (c) after a determination has been made under Article (b) hereof, the exemption referred to in that Article will not apply to any other Managing Director until the Managing Director first determined to have the benefit of the exemption ceases to be a Managing Director;
 - (d) if, at the time a Managing Director ceases to have the benefit of the exemption referred to in Article (b), he has not submitted himself for re-election for a period longer than that provided in the Listing Rules, he shall submit himself for re-election at the next meeting of the Company.

[See LR14.4].

- 45.4 Notwithstanding the provisions of Article 41 hereof, the remuneration of a Managing Director or Assistant Managing Director shall be fixed by the Directors from time to time and may be by way of fixed salary or commission on profits of the Company or of any other company in which the Company is interested or by participation in any such profits or by any or all of these modes, but shall not be by way of commission on or percentage of operating revenue.
- 45.5 The Directors may from time to time entrust to and confer upon a Managing Director or Assistant Managing Director for the time being such of the powers exercisable under this Constitution by the Directors as they think fit and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they think expedient and they may confer such powers collaterally with but not to the exclusion of or in substitution for all or any of the powers of the Directors in that behalf and may from time to time revoke withdraw alter or vary all or any of such powers.
- 45.6 The preceding provisions of this Article shall take effect subject to the provisions of any contract between the Managing Director or Assistant Managing Director and the Company PROVIDED THAT the terms of any contract between the Managing Director or Assistant Managing Director and the Company which are inconsistent with this Constitution have been first approved of by the Company in general Meeting.

46. **DIRECTORS' MEETINGS**

- 46.1 The Directors may meet together in person or by electronic device, PROVIDED THAT at all times the Directors shall be able to hear and may be heard by all other Directors at the meeting, for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.

- 46.2 Subject to Article 55.1(c), the quorum necessary for the transaction of the business of the Directors may be fixed by the Directors and unless so fixed shall be three (3).
- 46.3 A Director may at any time convene a meeting of the Directors.
- 46.4 The Secretary shall upon the requisition of a Director convene a meeting of the Directors.
- 46.5 Unless otherwise decided by the Directors, notice of every meeting of Directors, shall be given by delivering the same to, or by letter, facsimile or other form of visible communication to each Director at an address notified by him to the Secretary as his address for receipt of notice. If such address is outside the State then a copy of such notice shall also be given in any of the aforementioned modes to the address (if any) within the State notified by such Director to the Secretary as his address in the State for the receipt of notices.
- 46.6 If, prior to any meeting of Directors, the Secretary is advised by the Chairman of Directors or by any other Director that any urgent or contentious business is or may be transacted at such meeting, notice of such meeting shall be given by letter, facsimile, or other form of visible communication to the address of a Director outside the State notified by him to the Secretary as his address for the receipt of notices. The notice under this Article shall contain a statement of the general nature of the urgent or contentious business to be transacted.
- 46.7 Questions arising at any meeting of the Directors shall be determined by a majority of votes and such a determination shall be deemed a determination of the Directors.
- 46.8 In case of an equality of votes the Chairman of the meeting shall, when more than two (2) Directors including the Chairman are present and competent to vote on the question at issue, have a second or casting vote.
- [See LR 14.10]
- 46.9 A resolution in writing which is signed and dated by all the Directors for the time being in Australia (including any Alternate Director present in Australia and appointed by an absent Director), shall be as valid and effectual as if it had been duly passed at a meeting of Directors duly convened and constituted. Any such resolution may consist of several documents in like form each signed by one (1) or more Directors.
- 46.10 A resolution pursuant to Article 46.9 shall be deemed to have been passed on the day (according to the dates of signing) when the resolution shall have been signed by all the Directors and any Alternate Director (as the case may be) for the time being in Australia. If a signed copy of the resolution shall be returned to the Secretary undated, the Secretary shall fill in the date on which it was received and the same shall be deemed to have been signed on that day.
- 46.11 For the purposes of Articles 46.9 and 46.10:
- (a) a facsimile or other form of visible communication issued by a Director shall be deemed to be signed and dated by such Director; and
 - (b) a reference to all the Directors for the time being within Australia does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.
- 46.12 The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of Directors, the continuing Directors or Director may act for the purpose of increasing the number of Directors to that number or of summoning a Meeting of the Company, but for no other purpose, except in an emergency.

46.13 Subject to Article 46.12, a meeting of the Directors at which a quorum is present shall be competent to exercise all or any of the authorities powers and discretions by or under this Constitution or by or under statute for the time being vested in or exercisable by the Directors generally.

46.14 The Directors may adopt a code of conduct regulating the conduct and procedures to apply to all meetings of Directors, including disclosure and use of information received at any meeting of Directors.

47. CHAIRMAN OF DIRECTORS

47.1 The Directors may from time to time appoint a Chairman of Directors or Chairman and may entrust to and confer upon such Chairman of Directors or Chairman all or any of the powers of the Directors (excepting the powers to make calls, forfeit shares, borrow or otherwise raise money or issue debentures) that they may think fit. But the exercise of all powers by such Chairman of Directors or Chairman shall be subject to such regulations and restrictions as the Directors may from time to time make and impose and the said powers may at any time be withdrawn, revoked or varied.

47.2 The Chairman of Directors shall be entitled if present to take the chair at meetings of the Directors. If he is not present within ten (10) minutes after the time appointed for the meeting then the Directors shall choose one of their number to be chairman of the meeting.

47.3 The Chairman may be removed at any time by resolution of which notice shall have been given to all Directors for the time being in Australia not less than fourteen (14) days before the meeting of Directors at which the resolution is proposed.

48. DEFECTIVE APPOINTMENT OF DIRECTORS

All acts done at a meeting of the Directors or of a committee of the Directors or by any person acting bona fide as a Director shall be as valid as if every such person had been duly appointed or had duly continued in office and was qualified and had continued to be a Director, notwithstanding that it be afterwards discovered that there was some defect in the appointment or continuance in office of any of such Directors or persons acting as aforesaid or that any of them were disqualified or had vacated office.

49. DELEGATION TO COMMITTEES OF DIRECTORS

49.1 The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit and may revoke or vary such delegation whenever they think fit.

49.2 Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it from time to time by the Directors.

49.3 The committee may meet and adjourn as it thinks proper, questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

50. MINUTES OF MEETINGS

50.1 The Directors shall cause minutes to be made and faithfully entered in books provided for that purpose:

(a) of all appointments of officers;

(b) of names of Directors present at all Meetings and meetings of the Directors and of any committee of the Directors; and

- (c) of all proceedings at all Meetings and meetings of the Directors and of committees of Directors.

Such minutes shall be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting.

- 50.2 The minutes of a meeting signed by the Chairman thereof as provided in Article 50.1 shall be sufficient evidence without further proof of the facts therein stated.

