

A COMPANY LIMITED BY GUARANTEE

CONSTITUTION

- of -

HERBERT CANE PRODUCTIVITY SERVICES LTD

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A COMPANY LIMITED BY GUARANTEE

CONSTITUTION

of

HERBERT CANE PRODUCTIVITY SERVICES LTD

1. GENERAL

1.1 Name of Company

The name of the Company is Herbert Cane Productivity Services Ltd.

1.2 Replaceable Rules

The Replaceable Rules do not apply to the Company.

2. DEFINITIONS & INTERPRETATION

2.1 Definitions

In these Rules unless it is inconsistent with the subject or context in which it is used:

‘**Act**’ means the *Sugar Industry Act 1999 (Qld)* as modified or substituted from time to time;

‘**Authority to Deduct and Receive Farm Plan**’ means an authority (in a form acceptable to the Board and Wilmar Sugar) by the Holder of a Farm for Wilmar Sugar to deduct from monies periodically due from Wilmar Sugar to the holder of the Farm for payment of a Grower Levy, determined annually by the Board, and authorising Wilmar Sugar to remit the amount deducted to the Company and to obtain an updated copy of the relevant Farm Plan;

‘**Board**’ means the elected Grower Directors and the appointed Mill Directors of the Company;

‘**Business day**’ means a day on which banks (as that term is defined in the *Banking Act 1959*) are open for business in Ingham;

‘**Chairman**’ means the person elected pursuant to Rule 11.6 and includes an acting Chairman under Rule 9.5;

‘**Committee**’ means a committee to which powers have been delegated by the Board pursuant to Rule 16.6;

‘**Company**’ means Herbert Cane Productivity Services Ltd ACN 100 551 826;

‘**Constitution**’ means the constitution of the Company, as amended from time to time;

‘**Director**’ means a person elected or appointed as a Director of the Company or to perform the duties of a Director;

‘**Farm**’ means an area from which a Grower grows and supplies cane to the Mill;

‘**Farm Plan**’ means the plan showing for a date or period the boundaries of the land included as the supply area, including fallow land, of the Farm;

‘**Farm Plan Area**’ means the area of land in a Grower’s Farm Plan, expressed in hectares;

‘**Grower**’ means a person who is the Holder of a Farm who grows and supplies cane to the Mill, or t

‘**Grower Director**’ means a person elected or appointed as a Grower Director by Grower Members;

‘Grower Levy’ means the levy set by the Board from time to time and payable by each Grower Member to the Company each year at the time specified by the Board;

‘Grower Member’ means a Grower who becomes a Member;

“Grower’s Nominee” means a person who is directly employed by a Grower for more than 14 days per calendar year and nominated in writing to act on behalf of a Grower.

‘Herbert area’ means the Mill cane growing area or as the Board may later determine;

‘Holder of a Farm’ means a holder of a Farm;

‘Independent Director’ means a Director with specialised knowledge appointed by the Directors of the Company;

‘Law’ means the *Corporations Act 2001* and the *Corporations Regulations* (as defined in the *Corporations Act 2001*);

‘Macknade’ means the factory or sugar works owned and operated by Wilmar Sugar situated at Mill Road, Macknade via Ingham, Queensland;

‘Member’ means any person who becomes a member of the Company in accordance with the Law and this Constitution; **‘Members present’** means Members present in person at a general meeting of the Company in person or, if applicable, by duly appointed corporate representative, proxy or attorney;

‘Mill’ means the Macknade and Victoria factories;

‘Mill Member’ means a party admitted as a Member under Rule 5.3;

‘Mill Director’ means a Director appointed by the Mill Member;

‘Office’ means the registered office from time to time of the Company;

‘person’ and words importing persons include partnerships, associations and corporations unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals;

‘Register’ means the register of Members of the Company established pursuant to the Law;

‘Registered address’ means the address of a Member specified in the Register or any other address of which the Member notifies the Company as a place at which the Member will accept service of notices;

‘Replaceable Rules’ means all or any of the Replaceable Rules contained in the Law from time to time and includes any Replaceable Rule that was or may become, a provision of the Law;

‘Rules’ means the Rules of this Constitution as altered or added to from time to time;

‘Seal’ means the common seal, if any, from time to time of the Company;

‘Secretary’ means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary;

‘securities’ includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity;

‘Victoria’ means the factory or sugar works owned and operated by Wilmar Sugar situated at Forrest Beach Road, Victoria Estate, Queensland;

‘Wilmar Sugar’ means Wilmar Sugar Pty Ltd ACN 081 051 792 (owner of Macknade and Victoria Mills) and includes its related bodies corporate, its assignees or successors;

‘writing’ and **‘written’** includes printing, typing, lithography and other modes of reproducing words in a visible form;

2.2 Interpretation

- (a) An expression used in a particular Part, Division, Schedule or regulation of the Law that is given by that Part, Division, Schedule or regulation a special meaning for the purpose of that Part, Division, Schedule or regulation has, in any of these Rules that deals with a matter dealt with by that Part, Division, Schedule or regulation, unless the contrary intention appears, the same meaning as in that Part, Division, Schedule or regulation.
- (b) Words in the singular include the plural and vice versa.
- (c) Words importing a gender include each other gender.
- (d) A reference to the Law or any other statute or regulations is to be read as though the words 'as modified or substituted from time to time' were added to the reference.
- (e) The headings and sidenotes do not affect the construction of these Rules.

3. OBJECTS AND POWERS

3.1 Object of the Company

The primary object for which the Company is established is to enhance the productivity of the sugar industry by increasing the quantity and improving the quality of the cane produced by crops grown in the Herbert area and any other areas determined by the Board from time to time.

3.2 Secondary objects of the Company

The secondary objects for which the Company is established are:

- (a) to cooperate, partner with or help, in any way, any other body involved in the enhancement of productivity within the Herbert area;
- (b) provide advice and information to Members about any matter relevant to the enhancement of productivity in the Herbert area in a sustainable manner, minimising environmental impacts;
- (c) to cooperate in the development of and take an active interest in the securing of rational legislation and rules to regulate the sugar industry; and
- (d) to act commercially in the discharge of its functions.

3.3 Powers of the Company

In carrying out its objects the Company may, without limiting its powers under the Law:

- (a) enter into contracts;
- (b) acquire, hold, dispose of and deal with property;
- (c) appoint and act through agents or attorneys; and
- (d) do anything else necessary or convenient to be done for the performance of its objects or functions.