51. **GENERAL POWERS OF DIRECTORS**

- 51.1 The management and control of the business and affairs of the Company shall be vested in the Directors who may exercise all such powers and all such acts and things as the Company is by this Constitution or otherwise authorised to exercise and do and are not by this Constitution or by statute directed or required to be exercised or done by the Company in general Meeting.
- 51.2 The powers of the Directors under this Article shall be subject to any contract which may be made with a Managing Director in which the Directors delegate certain powers, and shall also be subject to the provisions of the Law and of this Constitution, and to any regulations from time to time and at all times made by the Company at a Meeting PROVIDED THAT no regulations so made shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.
- 51.3 Notwithstanding anything contained in this Article, any sale or disposal by the Directors of the Company's main undertaking shall be subject to prior approval or ratification by the members at a Meeting.

[See LR11.2].

- 51.4 So far as shall be practicable and not inconsistent with the provisions of this Constitution, any power authority or discretion vested in the Directors may be exercised at any time and from time to time as they shall think fit.

52. **BORROWING POWERS OF DIRECTORS**

- 52.1 The Directors may without the necessity of obtaining any consent of the members or otherwise raise or borrow for any purpose of or incidental to the attainment of the objects or to the exercise of the powers of the Company contained in this Constitution such sum or sums of money as they think fit.
- 52.2 Without limiting the generality of Article 51.1 hereof, the Directors may raise or borrow any money in any manner whatsoever either alone or jointly with another or others (including but without limitation by way of overdraft account, letters of credit or bill acceptance and discounting facility) and to secure the payment or repayment of such moneys in such manner and upon such terms and conditions in all respects as they may think fit and in particular by the issue or sale of Debt Securities, bonds or other obligations of the Company whether perpetual or otherwise and payable to bearer or otherwise and either without security or secured by deposit or pledge of the securities or properties of the Company or by mortgages bills of exchange or promissory notes or other instruments or in any other manner and if considered advisable for such purposes the Directors may charge assign and convey as security all or any of the Company's property and assets both present and future including its uncalled capital (if any) for the time being.
- 52.3 Any Debt Securities, bonds and other securities or obligations issued by the Company may be made assignable free from any equities between the Company and the person to whom the same may be issued.

52.4 Any Debt Securities bonds and other securities or obligations may be issued at par or at a discount, premium or otherwise and with any special privileges as to redemption, surrender, drawings, attending and voting at general Meetings of the Company, appointment of Directors making calls on members for any uncalled capital included in such securities and otherwise.

52.5 The Directors shall cause a proper register to be kept in accordance with the Law of all mortgages and charges specifically affecting the property of the Company.

53. INTERESTED DIRECTORS

53.1 For the purposes of this Constitution, an interest of a Director may arise in either of the following ways:

- (a) an interest of the kind set forth in Section 191 of the Law (herein called "a Material Personal Interest"); or
- (b) an interest of the kind set forth in Chapter 2E of the Law (herein called "a Financial Benefit").

54. DIRECTORS' INTERESTS

54.1 Directors shall, subject to this Constitution and the Law, be entitled to have or acquire:

- (a) a Material Personal Interest; or
- (b) a Financial Benefit.

55. DIRECTORS' MATERIAL PERSONAL INTERESTS

Subject to Article 55.2, where the interest of a Director is a Material Personal Interest, then the rights of the Director shall be the same as if the Material Personal Interest was an Interest PROVIDED THAT:

55.1 the Director holding the Material Personal Interest (including any alternate Director of that Director) shall not:

- (a) vote;
- (b) be present; or
- (c) be counted in the quorum,

at a meeting of the Board which is considering a matter involving the Material Personal Interest of the Director;

55.2 the restrictions contained in Article 55.1 hereof shall not apply:

- (a) if the Board (other than the Director who holds a Material Personal Interest) pass a resolution that:
 - (i) specifies the Director, the Material Personal Interest and the subject matter; and
 - (ii) states that they are satisfied that the Material Personal Interest should not disqualify the Director from considering or voting on the matter; or
- (b) if the Commission has granted an exemption pursuant to Section 232B of the Law permitting the same; and

55.3 if as a result of the restriction in Article 55.1 a quorum is not present for consideration of the matter in which a Director has a Material Personal Interest, the Board may convene a Meeting of the Company to be held to determine the matter.

56. **DIRECTORS' FINANCIAL BENEFITS**

If the interest of a Director constitutes a Financial Benefit, then the Director shall only be permitted to hold or acquire that interest if the Director, the Board and the Company (as the case may be) comply with the provisions set out in Part 2E of the Law.

57. **LOCAL MANAGEMENT**

57.1 The Directors may provide for the management and transaction of the business and affairs of the Company in any specified district and territory, whether in Australia or abroad, in such manner as they think fit, and may do all such acts, matters and things and may be necessary for that purpose and as will enable them to comply with, conform to or to satisfy any law or requisitions with respect to any of the matters contained in this Constitution.

57.2 The Directors may from time to time establish any local boards of directors, managers, branch offices or agencies for managing the affairs of the Company in any locality and may appoint any persons to be members of such local boards of directors or managers or agents and may fix their remuneration.

57.3 The Directors may make such regulations for the management of any local board, branch office or agency as the Directors may from time to time think fit. The Directors may pay the expenses occasioned by any of the matters in this Article out of the funds of the Company, and may from time to time discontinue all or any of such local boards of directors, branch offices or agencies as and when they think fit.

57.4 All local boards of directors, branch offices, agencies, local directors, agents, officers, clerks, servants and workmen whether in Australia or elsewhere shall at all times be under the control and government of the Directors.

57.5 The Directors may from time to time and at any time delegate to any person appointed pursuant to Article 57.2 any of the powers authorities and discretions for the time being vested in the Directors other than the power of making calls and may authorise the members for the time being of any local board of directors or any of them to fill any vacancies therein and to act notwithstanding such vacancies.

57.6 Any appointment made pursuant to Articles 57.2 and 57.5 shall be made on such terms and subject to such conditions as the Directors may think it.

57.7 The Directors may at any time remove any person appointed pursuant to Articles 57.2 and 57.5 and may annul or vary any delegation of their powers to persons so appointed.

57.8 Any person appointed pursuant to Articles 57.2 and 57.5 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in him.

57.9 The Directors may exercise the powers conferred on the Company by the Law, and may cause to be kept in any other State, colony or country in which it transacts business a branch register of members resident therein. The Directors may make such provisions as they deem fit with respect to the keeping of such branch register, and may do whatever they consider necessary to comply with any local law.

57.10 Whenever any Director shall be in any place where there is a local board of directors, he shall be entitled to act and vote at all meetings of the local directors.

58. ATTORNEYS FOR COMPANY

58.1 The Directors may from time to time by resolution, power of attorney or writing whether under common seal or otherwise appoint any corporation, firm, or person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or agent of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as they may think fit, and any such appointment may contain such provisions for the protection and convenience of persons dealing with any such attorney or agent as the Directors may think fit and may also authorise any such attorney or agent to delegate all or any of the powers, authorities, and discretions vested in him.

58.2 The Directors may appoint local directors or agents by facsimile, email or other form of visible communication in cases of urgency to act for and on behalf of the Company.

59. EXECUTION OF DOCUMENTATION BY COMPANY

59.1 The Company shall not be required to have a common seal.

59.2 If the Company has a common seal it shall contain:

- (a) the name of the Company; and
- (b) its Australian Company Number.

59.3 The Directors shall provide for the safe custody of any common seal and any duplicate of the Company as they shall think fit. No document, writing or other material shall be executed by the Company except pursuant to the authority of the Board of Directors or of a committee of the Directors authorised in that behalf or as otherwise permitted under the Law.

59.4 Without limiting the manner in which the Company may execute any agreement, deed, share certificate (if any) or other document, the Company may execute any such document either with or without the use of a common seal. Every document which is executed shall be signed by either two Directors or alternatively a Director and the Secretary.

59.5 The Directors may by resolution determine either generally or in any particular case that the signature of any Director, Secretary or other person appointed by the Directors for the purpose of signing any instruments or documents which may need to be executed by the Company is affixed by some mechanical means (to be specified in the resolution of the Directors) PROVIDED THAT the use of such means is by such resolution restricted to instruments and documents which bear evidence of examination by the Company's Auditors.

60. BILLS OF EXCHANGE

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

61. SECRETARY

61.1 The Secretary shall in accordance with the Law be appointed by the Directors for such term, at such remuneration, and upon such conditions as they may think fit and any Secretary so appointed may be removed by them.

61.2 The Directors may appoint an acting Secretary as temporary substitute for the Secretary. Whilst exercising such office the Acting Secretary shall be deemed to be the Secretary for the purpose of this Constitution.

61.3 The Directors may also appoint Assistant Secretaries.

62. PUBLIC OFFICER

The Directors shall appoint a public officer to the Company and may if they think fit remove such person from office and appoint another in his place.

63. RESERVES

63.1 The Directors may before recommending any dividends whether preferential or otherwise set aside out of the profits or other surplus assets of the Company including any premiums received upon the issue of shares, securities or obligations of the Company such sums as they may think fit as reserves.

63.2 Subject to the provisions of the Law, all sums set aside as reserves may be applied from time to time in the discretion of the Directors for:

- (a) meeting depreciation;
- (b) meeting contingencies;
- (c) repairing, improving or maintaining the property of the Company;
- (d) special dividends;
- (e) bonuses;
- (f) equalising dividends;
- (g) paying dividends, if the profits of the Company are insufficient for that purpose; or
- (h) such other purposes as the Directors in their absolute discretion think proper and conducive to the interest of the Company or which may be required by law.

63.3 The Directors may divide such reserves into separate funds as they shall think fit.

63.4 The Directors may, pending any application of reserve sums as provided in Article 63.2:

- (a) invest such reserve sums upon such investments and securities (other than shares of the Company or of its holding company) as they may think fit;
- (b) place such reserve sums or part thereof either upon deposit or at call at interest with any bank or banking institution or with any corporation receiving money on deposit;
- (c) from time to time deal with and vary any such investments and securities and dispose of all or any part thereof for the benefit of the Company; or
- (d) divide the reserve fund into such special funds as they may think fit.

63.5 The Directors shall have full power to employ any asset or assets constituting the reserves of the Company or any part thereof in the business of the Company without being bound to keep same separate from the other assets of the Company.

63.6 Any interest or other income derived from or accretions to such investments or securities shall be dealt with as profits arising from the business of the Company.

- 63.7 The Directors may re-value any assets of the Company.
- 63.8 The Directors may also without transferring same to a reserve carry forward any profits which they consider ought not to be distributed as dividends.

64. **DIVIDENDS**

- 64.1 Subject to the provisions of Article 63 and to the special conditions or rights (if any) as to dividend attaching to any shares, the profits of the Company which a Meeting of the Company on the recommendation of the Directors shall determine from time to time to distribute by way of dividend shall be applied in payment of dividends upon the shares of the Company in proportion to the amounts paid up on such shares respectively at the date of declaration of the dividend.

[See LR6.11].

- 64.2 If any capital is paid up on any share in advance of calls or otherwise on the footing that the same shall carry interest, such capital whilst carrying interest shall not confer a right to participate in profits.

[See LR6.11].

- 64.3 All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is declared PROVIDED THAT if any share is issued on terms providing that it shall rank for dividend as from a particular date that share shall rank for dividend accordingly.

- 64.4 The Company in Meeting may declare dividends, but no dividend shall exceed the amount recommended by the Directors.

- 64.5 The Directors may from time to time declare and pay to the members such interim dividends as appear to the Directors to be justified by the profits of the Company.

- 64.6 No dividend shall be paid otherwise than out of the profits or shall bear interest against the Company.

- 64.7 A declaration by the directors as to the amount of the profits available for dividend shall be conclusive and binding on all members of the Company.

- 64.8 The Directors may determine that any dividend declared or recommended by them shall be made payable out of any particular profits (whether current, past or reserved profits) or otherwise as they in their discretion shall think fit, subject however to any requirements of law in relation to amounts held in share premium reserves, capital redemption accounts or other special funds.

- 64.9 A transfer of shares shall not pass the right to any dividend declared thereon after such transfer and before the registration of the transfer.

- 64.10 All dividends and interest shall belong and be paid (subject to any lien or charge) to those members who shall be on the Register at the date on which such dividend shall be declared payable, or at the date on which interest shall be payable respectively, notwithstanding any subsequent transfer or transmission of shares, PROVIDED THAT the Directors may retain any dividend payable on a share in respect of which any person is entitled pursuant to Article 19 to become a member or which any person is entitled to transfer pursuant to that Article, until such person shall become a member in respect of such share or shall duly transfer the same as the case may be.

- 64.11 The Directors may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the Company on account of calls or otherwise in relation to the shares of the Company.
- 64.12 Any one of the several persons who are registered as the joint holders of a share may give an effectual receipt for any dividends, payments on account of dividend, bonuses or other money payable in respect of the share so held.
- 64.13 Any dividend, interest, or other money payable in cash in respect of shares and/or Debt Securities may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the Register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.
- 64.14 Notice of declaration of dividend whether interim or otherwise shall be given in the manner specified in Article 81 hereof to the persons entitled to share therein.
- 64.15 All dividends unclaimed after having been declared may be invested and otherwise made use of by the Directors for the benefit of the Company until claimed and the Company shall not be constituted a trustee in respect thereof. This paragraph is subject to the provisions of Section 544 of the Law and the *Public Trustee Act, 1978*.