3.4 No power to issue shares

The Company has no power to issue or allot fully or partly paid shares to any person.

4. NON-PROFIT NATURE OF THE COMPANY

4.1 Non-profit

- (a) The income, property, profits and financial surplus of the Company, whenever derived, must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.

- (b) The Company is a non-profit organisation and shall not carry on business for the purpose of profit or gain to its individual Members and no portion of its income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, or the Board, or his/her relatives, except as provided by this Constitution.
- (c) Nothing in this Constitution prevents:
 - (i) the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any Member or Director of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
 - (ii) the payment of interest at a rate not exceeding interest at the rate for the time being charged by the Company's bankers for overdrawn accounts on money borrowed from a Member; or
 - (iii) reasonable and proper rent for premises demised or let by any Member to the Company.

4.2 No distribution of profits to Members on winding up

Where property remains after the winding-up or dissolution of the Company and satisfaction of all its debts and liabilities, it may not be paid to nor distributed among the Members but must be given to or transferred to another company, body, fund, authority or institution having objects similar to the objects of the Company, and whose Constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under or by virtue of this Constitution, which company, body, fund, authority or institution is to be determined by the Members at or before the time of the dissolution.

4.3 Limited liability on winding up

Each Member undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Member or within one year after he ceases to be a Member for the payment of the debts and liabilities of the Company contracted before he/she ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributors among themselves such amount as may be required, not exceeding \$2.00.

5. MEMBERSHIP

5.1 Classes of membership

Until otherwise determined by the Members in general meeting there shall be two classes of Members; namely, Grower Members and Mill Members.

5.2 Grower Members

- (a) The Board may from time to time in its absolute discretion admit to Grower Membership of the Company any person who is more than 18 years of age and who is either a Grower or Grower's Nominee
- (b) Every application for Grower Membership must be in writing signed by the applicant and in such form as the Board determines.
- (c) Each applicant must fully describe the Farm registered in his/her name when submitting his/her application including a statement of his/her Farm Plan Area and a copy of his/her Farm Plan, if requested, current at the time of the application.
- (d) Every applicant must complete an 'Authority to Deduct and Receive Farm Plan' and deliver it to the Board. Such 'Authority to Deduct and Receive Farm Plan' shall only be capable of revocation if the Member has given the Company not less than 12 months' notice in writing

expressing an intention to revoke the 'Authority to Deduct and Receive Farm Plan', unless the Board agrees to a shorter period of notice.

- (e) No entrance fee shall be payable in respect of an application for membership received by the Company.
- (f) Notwithstanding paragraph (d) of this Rule, the Board may in its absolute discretion admit or reject any applicant for Grower Membership without the necessity of assigning any reason therefore.
- (g) A Grower Member has the right to receive notice of and attend general meetings of the Company and to vote at a general meeting of the Company in accordance with Rule 10.

5.3 Mill Member

- (a) Upon receipt of a written application for membership from Wilmar Sugar, Wilmar Sugar shall become the Mill Member.
- (b) The Mill Member has the right to receive notice of and attend general meetings of the Company, to vote at any general meeting of the Company and to appoint Mill Directors in accordance with Rule 11.4.

5.4 Eligibility

- (a) Only a Grower or the person in whose name the Farm is registered with Wilmar Sugar is eligible for Grower Membership.
- (b) Membership is available to an individual, partnership, a corporation or its nominee.
- (c) A Grower Member is only eligible to remain a Member while they remain a Grower and every Grower Member shall notify the Company within 28 days of ceasing to be a Grower or the Holder of a Farm.

5.5 Forfeiture and cancellations

- (a) The Board must declare the membership of a Grower Member cancelled if:
 - (i) the whereabouts of a Grower Member is not known to the Company despite its reasonable endeavours to ascertain his/her whereabouts, and not been known to the Company for a continuous 12 month period before the date of cancellation;
 - (ii) the Grower Member no longer has a Farm and has not had a Farm for a continuous 12 month period before the date of cancellation;
 - (iii) the Grower Member revokes his/her 'Authority to Deduct and Receive Farm Plan', or alters it so that it is no longer in a form acceptable to the Board; or
 - (iv) the Grower Member fails to provide the Company with a copy of his/her current Farm Plan by 30 June each year if a copy of his/her current Farm Plan has not otherwise been provided by Wilmar Sugar.
- (b) The Board must declare the membership of the Mill Member cancelled if it:
 - (i) no longer manufactures sugar or products from cane; or
 - (ii) is no longer recognised as a Mill owner under the Act; or
 - (iii) fails to contribute a levy to the Company each year equal to the total of the amounts received from Grower Members as annual levy or Grower Levy in the same year pursuant to the 'Authority to Deduct and Receive Farm Plan'.

5.6 Register of cancelled memberships

The Company must, in the approved form, keep a register of memberships cancelled under Rule 5.5, which must specify the reason for the cancellation.

5.7 Resignation

Subject to Rule 5.2(d), a Member may cease his or her membership by service of written notice to the Secretary of the Member's resignation from membership at least 12 months prior to the date on which the resignation is deemed by the Board to take effect. There shall be no refund of annual levies if any Member ceases his/her membership.

5.8 Reinstatement

- (a) Should a Member who had previously resigned in accordance with Rule 5.7 or otherwise, wish to rejoin as a Member, that Member must pay a reinstatement fee prescribed by the Board.
- (b) The Board shall not deal with any application to be reinstated as a Member unless the reinstatement fee payable in respect of an application for membership has been received by the Company. If the applicant is not reinstated to membership in due course, any reinstatement fee paid by him or her to the Company must be returned forthwith in full.

6. RIGHTS AND OBLIGATIONS

6.1 Amount of fees and subscriptions payable

The donation amounts, reinstatement fees and the annual levies or subscription fees for the Members are such amounts and are due at such times as the Board from time to time determines.

6.2 Variation of rights of Members

Whilst the membership is divided into different classes, the rights attached to any class (unless otherwise provided by the terms of application for membership of that class) may, whether or not the Company is being wound up be varied with the consent in writing of Members with at least 75% of the votes in the class, or with the sanction of a special resolution passed at a separate meeting of the Members of that class.