65. ELECTION TO FOREGO CASH DIVIDENDS

- 65.1 The Board may at its discretion and subject to the provisions of this Article decide (at the same time as it resolves to pay or to recommend any dividend on the ordinary shares) that each holder of ordinary shares to the extent that his ordinary shares are fully paid shall have the option to elect to forego his right to share in such dividend and to receive instead an issue of ordinary shares credited as fully paid to the extent and within the limits and on the terms and conditions set out below.
- 65.2 If the Board resolves to allow such option in relation to any dividend, each holder of fully paid ordinary shares conferring a right to share in such dividend may, by notice in writing to the Company (herein called a "Notice of Election"), given in such form and within such period as the Board may from time to time decide, elect to forego (subject to the provisions of Article 65.3) the dividend which otherwise would have been paid to him on such of his ordinary shares conferring a right to share in such dividend as he shall specify in the Notice of Election and to receive in lieu thereof ordinary shares, to be allotted and issued to him credited as fully paid, so that the number of such shares so allotted and issued shall be the whole number next below the sum calculated by the formula:

$$\frac{S \times D}{C}$$

Where: S = the number of ordinary shares in respect of which such election has been made;

D = the number of the dividends, payable on one such ordinary share as if no such election had been made (expressed in terms of cents and fractions of a cent) less the amount of such dividend (if any) per ordinary share which the Board have (pursuant to Article 65.3) resolved that the holders of such ordinary shares shall not be permitted to forego; and

C = the higher of the par value of one ordinary share or the average of the middle market quotation for one fully paid registered ordinary share (expressed in terms of cents and fractions of a cent) as shown in the daily Official List published by the Exchange for the five (5) business days

immediately following the day on which the Board announces an intention to pay or resolve to recommend any dividend on the ordinary shares after deducting, where such prices include the amount of the dividend to be foregone, the amount of such dividend to be foregone.

- 65.3 A shareholder entitled to elect as aforesaid shall not be permitted to forego under the provisions of Article 65.2 such amount of dividend per share as the Board in its sole discretion may resolve shall not be foregone.
- 65.4 Following the receipt of a duly completed Notice or Notices of Election pursuant to Article 65.2 the Board shall appropriate from the Share Premium Reserve or such other reserve or account which may be conducted by a company and from which bonus shares may be distributed, an amount equal to the aggregate nominal amount of the ordinary shares to be allotted and credited as fully paid to those holders of ordinary shares who have given Notices of Election and shall apply the same in paying up in full the number of ordinary shares required to be so allotted. The ordinary shares so allotted and issued will rank *pari passu* with the existing fully paid ordinary shares and will rank for all dividends on ordinary shares declared after the date of such allotment.
- 65.5 The Board shall not exercise the power conferred on them by Article 65.1 unless the Company shall then have sufficient unissued shares capable of issue as ordinary shares and reserves to give effect to any elections which could be made under the terms of this Article.
- 65.6 The powers given to the Board by this Article are additional to the provisions for capitalisation of profits provided for by this Constitution.
- 65.7 The Board shall not exercise the power conferred on them by Article 65.1 in respect of any dividend payment which they resolve to make or recommend during the period commencing with the day following the conclusion of any annual general Meeting and terminating on the day preceding the commencement of the next following annual general Meeting unless the Company shall by ordinary resolution passed at a Meeting immediately preceding such period have approved the use of that power in respect of any such payment or recommendation by the Board in such period.

66. **DIVIDENDS IN SPECIE**

- 66.1 Any Meeting declaring a dividend or bonus may direct payment of such dividend or bonus wholly or partly by the distribution of specific assets, and in particular of paid up shares, debentures or debenture stock of the Company or of any other company or in any one or more of such ways, and the Directors shall give effect to such resolution.
- 66.2 Where any difficulty arises in relation to the distribution of assets as provided in Article 66.1, the Directors may settle such difficulty in such manner as they think fit and in particular may:
- (a) fix the value for distribution of the assets or any part thereof;
 - (b) determine that cash payments shall be made to any members upon the footing of the value so fixed or that fractions of less than ONE DOLLAR (\$1.00) may be disregarded in order to adjust the rights of all parties; and
 - (c) vest any such specific assets in trustees upon such trusts for the persons entitled to the dividend as may seem expedient to the Directors.

67. **EMPLOYEE BONUSES AND EMPLOYEE SCHEME**

- 67.1 The Directors may reserve out of the profits of the Company in any year a sum or sums of money, and distribute same or any part thereof as a bonus or bonuses among the

employees of the Company and the subsidiaries of the Company or any of them at such time and in such amounts and on such terms and conditions as the Directors may from time to time determine.

- 67.2 Subject to the provisions of this Constitution, this Constitution and the Listing Rules, the Directors may at their discretion introduce an employee scheme pursuant to which the Company may issue securities in the Company to employees of the Company.

[See LR's 7.37 & 10.14].

68. CAPITALISATION OF PROFITS

- 68.1 The Company at a Meeting may upon the recommendation of the Directors resolve:

- (a) that any part of the undivided profits of the Company which are available for distribution (including profits standing to the credit of any reserve other than the capital redemption reserve or of the profit and loss account or of the share premium account and profits arising from accretion in value as disclosed on revaluation of fixed assets) shall be divided and/or distributed as capital amongst such of the members as would be entitled to receive the same if distributed as dividends and in the same proportions; and/or
- (b) that all or any part of the profits referred to Article (a) be appropriated in or towards payment of the uncalled liability of such members on issued shares or debentures of the Company held by them, or be applied in paying up in full, either at par or at a premium, previously unissued shares or debentures of the Company all of which shall be distributed to the members entitled according to their respective rights, or partly in one way and partly in the other.

- 68.2 A capital redemption reserve fund may for the purposes of this Article be applied only in the paying up of unissued shares to be issued to members of the Company as fully paid bonus shares.

- 68.3 Whenever a resolution shall have been passed pursuant to the provisions of Article 68.1, the Directors shall in accordance with such resolution:

- (a) make all appropriations and applications of the undivided profits resolved to be capitalised; and
- (b) make all allotments and issues of fully paid shares or debentures, if any; and
- (c) generally to do all acts and things required to give effect to the resolution.

- 68.4 The Directors shall in carrying out their duties under Article 68.3 have full power to make such provision by payment in cash or otherwise as they think fit, for the case of shares or debentures becoming distributable in fractions.

- 68.5 Any payment or distribution of or in relation to capitalised profits to any members made pursuant to this Article shall be binding on and accepted by such members in full satisfaction of their respective interests in such profits.

69. ACCOUNTS

- 69.1 The Directors shall cause the Company to:

- (a) keep such accounting records as correctly record and explain the transactions (including any transactions as trustee) and financial position of the Company;

- (b) keep its accounting records in such a manner as will enable true and fair accounts of the Company to be prepared from time to time; and
 - (c) keep its accounting records in such manner as will enable the accounts of the Company to be conveniently and properly audited in accordance with the Law.
- 69.2 Subject to any law to the contrary, the Directors shall lay before each annual general meeting of the Company:
- (a) a duly audited balance sheet made up to the end of the Company's financial year giving a true and fair view of the state of affairs of the Company as at the end of that financial year; and
 - (b) a duly audited profit and loss account for the last financial year of the Company, being a profit and loss account that gives a true and fair view of the state of affairs of the Company as at the end of that financial year,

such balance sheet and profit and loss account to comply with the requirements of the Law.

70. **DIRECTORS REPORT**

The Directors of the Company shall cause to be attached to every balance sheet a report made in accordance with a resolution of the Directors and signed by not less than two (2) of the Directors with respect to the profit and loss of the Company for that financial year and the state of the Company's affairs as at the end of that financial year, stating the matters required by the Law.

71. **DISTRIBUTION OF ACCOUNTS**

- 71.1 A printed copy of such profit and loss account, balance sheet and report, together with such other material as is required to be sent by Section 314 of the Law, shall be sent direct to every person entitled to receive notice of Meetings of the Company at least fourteen (14) days before the date of the Meeting at which they are to be considered.
- 71.2 A copy of such profit and loss account, balance sheet, report and such other material as is required to be sent by Section 314 of the Law shall be forwarded to the Home Branch at least fourteen (14) days before the date of the Meeting at which they are to be considered, together with additional copies of all such material as the Company shall be obliged to provide pursuant to the terms of the Listing Rules.
- 71.3 The Company shall (when it is obliged under the Law to lodge annual financial statements) provide the Home Branch with a copy of those documents at the same time as they are lodged with the Commission.

[See LR4.5].

72. **INSPECTION OF BOOKS OF ACCOUNT**

- 72.1 The books of account and records shall be kept at the Office of the Company or at such other place or places as the Directors think fit and shall at all times be open to inspection by the Directors of the Company or of any holding company of the Company.
- 72.2 Subject to the provisions of the Law the Directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the books of account and records of the Company or any of them shall be open to the inspection of the members.
- 72.3 No member, not being a Director, shall be entitled to inspect any accounts, records, books or documents of the Company except as provided by the Law or authorised by the Directors pursuant to Article 72.2 or by a resolution of the Company at a Meeting.

73. ACCOUNTS CONCLUSIVE

Every account of the Company (including any consolidated accounts of the Company and its subsidiaries and/or holding company if any) when audited and approved by a Meeting shall be conclusive.

74. AUDIT

74.1 An Auditor or Auditors shall be appointed in accordance with the Law and his or their duties shall be regulated in accordance with the Law.

74.2 The Auditor shall report to the members on the accounts to be laid before the Company at a Meeting and on the Company's accounting records relating to those accounts and, if the Company is a holding company for which group accounts are required by the Law, the Auditor of the Company shall also report to the members on the group accounts.

74.3 Any person who is:

- (a) a Director of the Company;
- (b) an officer of the Company;
- (c) a partner, employer or employee of a Director or officer of the Company;
- (d) a partner, employer or employee of an employee of a Director or officer of the Company;
- (e) not a registered company auditor; or
- (f) indebted in any amount exceeding FIVE THOUSAND DOLLARS (\$5,000.00) to the Company or to a related corporation,

shall not be capable of being appointed or of acting as Auditor of the Company.

74.4 A copy of an Auditor's qualified report which in the opinion of the Auditor so stated in his report should be made known to shareholders shall be supplied forthwith by the Directors to the Home Branch.

74.5 The Company's Share Register and branch registers (if any) shall be audited at such times as are required by the Listing Rules.

[See LR8.16].

75. BUY-BACK ARRANGEMENTS

The Company may, so far as is permitted by law, buy securities in itself under arrangements provided for under the Law from time to time and shall be entitled to give financial assistance to any entity for the purpose of promoting such arrangements provided however that the requirements of the Listing Rules and the Law are satisfied in respect of any such arrangement.

[See LR7.29].

76. SALE OF LESS THAN MINIMUM HOLDING

76.1 This Article has effect notwithstanding any other provision of this Constitution, either express or implied, to the contrary and shall override the same to the extent of any inconsistency.

76.2 In this Article:

"Continuation Election" means an election by a Small Holder contained on or enclosed with a Continuing member Notice notifying the Company that this Article is not to apply to that Small Holder so that that Small Holder may remain as the holder of the securities registered in its name;

"Continuing member Notice" means a notice issued pursuant to Article 76.3 below;

"Election Deadline" means 5.00pm (Brisbane time) on a date specified in a Continuing member Notice, being a date not less than six (6) weeks after the date of dispatch of that Continuing member Notice;

"Minimum Holding" means a holding of securities the maximum of which shall be one marketable parcel of securities, of the same class in the Company at the time of reference as determined by the Board from time to time;

"Small Holders" means persons registered, either alone or jointly with any other persons, as the holders of less than a Minimum Holding.

76.3 Subject to the provisions of this Article, the Board may determine no more than once in any twelve (12) month period, to require all (and not merely some) of the Small Holders of any class of securities in the Company to elect whether they wish to remain as the holders of the securities of that class in the Company registered in their name by:

- (a) forwarding to each such Small Holder (including all persons registered jointly) a Continuing member Notice containing or enclosing:
 - (i) details of the securities of that class in the company held by the Small Holder;
 - (ii) statements to the effect that:
 - (A) the Company intends to invoke the provisions of this Article which allows for the sale of securities of that particular class held by all Small Holders in the Company;
 - (B) if any such Small Holder does not forward a Continuation Election signed in accordance with the instructions contained therein so as to be received by the Company by the Election Deadline, the Company will be, subject to this Article, entitled to sell the securities of that particular class held by those particular Small Holders in its absolute discretion; and
 - (C) in the case of a member whose securities are in a CHESS holding shall advise that the Company may, without further notice, after the Election Deadline, move the securities from the CHESS holding to an Issuer Sponsored or certificated holding for the purpose of sale.
 - (iii) Continuation Election;
 - (iv) a reply-paid envelope;
 - (v) a copy of the text of this Article; and
 - (vi) any other information which the Directors may desire to include; and
- (b) lodging, on the same day as the Continuing member Notices are despatched, for publication in a newspaper circulating generally throughout Australia a notice including statements to the effect of those specified in Article (a)(ii) hereof.