6.3 Provision of Farm Plan

Every Grower Member authorises the Company to obtain an updated copy of his/her relevant Farm Plan (or Plans).

6.4 Register of Farm Plan Areas

The Company will with appropriate consents use any register or database maintained by the Board or any other body corporate or organisation to compile a register of the Members of Farm Plan Areas. Each Grower Member is responsible for ensuring the details on the register of his/her Farm Plan Area are correct, so far as it is relevant.

7. FINANCIAL RECORDS

7.1 Keeping of financial records

- (a) The financial year of the Company commences on 1 July and ends on 30 June.
- (b) Proper books and financial records must be kept and maintained showing correctly the financial affairs of the Company. The Company must ensure there is due compliance with the relevant accounting and auditing requirements of the Law.
- (c) The Board must distribute to all Members at the end of each financial year, copies of the financial report including a copy of the auditor's report and any other documentation required under the Law.

- (d) The Board must cause to be made out and laid before each annual general meeting a statement of financial position, a statement of financial performance and a cash flow statement made up to a date not more than 6 months before the date of the meeting.

7.2 Banking of monies

All the monies of the Company shall be banked in the name of the Company in a bank account at such bank as the Board may from time to time direct.

7.3 Appointment of Auditor

The Company must appoint and retain a properly qualified auditor whose duties are determined in accordance with the Law. No Member may act as auditor of the Company.

7.4 Inspection of records of the Company

- (a) The Board may at its sole discretion determine whether and to what extent, and at what time and place and under what conditions the financial records and other documents of the Company or any of them will be open to the inspection of Members other than the Board.
- (b) No Member, other than the Directors, has the right to inspect any document of the Company except as provided by Law or as authorised by the Board.

8. GENERAL MEETINGS

8.1 General Meetings

- (a) General meetings of the Company may be called and held at the times and places and in the manner determined by the Board. Except as permitted by the Law, the Members may not convene a meeting of the Company. By resolution of the Board, any general meeting (other than a general meeting which has been requisitioned or called by Members in accordance with the Law) may be cancelled or postponed prior to the date on which it is to be held.
- (b) The Chairman of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:
 - (i) in possession of a pictorial-recording or sound-recording device;
 - (ii) in possession of a placard or banner;
 - (iii) in possession of an object considered by the Chairman to be dangerous, offensive or liable to cause disruption;
 - (iv) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
 - (v) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (vi) who is not:
 - (A) a Member or a proxy, attorney or, if applicable, a corporate representative of a Member;
 - (B) a Director; or
 - (C) the auditor of the Company.

8.2 Notice of General Meeting

- (a) Not less than 21 days notice of a general meeting must be given by the Board in the form and in the manner the Board thinks fit. Notice of meetings shall be given to the Members and to such persons as are entitled under these Rules or the Law to receive notice. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.

- (b) If the meeting is to be held at 2 or more places the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Law in relation to the use of such technology.

9. PROCEEDINGS OF MEETINGS

9.1 Business of General Meetings

- (a) The business of an annual general meeting is to receive and consider the financial and other reports required by the Law to be laid before each annual general meeting, when relevant to appoint an auditor, and to transact any other business which, under these Rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Except with the approval of the Board, with the permission of the Chairman or pursuant to the Law, no person may move at any meeting either:
 - (i) in regard to any special business of which notice has been given under Rule 8.2, any resolution or any amendment of a resolution; or
 - (ii) any other resolution which does not constitute part of special business of which notice has been given under Rule 8.2.
- (b) The auditors and his/her representative are entitled to attend and be heard on any part of the business of a meeting which concerns the auditors. The auditors or his/her representative, if present at the meeting, may be questioned by the Members, as a whole, about the audit.

9.2 Quorum

Twenty Grower Members and one Mill Member present in person or by proxy, attorney or duly appointed corporate representative shall constitute a quorum for a meeting except if the Company at any time has less than twenty Grower Members whereupon one half of the number of Grower Members and the Mill Member shall constitute a quorum for a meeting. No business may be transacted at any meeting except the election of a Chairman and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business.

9.3 Adjournment in absence of Quorum

If within 15 minutes after the time specified for a general meeting a quorum is not present, the meeting, if convened upon a requisition or called by Members, is to be dissolved, and in any other case it is to be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

9.4 Chairman

- (a) The Chairman of the Board is entitled to take the chair at every general meeting.
- (b) If at any general meeting:
 - (i) The Chairman of the Board is not present at the specified time for holding the meeting; or
 - (ii) the Chairman of the Board is present but is unwilling to act as Chairman of the meeting;the deputy Chairman of the Board is entitled to take the chair at the meeting.
- (c) If at any general meeting:
 - (i) there is no Chairman of the Board or deputy Chairman of the Board; or
 - (ii) the Chairman of the Board and deputy Chairman of the Board are not present at the specified time for holding the meeting; or

- (iii) the Chairman of the Board and the deputy Chairman of the Board are present but each is unwilling to act as Chairman of the meeting;

the Directors present may choose another Director as Chairman of the meeting and if no Director is present or if each of the Directors present are unwilling to act as Chairman of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

9.5 Acting Chairman

If during any general meeting the Chairman acting pursuant to Rule 9.4 is unwilling to act as chairman for any part of the proceedings, the Chairman may withdraw as chairman during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting chairman of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings, the acting chairman is to withdraw and the Chairman is to resume acting as chairman of the meeting.

9.6 General conduct of Meeting

Except as provided by the Law, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined by the Chairman. The Chairman may at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present. The Chairman may require the adoption of any procedure which is in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

9.7 Adjournment

The Chairman may at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairman exercises a right of adjournment of a meeting pursuant to this Rule, the Chairman has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chairman exercises that discretion, no vote may be taken by the Members present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

9.8 Voting

- (a) Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote. Subject to paragraph (b) of this Rule, in the case of an equality of votes, the Chairman has, both on a show of hands and at a poll, no casting vote in addition to the vote or votes to which the Chairman may be entitled as a Member or as a proxy, attorney or, if applicable, a duly appointed corporate representative of a Member.
- (b) On a show of hands, where the Chairman has 2 or more appointments that specify different ways to vote on a resolution, the Chairman can vote but does not have a casting vote in the case of an equality of votes cast by Members entitled to vote at the meeting.