- 76.4 After the Election Deadline has expired, the Company shall be entitled to sell, subject to this Article, all securities in the Company held by Small Holders of the particular class in respect of which Continuing member Notices were dispatched and for which the Company did not receive a Continuation Election signed in accordance with the instructions contained therein prior to the Election Deadline. Any such sale may be made on such terms and conditions, in such manner, at such prices and to such persons (including the Company itself where authorised by law) as the Board may in its absolute discretion think fit and, for the purposes of such sale, each such Small Holder shall be deemed to have appointed the Company as its agent and the Directors at the relevant time jointly and severally as its attorney in its name and on its behalf to effect a transfer of the securities so sold. Unless the securities are non-SCH-regulated any transfer of securities sold pursuant to this Article may be registered by the Company without the production of the certificates in respect of such securities.
- 76.5 Any transferee of any securities sold pursuant to this Article shall not be bound to see to the regularity of any procedure herein or to the application of the purchase consideration in respect of such sale nor shall any transferee be required to produce the certificates in respect of such securities to enable registration. Once the transferee has been registered as the holder of such securities his title shall not be affected by any irregularity or invalidity in any procedure hereunder and the only remedy of any Small Holder aggrieved by the sale of its securities shall be in damages only and against the Company exclusively and shall be limited to the amount of the sale consideration received (less any unpaid calls instalments or interest (if any) thereon).
- 76.6 The costs and expenses of any sale of securities pursuant to this Article (including legal costs and disbursements, brokerage and stamp duty) shall be borne and paid by the Company.
- 76.7 The sale consideration received for the sale of any securities (less any unpaid calls instalments or interest (if any) accrued thereon) shall be forthwith paid by the Company into a bank account opened and maintained for no other purpose and shall be held by the Company in trust for the Small Holder whose securities have been so sold. The Company shall then forthwith notify such Small Holder in writing that the relevant class of securities held by it have been sold and that the relevant sale consideration is being held by the Company pending the receipt by the Company of written instructions as to how such moneys are to be dealt with and, unless such certificates have been cancelled pursuant to this Constitution, the certificates in respect of such securities or evidence satisfactory to the Board that such certificates have been stolen lost or destroyed and have not been pledged sold or otherwise disposed of prior to their sale under this Article. The sale consideration for any securities sold pursuant to this Article shall be dealt with in accordance with Section 544 of the Law or the *Public Trustee Act 1978* (Qld) as the case may be.
- 76.8 Except where the securities are non-SCH-regulated securities the Company shall cancel all certificates relating to securities sold pursuant to this Article.
- 76.9 Notwithstanding any provision of this Article, either express or implied, to the contrary:
- (a) the Board shall not be bound to exercise the powers conferred by this Article and shall be entitled, at any time prior to a sale of securities being effected, to suspend or terminate its use by written notice to the Small Holders affected;
 - (b) the accidental omission by the Company to give any notice required under this Article or the non-receipt of any such notice by any Small Holder shall not invalidate any action undertaken in good faith pursuant to this Article;
 - (c) the Board may in its absolute discretion settle any ambiguity difficulty anomaly or dispute which may arise in relation to the operation of this Article;

- (d) no sale of any securities pursuant to this Article shall be commenced if prior to such sale a takeover bid (within the meaning of Section 9 of the Law) to acquire securities of the same class as the securities which are to be sold pursuant to this Article has either been announced as being intended to be made or has been made and is still open for acceptance; and
- (e) where a Continuing member Notice has been dispatched to any person who at a particular time was a Small Holder but, prior to the Election Deadline in relation thereto, that person acquires such number of securities in the Company of the same class in respect of which the Continuing member Notice was dispatched so that the total number of securities of that class to which the Small Holder is registered or is entitled to be registered becomes greater than or equal to a Minimum Holding of securities of that class and a transfer for such securities acquired has been lodged for registration with the Company, then this Article shall not apply to that in respect of that Continuing member Notice notwithstanding that that person may not have forwarded a continuation Election to the Company prior to the relevant Election Deadline in relation thereto.

76.10 This Article shall be subject to the potential operation of the Listing Rules or the SCH Business Rules (as the case may be) to the securities intended to be sold hereunder.

[See LR15.13].

77. FRACTIONAL ENTITLEMENTS AND DIFFICULTIES

The Board may determine as it thinks fit the manner in which fractional entitlements or any difficulties relating to distribution and adjustment of the rights of the members themselves are to be dealt with and, without limiting generality of the foregoing, may:

- 77.1 specify that fractions are to be disregarded or that any fractional entitlements are to be increased to the next whole number;
- 77.2 make cash payments in lieu of fractional entitlements or sell shares not divisible by reason of fractional entitlements and account for the net proceeds of sale to members entitled to such fractions proportionately;
- 77.3 fix the value for distribution of any specific assets or any part thereof;
- 77.4 vest any such cash shares or specific assets in trustees upon trusts for the persons entitled to the dividend or capitalised sum; or
- 77.5 appoint a person to sign a contract, on behalf of the members entitled to any further shares or debentures upon the capitalisation, with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised.

78. TAKEOVER APPROVAL PROVISIONS

Subject to the provisions of the Law where offers have been made for shares in the Company under a takeover scheme as defined in the Law and each such offer relates to a proportion of these shares in the Company included in a class of shares being a proportion that is the same in respect of each offer (herein called "the Takeover Scheme") the Directors shall refuse to register a transfer giving effect to a contract resulting from the acceptance of any offer pursuant to the Takeover Scheme unless the provisions of this Article have been complied with;

- 78.1 the Directors shall convene a Meeting of the Company to be held in accordance with this Constitution on a day which is not less than fifteen (15) days prior to the end of the period during which the offers made pursuant to the Takeover Scheme remain open:
- 78.2 at the Meeting referred to the members entitled to vote in accordance with Article 78.3 shall consider and vote on a resolution approving the Takeover Scheme which resolution shall be taken to have been passed if the votes cast in favour of the resolution exceed fifty per centum (50%) of all votes validly passed in respect of the resolution; and
- 78.3 for the purposes of the resolution referred to a person (other than the offerer under the Takeover Scheme or a person associated within the meaning of the Law with the offerer) who, as at 5.00pm on the day on which the first offer under the Takeover Scheme was made, held shares included in the class of shares the subject of the Takeover Scheme is entitled to vote and notwithstanding anything contained in this Constitution shall have one vote for each such share held.

79. **NOTICE TO HOLDERS LESS THAN A MINIMUM HOLDING**

- 79.1 In this Article:

"Minimum Holding" means a holding of 2,000 shares or other securities of the company or a Marketable Parcel of such shares or securities, whichever is the lesser; and

"Annual Reports, Accounts and Notices" means:

- (a) any notice of a general meeting of members or class of members and any explanatory memorandum or other documents accompanying any such notice; and
 - (b) the accounts statements and reports referred to in Article 69.
- 79.2 Notwithstanding any other provision of this Constitution to the contrary, a member holding less than a Minimum Holding shall not be entitled to receive Annual Reports, Accounts and Notices in respect of that holding in the event that such member has returned to the Company a duly completed Request for Suspension of Full Notice Rights as described in Article 79.3(d) below ("Request for Suspension of Full Notice Rights").
- 79.3 Upon any person becoming a member holding less than a Minimum Holding, the Company shall be entitled to give to that member (in the manner prescribed for the giving of notice of general meetings) the documents referred to below:
- (a) a written invitation to complete and return to the Company a Request for Suspension of Full Notice Rights;
 - (b) an explanation that, in the event that member returning to the Company a duly completed Request for Suspension of Full Notice Rights, he will not be entitled to receive Annual Reports, Accounts and Notices in respect of that holding and that such entitlement will be restored to the member forthwith upon return to the Company of a duly completed Request for Full Notice Rights as described in Article 79.4 ("Request for Full Notice Rights") at any time during which he is a member;
 - (c) an envelope, pre-printed with the address of the Registered Office of the Company, in which the Request for Suspension of Full Notice Rights may, should the member so desire, be mailed to the Company free of postage cost to the member;
 - (d) a form of Request for Suspension of Full Notice Rights as nearly as practicable in the following form:

Request for Suspension of Full Notice Rights

I/We

.....

(Full Name(s))

of

.....

(Address(es))

being the holder(s) of less than a Minimum holding in the Company, hereby advise pursuant to Article 79.3 of the Constitution of the Company that I/we wish to cease to receive all Annual Reports, Accounts and Notices to which I/we would be entitled were it not for the operation of Article 79.3.

.....

(Date)

(Signature of member (s))

79.4 A member who, by returning to the Company a duly completed Request for Suspension of Full Notice Rights, has ceased to be entitled to receive Annual Reports, Accounts and Notices shall have that right restored forthwith upon the Company receiving from that member a duly completed Request for Full Notice Rights at any time during which he is a member, and which Request for Full Notice Rights shall as nearly as practicable be in the following form:

MEDIGARD LIMITED ACN 090 003 044

Request for Full Notice Rights

I/We

.....

(Full Name(s))

of

.....

(Address(es))

being the holder(s) of less than a Minimum holding in the Company, hereby advise pursuant to Article 79.4 of the Constitution of the Company that I/we wish to receive all Annual Reports, Accounts and Notices to which I/we would be entitled were it not for the operation of Article 79.3.

.....

(Date)

(Signature of member (s))

79.5 Upon being requested to do so by a member, the company shall forward a Request for Full Notice Rights to the member in an envelope, pre-printed with the address of the Registered Office of the Company, in which the Request for Suspension of Full Notice Rights may, should the member so desire, be mailed to the Company free of postage cost to the member.

80. CONFIDENTIAL INFORMATION

80.1 No member, not being a Director, shall be entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret or secret process of or used by the Company.

80.2 Every Director, manager, trustee or member of a committee of the Company may be required by the Directors to sign a declaration pledging himself to observe strict secrecy respecting all transactions of the Company. Such a declaration may require the person so signing to pledge himself not to reveal any of the matters which may come to his knowledge in the discharge of his duties except when required to do so by the Directors or a member of a local board or by any Meeting of members or by a court of law and except so far as may be necessary in order to comply with any of the provisions in this Constitution.

80.3 A person who ceases to become a Director of the Company may, within a period of seven (7) years from the date of their cessation from office, be given access by the Company to materials referred to in Article 80.1 (which came into existence during the Director's term of office or arose from conduct during that term) upon the following terms and conditions:

- (a) a written request is made to the Company for access by the former Director (or his duly authorised representative) stating a reasonable and lawful purpose for the access as well as particulars of the documentation that the former Director is wishing to obtain access to;
- (b) the notice in Article (a) gives the Company a reasonable period of time prior to when access is requested;
- (c) the Company shall be entitled (acting at all times reasonably) to reject or postpone (as the case may be) any request for access on the basis that to provide access would impose an unreasonable burden on the Company's resources, having regard to the circumstances of the Company at the time;
- (d) the former Director provides the Company with an undertaking to meet all reasonable costs to be incurred by the Company in providing access; and
- (e) the former Director signs a declaration along similar terms to that contemplated by Article 80.2.

81. NOTICES

81.1 Any notice to be given by the Company under or in reference to this Constitution may be served on the person to be notified either personally or by sending it through the post in a prepaid letter envelope or wrapper to the person to be notified at his registered place of address.

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

81.3 Where a non-resident member has supplied an overseas facsimile or other electronic address to the Secretary, the Secretary shall endeavour to send by facsimile or other means of electronic communication to the facsimile or electronic address (as the case may

- be) a copy of any notice given to members but a failure to do so shall not affect the validity of any Meeting.
- 81.4 A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the Register in respect of the share and notice so given shall be sufficient notice to all the holders of such share.
- 81.5 Every person who by operation of law transfer or by other means whatsoever shall become entitled to any share shall be bound by every notice in respect of such share which, prior to his name and address being entered on the Register, shall have been duly given to the person from whom he derives his title to such share.
- 81.6 Any notice or document delivered or sent by post to or left at the registered address of any member pursuant to this Constitution shall, notwithstanding that such member be then deceased and whether or not the Company has notice of his decease, be deemed to have been duly served in respect of any share whether held by the member solely or jointly with other persons, until some other person be registered in his stead as the holder or joint holder thereof and such service shall for all purposes of this Constitution be deemed a sufficient service of such notice or document on his legal personal representatives and on all persons, if any, jointly interested with him in the share.
- 81.7 Any notice sent by post shall be deemed to have been served on the day following that on which the letter envelope or wrapper containing the same was posted.
- 81.8 In proving service of a notice by post it shall be sufficient to prove that the letter envelope or wrapper containing the notice was properly addressed stamped and posted. A certificate in writing signed by any manager Secretary or other officer of the Company that the letter envelope or wrapper containing the notice was so addressed and posted shall in the absence of evidence to the contrary be conclusive evidence thereof.
- 81.9 Subject to Article 81.12, any notices to be given under or in reference to this Constitution by the Company to any Director or vice versa may be given by facsimile, or other form of visible communication and shall be deemed to have been duly given when dispatched PROVIDED THAT:
- (a) in the case of a facsimile transmission, at the completion of the transmission the machine operated by the sender signifies that the transmission has been received; and
 - (b) in the case of any other form of visible communication, where the intended recipient of the notice has signalled receipt of same.
- 81.10 Where a given number of days' notice, or notice extending over any period is required to be given, the day on which the notice is deemed to be served shall be excluded but the day for which the notice is given shall be included in calculating the number of days or other period.
- 81.11 Subject to any provisions with respect to service in the Law or in the rules of any court in which proceedings are brought by the Company or its liquidator against any Director or member, all summonses, notices, process, orders and judgments in relation to any such proceedings may be served on such Director or member by registered post and the provisions contained in the foregoing paragraphs of this Article shall apply mutatis mutandis and such service shall be deemed for all purposes to be personal service.
- 81.12 Subject to Article 81.1, notice of every Meeting or, if required, any adjournments thereof shall be given in any manner hereinbefore authorised to:
- (a) every member;

- (b) every person entitled by transmission to vote under this Constitution; and
- (c) the Auditor for the time being of the Company.

82. OVERSEAS SHAREHOLDERS

82.1 Upon an issue of Equity Securities, the Directors may take such steps as are authorised from time to time by the Listing Rules and as they shall think fit to provide equitably in all the circumstances for the rights and interests of any Overseas Shareholder.

82.2 Documents for Overseas Shareholders shall be forwarded by air, by facsimile, by electronic transmission or in another way that ensures they will be received quickly.

[See LR15.10].

82.3 In this Article 82, "Overseas Shareholder" means a member of the Company who has not supplied to the Company an address within Australia pursuant to Article 81.1 and:

- (a) being an individual, the Directors have reason to believe is not resident in Australia; or
- (b) being a company, the Directors have ascertained that it is not registered in Australia.