9.9 Declaration of vote on a show of hands; when Poll demanded

- (a) At any meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Company signed by the Chairman of that or the

next succeeding 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. A poll may be demanded:

- (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) A poll may be demanded by:
- (i) the Chairman;
 - (ii) at least 2 Grower Members present entitled to vote on the resolution; or
 - (iii) a representative of the Mill Member.
- (c) No poll may be demanded on the election of a Chairman of a meeting.

9.10 Taking a Poll

If a poll is demanded as provided in Rule 9.9, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in respect of the dispute made in good faith is final.

9.11 Continuation of Business

A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

9.12 Special Meetings

All the provisions of these Rules as to general meetings apply to any special meeting of any class of Members which may be held pursuant to the operation of these Rules or the Law.

10. VOTES OF MEMBERS

10.1 Voting rights

- (a) Subject to paragraph (g), on a vote by a show of hands, each Grower Member present and voting will receive one vote.
- (b) Each Grower Member will, on a poll or in a postal ballot, be entitled to exercise one vote irrespective of the number of hectares or partial hectares in his/her Farm Plan.
- (c) If a Grower Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.
- (d) Subject to paragraph (e) of this Rule, where a person is entitled to vote in more than one capacity, that person is entitled only to one vote on a show of hands.
- (e) If the person appointed as proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands.
- (f) If a Grower Member holds his/her membership jointly with or in partnership with another person or persons arising out of the holding of a single Farm Plan Area, the person first recorded in the register shall be entitled to exercise the right to vote on behalf of all joint Grower Members in the absence of any authorisation in writing signed by the joint Grower Members to the contrary. In any instance where a membership is held jointly with or in

partnership with another person or persons and the first person recorded in the register is absent or unable to vote and in the absence of any authorisation in writing signed by the Grower Members to the contrary, the person next named in the register (or, as applicable, consequentially named thereafter) and who is present and able to vote shall be entitled to exercise the right to vote on behalf of all joint Grower Members.

- (g) In any instance where a Grower Member holds his/her membership jointly with or in partnership with another person or persons arising out of their holding more than one Farm, then, irrespective of the number of Farm's held, each such person shall, for the purposes of determining and exercising voting rights, on a show of hands, in a postal ballot or on a poll, be entitled to exercise one vote.
- (h) On a vote by a show of hands, the Mill Member shall have one vote. On a poll or a postal ballot, the Mill Member shall be entitled to exercise an equivalent number of votes to that represented by the total number of Grower Members. Notwithstanding any other provision of this Constitution, on the election of a Grower Director by postal ballot, the Mill Member shall not have a vote.

10.2 Appointment of Proxies

- (a) Any Member entitled to vote at a general meeting may appoint one proxy.
- (b) A proxy need not be a Member of the Company.
- (c) The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, faxed to the Office or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting, at least 48 hours (or a lesser period as the Board may determine and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.
- (d) No instrument appointing a proxy is, except as provided in this Rule, valid after the expiration of 12 months after the date of its execution. Any Member may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Company until revocation.

10.3 Voting by Corporation

Any corporation, being a Member and entitled to vote, may by resolution of its Directors or other governing body or by an instrument of proxy authorise any person, though not a Member of the Company, or any person occupying a particular office from time to time, to act as its representative, and such representative is, in accordance with his authority and until his authority is revoked by the corporation which he represents, entitled to exercise the same powers at meetings on behalf of the corporation which he represents as that corporation could exercise if it were a natural person who was a Member and exercise any other powers permitted to be exercised by a body corporate representative under the Law.

10.4 Validity of vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy or power of attorney in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind or revocation has been received at the Office before the meeting or any adjourned meeting. A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

10.5 Form and execution of Instrument of Proxy

An instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, under its common seal or signed by a duly authorised officer and in the form which the Board may from time to time prescribe to accept.

- (a) The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.
- (b) An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Law and the Board may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given provided that that Director is also entitled to vote at the general meeting as required by Rule 10.2(b).

10.6 Board to issue forms of Proxy

The Board may issue with any notice of general meeting of Members or any class of Members forms of proxy for use by the Members. Each form is to make provision for the Member to write in the name of the person to be appointed as proxy and may provide that, if the Member does not so write in a name, the proxy is to be a person named on the form. The form may include the names of any of the Directors or of any other person as a suggested proxy. The forms are to be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

10.7 Attorneys of Members

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

11. THE BOARD

11.1 The initial Board of Directors

The names of the first Directors are those persons named as Directors in the application for registration of the Company. Subject to the Law, the first Directors shall hold office for a three year period until the conclusion of the third annual general meeting of the Company in 2005. Thereafter the composition of the Board must satisfy Rules 11.2, 11.3, 11.4 and 11.5.

11.2 Number of Board Directors

- (a) Upon the conclusion of the 3 year term for each of the first Directors, the Board shall have the power to maintain, decrease or increase the number of Directors provided that at all times the minimum number of Directors shall be 4 and the maximum number of Directors shall be 12.
- (b) There shall be equal representation on the Board by Grower Directors and Mill Directors.

11.3 Grower Directors

- (a) Subject to Rules 11.1, 11.2, and 11.3(b), the Board must initially include a total of 3 Grower Directors, being Directors elected by the Grower Members. Notwithstanding any other Rule

in this Constitution, the number of Grower Directors may be varied such that less than 3 Directors may be elected.

- (b) A person is not qualified to be a Grower Director unless they are an individual, whether a Member of the Company or a representative of a corporate Member, and at least 18 years old.
- (c) Subject to the size and composition of the Board determined under Rule 11.3(a) in the event that only 3 nominations for the positions of Grower Directors are received, those 3 nominations will be accepted and the respective Grower Directors will be appointed automatically to the Board on behalf of the Grower Members, without the need for a formal election.
- (d) Subject to the size and composition of the Board determined under Rule 11.3(a), prior to the third annual general meeting of the Company, 3 Grower Directors shall be elected by postal ballot. The initial Grower Directors appointed to represent the Company shall hold office for a three year period until the third annual general meeting of the Company in 2005, prior to which they must retire.
- (e) Thereafter, subject to the Law, every 3 years each Grower Director must retire prior to the Company's annual general meeting.
- (f) A retiring Grower Director is eligible for re-election.
- (g) A Grower Director's resignation takes effect upon the dissolution of the annual general meeting in the year of his/her resignation.
- (h) The incoming Grower Directors commence office upon the dissolution of the annual general meeting at which the outgoing Grower Directors resign.
- (i) Postal ballots must be held in accordance with Rule 13 to elect Grower Directors.
- (j) No person is eligible for election as a Grower Director unless the person or a Member intending to nominate the person has given notice in writing signed by the nominee giving consent to the nomination. To be valid the notice must be left at the Company's registered office at least 28 days before the closing of the ballot.
- (k) The Board has the power at any time and from time to time to appoint a person as a Grower Director to fill a casual vacancy arising upon the resignation or retirement for whatever reason of a Grower Director. The appointee must be a Grower Member. Any person appointed under this Rule holds office until the next general meeting, prior to which an election by postal ballot must be held to fill the vacancy.

11.4 Mill Directors

- (a) Subject to Rule 11.2(b), three Directors appointed by Wilmar Sugar shall be included on the Board while it remains the Mill Member.
- (b) A person is not eligible for appointment by Wilmar Sugar unless he/she is an individual, at least 18 years old, and currently employed by Wilmar Sugar.
- (c) Subject to the Law, the Directors appointed to represent Wilmar Sugar must retire every 3 years where such resignation takes effect upon the dissolution of the annual general meeting in the year of his/her resignation.
- (d) Other than as provided in this Rule and Rule 13, a Mill Director is subject to all other Rules relating to Directors.
- (e) On the termination of the appointment of a Mill Director by death, retirement, resignation, expiry of term or in any other way, then the Company must ask Wilmar Sugar to appoint a new Director.
- (f) The appointment of a Mill Director does not require ratification by the Members of the Company.

- (g) If at any point the Board does not include 3 Mill Directors, any acts performed by the Board during that time are taken to have been validly performed.
- (h) A retiring Mill Director is eligible for re-appointment.

11.5 Independent Directors

- (a) The Board may include at least one person who is an Independent Director.
- (b) The Board may appoint any person or persons with special skills to be an Independent Director on the terms and conditions and for the period the Board may decide, and set the remuneration, benefits and allowances to be paid to an Independent Director for service as a Director subject to the Law.
- (c) A person is not eligible for appointment as an Independent Director unless he/she is an individual, at least 18 years old and independent of any Grower Member and Mill Member. The Director is deemed to be independent if he/she does not stand to derive any financial benefit, either directly or indirectly by reason of his/her election to the Board, apart from remuneration, benefits and allowances (if any) to be paid or provided in respect of service as a Director of the Company.
- (d) Subject to these Rules, such persons are Directors of the Company for the period of his/her appointment, if any term is specified. An Independent Director's term must not exceed 3 years.
- (e) The appointment of an Independent Director does not require ratification by the Members of the Company.
- (f) Other than as provided in this Rule and Rule 13 for the election of a Grower Director, an Independent Director is subject to all other Rules relating to Directors.
- (g) If at any point the Board does not include at least one person who is an Independent Director, any acts performed by the Board during that time are taken to have been validly performed.

11.6 Chairman

The Board shall elect a Chairman and Deputy Chairman of its meetings and determine the period for which he/she is to hold office. If at any meeting the Chairman is not present at the time specified for holding the meeting (or if, being present, he/she refuses to act as Chairman), the Deputy Chairman, if present, shall act as Chairman. If the Deputy Chairman is not present (or if, being present, he/she refuses to act as Chairman), the Directors present may choose one of their number to be Chairman of the meeting.

12. RESIGNATION AND REMOVAL

12.1 Resignation

Any Director may resign at any time from membership of the Board by notice in writing delivered to the Secretary but such resignation only takes effect at the time when such notice is received by the Secretary unless some later date is specified in the notice when it shall take effect on the later date.

12.2 Removal

- (a) A Director may be removed from office by ordinary resolution of the Members at a general meeting of the Company convened for that purpose. At any such general meeting the Director must be given the opportunity to fully present his/her case either orally or in writing or partly by either or both of these means.
- (b) A Director who ceases to be a Director under paragraph (a) of this Rule retains office until the dissolution or adjournment of the general meeting at which the member is removed.

12.3 Vacation of office by Director

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Law and Rules 12.1 and 12.2, the office becomes vacant if that Director:

- (a) becomes of unsound mind or a person who is a patient under laws relating to mental health or whose estate is liable to be dealt with or administered in any way under the law relating to mental health; or
- (b) becomes an insolvent under administration, suspends payment generally to creditors or compounds with or assigns his/her estate for the benefit of creditors; or
- (c) is absent from 3 consecutive meetings of the Board without the consent of the Board and without having arranged an alternate Director; or
- (d) resigns office by notice in writing to the Company.

13. POSTAL BALLOT

13.1 General Procedures

- (a) Subject to this Rule, a postal ballot must be held for the election of Grower Directors and may be held otherwise when the Board determines so. Postal ballots must be conducted in the manner set out below. Subject to the circumstances in Rules 11.2, 11.3(a), 11.3(c) and 11.3(d), and where the Company is to have three Grower Directors, a postal ballot will not be required to elect a Grower Director:
 - (i) if 3 persons are nominated to represent the Grower Members unopposed, in which case they must be declared as having been elected;
 - (ii) if the Company is to have only two Grower Directors and only two persons are nominated to represent the Grower Members, in which case they must be declared as having been elected.
- (b) The Board must cause the details of the proposal on which the ballot is to be held to be set in a statement and fix the dates for the forwarding of ballots to Grower Members and closing the ballot.
- (c) Every ballot must be conducted by the returning officer who must be appointed by the Board.
- (d) A person who is independent of the Herbert area cane industry will be appointed by the Board to act as returning officer.
- (e) The returning officer may be helped in the performance of a duty or power under this section by the person (who would be eligible to be a returning officer) the returning officer appoints.
- (f) The Company Secretary will provide to the returning officer a roll of the full names and addresses of the Grower Members as disclosed by the Register together with particulars of the number of votes each Grower Member would be entitled to exercise on a poll.
- (g) A person whose name is on the roll is entitled to vote in a postal ballot, and no person is otherwise eligible or entitled.
- (h) The returning officer must cause ballot papers to be prepared in or to the following effect:

'Name of Company

Ballot of Members to decide the following proposal:

.....
.....
.....