83. INDEMNITY AND LIABILITY OF DIRECTORS AND OTHER OFFICERS

83.1 To the extent permitted by law, the Company shall:

- (a) indemnify a person who is or has been an Officer of the Company against liability incurred by the person as such an Officer to another person (other than the Company or a related body corporate); and
- (b) indemnify a person who is or has been an Officer or Auditor of the Company against liability for costs and expenses incurred by the person in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted or in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the *Corporations Act 2001 (Cwlth)*.

83.2 The Company may pay, or agree to pay, at the discretion of the Directors, a premium in respect of a contract insuring a person who is or has been an Officer of the Company against the liability incurred by the person as such an Officer, except for a liability arising out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 232(5) or (6) of the *Corporations Act 2001 (Cwlth)*. In the case of a Director, any such premium shall be paid in addition to any remuneration paid to that Director by the Company in accordance with the Constitution.

83.3 A person who ceases to become a Director of the Company may, within a period of seven (7) years from the date of their cessation from office, be given access by the Company to materials referred to in Article 83.1 (which came into existence during the Director's term of office or arose from conduct during that term) upon the following terms and conditions:

- (a) A written request is made to the Company for access by the former Director (or his duly authorised representative) stating a reasonable and lawful purpose for the access as well as particulars of the documentation that the former Director is wishing to obtain access to;
- (b) The notice in Article (a) gives the Company a reasonable period of time prior to when access is requested;

- (c) The Company shall be entitled (acting at all times reasonably) to reject or postpone (as the case may be) any request for access on the basis that to provide access would impose an unreasonable burden on the Company's resources, having regard to the circumstances of the Company at that time;
 - (d) The former Director provides the Company with an undertaking to meet all reasonable costs to be incurred by the Company in providing access; and
 - (e) The former Director signs a declaration along similar terms to that contemplated by Article 83.2.
- 83.4 For the purpose of this Article "Officer" shall have the meaning ascribed to that term in section 241 of the *Corporations Act 2001 (Cwlth)*.

84. **RESTRICTED SECURITIES**

- 84.1 Subject to Article 18.5, the Company shall refuse to acknowledge, deal with, accept or register any sale, assignment or transfer of Restricted Securities which is or might or might be in breach of the Listing Rules or any escrow agreement entered into by the Company under the Listing Rules in relation to the Restricted Securities.

[See LR15.12].

- 84.2 In the event of a breach of any escrow agreement entered into by the Company under the Listing Rules in relation to shares which are classified under the Listing Rules or by the Home Branch as Restricted Securities, the member holding the shares in question shall to the extent permitted by law cease to be entitled to any dividends and to any voting rights in respect of those shares for so long as the breach subsists.

See LR15.12.3].

85. **WINDING UP**

- 85.1 In this Article the term "surplus assets" shall mean those assets of the Company which, upon the winding up of the Company, remain after the payment of debts and liabilities of the Company and of the costs of winding up.
- 85.2 Subject to Article 85.3 hereof, upon the winding up of the Company the surplus assets shall, subject to the terms and conditions upon which any shares have been issued, be distributed as follows:
- (a) firstly, in repayment of paid-up capital in accordance with the respective rights of the members; and
 - (b) secondly, the balance then remaining shall be distributed among the ordinary members in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the shares held by them respectively other than amounts paid in advance of calls.
- 85.3 If the surplus assets shall be insufficient to repay the whole of the paid-up capital, such assets shall be distributed, subject to the provisions of Article 85.4, so that as nearly as may be the losses shall be borne by the members in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up on the shares held by them respectively, but disregarding amounts paid in advance of calls.
- 85.4 If the Company is wound up, whether voluntarily or otherwise, then, subject to the rights of holders of shares issued on special conditions, the liquidator, with the sanction of a special resolution, may divide in specie among the contributories of the Company any part of the surplus assets of the Company and in particular, any shares stocks or debentures of any

other company to which the Company may be entitled and, with the like sanction, may vest any part of the surplus assets of the Company in trustees on such trusts for the benefit of the contributories or any of them as the liquidator with the like sanction shall think fit.

- 85.5 Any division under Article 85.4 may, if thought expedient by the liquidator, be otherwise than in accordance with the legal rights of the contributories of the Company and in particular any class may be given preference or special rights or may be excluded altogether or in part PROVIDED THAT if any division otherwise than in accordance with the legal rights of the contributories shall be determined on, any contributory who would be prejudiced thereby shall have a right of dissent and ancillary rights as if such determination were a special resolution passed pursuant to the Law.
- 85.6 In case any of the surplus assets to be distributed pursuant to Article 85.4 are shares upon which there is a liability to calls or otherwise, any person entitled under such distribution to any of the said shares may within ten (10) days after the passing of the special resolution by notice in writing direct the liquidator to sell his proportion and pay him the net proceeds and the liquidator shall act accordingly if practicable.
- 85.7 No remuneration shall be paid by the Company to any Director or liquidator upon any sale or realisation of the Company's undertaking or assets or any part thereof except with the prior sanction of a Meeting convened by at least seven (7) days' notice specifying the remuneration proposed to be paid.

86. SUPPLY OF DOCUMENTATION TO EXCHANGE

The Company shall supply to the Exchange all documentation required by the Listing Rules or otherwise to be lodged with the Home Branch or released or issued by the Company for the information of holders of any of the Company's securities in accordance with the manner prescribed in the Listing Rules.

[See LR's 3.17, 15.2 through 15.7].

87. SALE OF MAIN UNDERTAKING

Any sale or disposal of the Company's main undertaking shall be conditional upon approval by shareholders at a Meeting. At the Meeting held to approve any sale or disposal, any person who may benefit (in a capacity other than only as a security holder of the Company) from the sale or disposal and any person who for the purposes of Division 2 of Part 1.2 of the Law would be regarded as a person associated with that person shall not vote on the resolution.

[See LR11.2].

88. LISTING AND SCH BUSINESS RULES

- 88.1 In the event of the Company being admitted to the Official List of the Exchange, and for so long as the Company remains admitted to the Official List of the Exchange, the following provisions shall apply:
- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
 - (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
 - (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a "provision" this Constitution is deemed to contain that provision;

- (e) if the Listing Rules require this Constitution not to contain a provision and this Constitution contain such a provision, this Constitution is deemed not to contain that provision; and
 - (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
- 88.2 This Constitution (other than Article 88.1) is also to be read as subject to the SCH Business Rules and in the case of any inconsistency between any Article (other than Article 88.1) and any provision of the SCH Business Rules, the provisions of the SCH Business Rules shall prevail and the Article should be read down accordingly PROVIDED ALWAYS THAT the provisions of Article 88.1 shall be paramount and given full force and effect and notwithstanding any inconsistency between any Article or any provision of the SCH Business Rules.

[See App15A of the LR's].