The ballot will close at noon on

How to Vote

1. Read these directions and the ballot paper carefully.
2. Complete the ballot paper..
3. If you are in favour of the proposal, insert 'YES' in the square in the ballot paper. If you are not in favour of the proposal insert 'NO'.
4. In the case of voting for a Grower Director insert a number; with 1 being the first option and so on, in order of preference.
5. After marking the ballot paper fold it in half and place it in the reply paid envelope provided and seal the envelope. The envelope is addressed to the returning officer. Forward this envelope either by post or personal delivery to reach the returning officer by noon on the date determined as the close of ballot.
6. The envelope will have printed on the back the name of the person voting and their contact details, and a unique ID number identifying the Member. This will be populated from the Register and have the wording HCPSL Election Papers and official Company insignia present.
7. Unless the ballot paper is marked as indicated in 3 or 4 above and the details mentioned in 6 above are completed in full, your vote may be rejected as informal.

BALLOT PAPER

Are you in favour of the proposal as mentioned above?'

- (i) Each ballot paper must be initialled by the returning officer. The returning officer must, at least 21 days before the day fixed for closing the ballot, transmit by post or otherwise deliver to every Grower Member entitled to vote in a ballot, one set of the following material:
 - (i) one ballot paper;
 - (ii) an unsealed envelope addressed to the returning officer with the Grower details and unique identifying number on the back of the envelope;
 - (iii) an unsealed envelope into which the voter must enclose the ballot paper, the reverse side of which is to be prepared by the returning officer or their appointee prior to the voting papers being mailed out to the Grower Members who will be voting to show:
 - (A) The official Company insignia (logo)
 - (B) The words "HCPSL Ballot Papers".
 - (C) The populated details from the .Register
 - (D) A unique identifying number (which can be a written number or barcode) which identifies the Grower Member from the populated Register; and
 - (iv) A copy of the statement (prepared by the Board) setting out the details of the proposal on which the decision of the Members is to be sought.
- (j) Every Grower Member desiring to vote in the ballot should complete the ballot paper, seal the ballot paper in the return envelope provided addressed to the returning officer. The envelope should then be posted or personally delivered to the returning officer by noon on the day fixed for closing the ballot.
- (k) The returning officer must provide a ballot box.
- (l) The ballot box must be locked immediately before the ballot papers are delivered under Rule 13.1(i) and remain locked until the close of the ballot.
- (m) The returning officer must place the envelopes containing the ballot papers in the ballot box by noon on the day fixed for closing the ballot.

Comment [AP1]: We won't know the voter's name, only the farm name

Comment [AP2]: The envelope? Also, should unique ID number be mentioned here?

Comment [AP3]: This is required to validate ballot paper; see sub-clause (r)(i) below

Comment [BS4]: Subclauses (ii) and (iii) are repetitive re the envelope.

- (n) Upon a Grower Member making and transmitting to the returning officer a declaration that the Grower Member has not received the ballot paper, or that the ballot papers received by the Grower Member have been lost, spoiled or destroyed, and that the Grower Member has not already voted, the returning officer may issue a duplicate set of the material required under Rule 13.1(i), having endorsed any duplicate envelope with the word 'duplicate'.
- (o) Any Grower Member who makes a declaration under this subsection, which is false, in any particular material, contravenes these Rules.
- (p) Ballot papers received after noon on the day fixed for closing the ballot must not be taken into account at the ballot.
- (q) As soon as practicable after noon on that day, the returning officer in the presence of such scrutineers as may be appointed by the Board may open the ballot box and deal with the contents under Rule 13.1(r) and 13.1(s).
- (r) The returning officer must:
 - (i) if a duplicate envelope has been issued and the original envelope is received, reject the original envelope and mark it 'rejected'; and
 - (ii) according to the information on the envelope, mark for each set of voting papers returned, the voter's name on the roll by drawing a line through the name; and
 - (iii) if a Grower Member's name has already been crossed out on the roll, reject the postal vote and mark it 'rejected'; and
 - (iv) if the envelope is not the official ballot paper return Reply Paid envelope provided in accordance with sub-clause (i) above, or if the details shown on the envelope are not enough to disclose by whom the vote is being exercised, reject the envelope and mark it 'rejected'; and
- (s) extract the ballot papers from all unrejected envelopes, separating the contents from the envelopes in such a way that the ballot paper could not subsequently be identified with a particular voter. The ballot papers must be scrutinised by the returning officer who should supervise and reject as informal a ballot paper that:
 - (i) is not duly initialled by the returning officer; or
 - (ii) is so imperfectly marked that the intention of the voter cannot be ascertained by the returning officer; or
 - (iii) has any mark or writing not authorised by this section which, in the opinion of the returning officer will enable any persons to identify the voter; or
 - (iv) has not been marked as prescribed on the ballot paper itself.
- (t) The decision of the returning officer as to the formality of any ballot paper is final and is not open to appeal.
- (u) The returning officer must count votes cast and make out and sign a statement of:
 - (i) the number of formal votes cast in favour of each proposal; and
 - (ii) the number of formal votes cast against each proposal; and
 - (iii) the number of informal votes cast; and
 - (iv) the proportion of the formal votes polled which were in the affirmative or the outcomes of a Grower Director election.
- (v) On the declaration of the returning officer of the result of the postal ballot the Secretary of the Company is to make an entry in the minute book showing the particulars mentioned in Rule 13.1(u)(i), (ii), (iii) and (i)
- (w) The returning officer must forward the statement to the Chairman who must announce the result of the ballot at the next general meeting.

Comment [BS5]: Has this been deleted for a reason (other than the fact that it will be the envelope that is marked rejected and not the inner envelope)? This is not of concern wither way, just clarification.

- (x) The proposal which received the required majority of votes must be declared won. In the case of the election of Grower Directors, if candidates are competing to be elected as Grower Directors, the candidate who receives most votes must be declared the winner.
- (y) The returning officer must keep all ballot papers (whether formal or otherwise) and rejected envelopes and rolls used for the conduct of the ballot, locked in the ballot box until the returning officer has been directed by the Board, in writing, that they may be destroyed.
- (z) For a postal ballot altering the Rules, the Company must cause the alteration to be notified in writing to its Members as soon as practicable after the alteration takes effect and, in any event, not later than the day notice is given to the Members of the next annual general meeting of the Company, following the taking effect of the alteration.

13.2 Exception

Notwithstanding any other provision of Rule 13.1, the procedures so specified shall be deemed to have regard to the voting rights specified under Rule 10.1(g) though no grounds for objection or invalidity of process or procedure shall apply in any case where any person entitled to vote by reason of Rule 10.1(g) does not vote by reason of oversight, omission or any other error involved in the postal ballot process or procedure.

14. EXERCISE OF VOTING POWER

14.1 Exercise of voting power in other Corporations

The Board may exercise the voting power conferred by the shares in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the Directors or any of them directors of that corporation and a Director of the Company may vote in favour of the exercise of those voting rights) notwithstanding that the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

15. ALTERNATE DIRECTORS

- (a) Subject to these Rules, each Director has power from time to time to appoint any person to act as his/her alternate in the place of that Director, 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 otherwise the Director is unable to attend to his/her duties.
- (b) The Director must first seek and obtain the consent of the Board to the appointment, which consent is not to be unreasonably withheld or delayed. The appointment is to be in writing and signed by the Director and a copy of the appointment is to be given by the appointing Director to the Company by forwarding or delivering it to the Office.
- (c) The appointment takes effect immediately upon receipt of the appointment at the Office or at the time or period and date specified in the written notice of appointment.
- (d) The following provisions apply to an alternate Director:
 - (i) an alternate may be removed or suspended from office upon receipt at the Office of written notice, letter, facsimile transmission or other form of visible communication from the Director by whom the alternate was appointed to the Company;
 - (ii) the alternate is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate was appointed is not present;
 - (iii) the alternate is entitled to exercise all the powers (except the power to appoint an alternate) and perform all duties of a Director, in so far as the Director by whom the alternate was appointed had not exercised or performed them;

- (iv) the office of the alternate is vacated upon vacation of office by the Director or written resignation being given to the Company by the Director, by whom the alternate was appointed;
- (v) the alternate is not to be taken into account in determining the number of Directors or rotation of Directors; and
- (vi) the alternate is, while acting as a Director, responsible to the Company for the alternate's own acts and defaults and is not to be deemed to be the agent of the Director by whom the alternate was appointed.

16. PROCEEDINGS OF THE BOARD

16.1 Procedures relating to Board Meetings

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit, provided that there is a minimum of 6 meetings held per calendar year.
- (b) Until otherwise determined by the Board, at least 50% of the total number of appointed Directors of the Board form a quorum but so that a quorum shall only be constituted if not less than 50% of the Grower Directors and not less than 50% of the Mill Directors are present or as represented by their respective duly appointed alternates.
- (c) Notice is deemed to have been given to a Director, and all Directors are hereby deemed to have consented to the method of giving notice, if notice is sent by mail, personal delivery, facsimile transmission or by electronic mail to the usual place of residence, fax number or electronic address of the Director (if any fax number or electronic address is notified to the Company) or at any other address given to the Secretary by the Director from time to time subject to the right of the Director to withdraw such consent within a reasonable period before a meeting.

16.2 Meetings by telephone or other means of communication

The Board may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw his/her consent within a reasonable period before a meeting. All persons participating in the meeting must be able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting is at that place for the duration of the meeting.

16.3 Votes at meetings

- (a) Questions arising at any meeting of the Board are to be decided by a majority of votes. Any Grower Director present in person or by an alternate shall have one vote each and Mill Directors present in person or by alternate shall have one vote each. The Chairman of the meeting of the Board shall not have a second or casting vote in the event of an equality of votes. A resolution may only be carried where at least one Grower Director and one Mill Director vote in favour of the resolution.
- (b) In the event of an equality of votes on a resolution resulting in a deadlock then and in that case the Board may appoint a mediator to assist in resolving the deadlock. The mediator cannot vote on a resolution.

16.4 Convening of meetings

The Chairman or the Board may at any time, and the Secretary, upon the request of any one Director, must, convene a meeting of the Board.

16.5 Powers of meetings

- (a) A meeting of the Board or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.
- (b) The Board shall have the right to invite any person it sees fit and who is not a Director to attend Board and Committee meetings (and as permitted by the Board participate in Board discussions and/or in Committees), any meeting of the Board or of a Committee, though such person shall not have any voting rights at a Board or Committee meeting.

16.6 Delegation of Powers to Committees

The Board may, subject to the constraints imposed by Law, delegate any of its powers to Committees consisting of one or more Directors and or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised to subdelegate any of the powers for the time being vested in the delegate.

16.7 Proceedings of Committees

- (a) The meetings and proceedings of any Committee are to be governed by the provisions of these Rules for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under Rule 16.6.
- (b) A Committee in the exercise of the duties delegated or assigned to it shall conform to any regulations, directions or instructions that may be imposed or given by the Board.
- (c) A Committee appointed by the Board shall be under the control and direction of the Board and has no direct part or power in the management of the Company.

16.8 Validity of acts

- (a) All acts done at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee (as the case may be).
- (b) If the number of Directors is reduced below the minimum number fixed pursuant to these Rules, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

16.9 Resolution in writing

A resolution in writing of which notice has been given to all Directors and which is signed by all such members entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted and may consist of several documents in the same form each signed by one or more of the Directors. For the purposes of this Rule, the references to 'Director' shall include any alternate for the time being present in Australia who is appointed by a Director not for the time being present in Australia but does not include any other alternate Director. A facsimile transmission or other document produced by mechanical or electronic means under the

name of a Director with the member's authority is deemed to be a document in writing signed by that Director.

17. POWERS OF THE BOARD

17.1 General Powers of the Board

- (a) The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred upon them by these Rules) may exercise all powers and do all things as are within the power of the Company and are not by these Rules or by Law directed or required to be exercised or done by the Company in general meeting.
- (b) The Board may make such regulations and by-laws not inconsistent with the Constitution, as in the opinion of the Board are necessary or desirable for the proper control, administration and management of the Company's finances, affairs and property and amend or rescind from time to time any such regulations and by-laws.
- (c) A regulation or by-law of the Company made by the Board may be disallowed by the Company in a later general meeting.
- (d) A resolution or regulation made by the Company in general meeting cannot invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.

17.2 Director contracting with the Company

- (a) Neither the holding of office as a Director nor the fiduciary relationship resulting from holding that office shall:
 - (i) disqualify any Director from holding any office or place of profit (other than that of auditor) in the Company;
 - (ii) disqualify any Director from entering into any arrangement, contract or dealing with the Company in any capacity;
 - (iii) void or vitiate any arrangement, contract or dealing entered into by or on behalf of the Company in which a Director is any way interested; or
 - (iv) render any Director or any corporation of which a Director is an officer or member or in any way interested or any partnership of which a Director is a member or in any way interested liable to account for any profit arising out of the holding of any such office or place of profit or any such arrangement, contract or dealing.
- (b) The nature of the interest of a Director must be disclosed by him/her at the meeting of the Board at which the arrangement, contract or dealing is determined by the Board, if his/her interest then exists, or, in any other case, at the meeting of the Board next following the acquisition of his/her interest.
- (c) Subject to the Law, a Director who is any way interested in any arrangement, contract or dealing as referred to in paragraph (a) of this Rule (whether existing or proposed) may vote in respect of the arrangement, contract or dealing at a meeting of the Board and may be counted in a quorum present at such meeting.
- (d) A Director may affix or attest the affixation of the Seal to any instrument or sign or execute any document notwithstanding any interest which such Director has in the subject matter of that instrument or document or any other office or place of profit held by such Director.
- (e) All acts done by any meeting of the Directors or of any Committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director or subcommittee.

18. **COMPANY SECRETARY**

The Secretary holds office on such terms and conditions as to remuneration and otherwise as the Board determines.

19. **OTHER SALARIED OFFICERS**

The Board may appoint such officers and employees at such salaries for such periods and on such terms as it thinks fit and may subject to conditions of the employment of such officers and employees dispense with his/her services and re-appoint or appoint other officers and employees as it thinks fit.

20. **THE SEAL**

20.1 Company seal is optional

The Company may have a Seal.

20.2 Affixing the Seal

If the Company has a Seal, the Board is to provide for its safe custody and it should only be used by the authority of the Board. Every instrument to which the Seal is affixed is to be signed by a Director and countersigned by the Secretary or by a second Director or by another person appointed by the Board for the purpose. The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

20.3 Execution of documents without a Seal

The Company may execute a document, including a deed, by having the document signed by:

- (a) 2 Directors; or
- (b) a Director and the Secretary; and

if the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in Rule 20.2 or this Rule.

20.4 Other ways of executing documents

Notwithstanding the provisions of Rules 20.2 and 20.3, any document including a deed, may also be executed by the Company in any other manner permitted by law.

21. **MINUTES**

The Board must ensure that minutes are duly recorded in any manner it thinks fit:

- (a) of the names of the Directors present at each meeting of the Company, the Board and of any Committees; and
- (b) of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and any Committees,

and the minutes of any meeting of the Board or of any Committee or of the Company, if purporting to be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting, are prima facie evidence of the matters stated in the minutes.

22. NOTICES

22.1 Service of Notices

A notice may be given by the Company to a Member, or in the case of joint holders to the Member whose name stands first in the Register, personally, by leaving it at the Member's Registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's Registered address or by sending it to the electronic address (if any) nominated by the Member. All notices sent by prepaid post to persons whose Registered address is not in Australia may be sent by airmail or some other way that ensures that it will be received quickly.

22.2 When Notice deemed to be served

Any notice sent by post is deemed to have been served at the expiration of 48 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's Registered address is deemed to have been served when delivered. Any notice served on a Member by facsimile transmission is deemed to have been served when the transmission is sent. A facsimile is deemed to be duly sent when the Company's facsimile system generates a message confirming successful transmission of the total number of pages of the notice to the addressee. Any notice served on a Member by electronic means is deemed to have been served when the electronic message is sent.

22.3 Member not known at Registered address

Where a Member does not have a Registered address or where the Company has bona fide reason to believe that a Member is not known at the Member's Registered address, all future notices are deemed to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the Member informs the Company of a registered place of address.

22.4 Signature to Notice

The signature to any notice to be given by the Company may be handwritten or printed.

22.5 Reckoning of period of Notice

Where a given number of days notice or notice extending over any other period is required to be given, the day of service is not to be reckoned in the number of days or other period.

22.6 Service on deceased Members

A notice delivered or sent by post to the Registered address of a Member pursuant to these Rules is (notwithstanding that the Member is then dead and whether or not the Company has notice of the Member's death) deemed to have been duly served and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators.

22.7 Persons entitled to Notice of General Meeting

- (a) Notice of every general meeting is to be given to:
 - (i) each Member individually who is entitled to vote at general meetings of the Company;
 - (ii) each Director; and
 - (iii) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of general meetings.

22.8 Notification of change of address

Every Member must notify the Company of any change of his or her Registered address and any such new Registered address must be entered in the Register as required to be kept by the Law and upon being so entered becomes the Member's Registered address.

23. INDEMNITY

23.1 Indemnity for/in favour of Directors, Secretaries and Board Officers

Subject to the Law, the Company must indemnify every person who is or has been a Director, Secretary or executive officer of the Company against a liability:

- (a) incurred by the person acting in his/her capacity as a Director, Secretary or executive officer to a person other than the Company or a related body corporate where the liability does not arise out of a lack of good faith;
- (b) for the costs and expenses incurred by the person:
 - (i) 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
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the person under the Law.

23.2 Indemnity to Employees

Every employee who is not a Director, Secretary or executive officer of the Company may be indemnified out of the property of the Company against a liability:

- (a) incurred by the employee acting in that capacity;
- (b) for the costs and expenses incurred by an employee:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Law.

23.3 Personal liability of Officer

If the Board or any member thereof or any officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, the Board may execute or cause to be executed any charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the persons or person so becoming liable as aforesaid from any loss in respect of such liability.

23.4 Insurance

- (a) Subject to the Law, the Company may pay insurance premiums in respect of insurance for the benefit of every person who is or has been a Director, Secretary or executive officer acting in that capacity against:
 - (i) costs and expenses in defending any proceedings, whether civil or criminal, whatever the outcome; or
 - (ii) a liability arising from negligence or other conduct not being a liability incurred by the person acting in that capacity and arising out of conduct involving a wilful breach of duty in relation to the Company or a breach of the provisions of the Law dealing with improper use of inside information or position.
- (b) The Company may pay insurance premiums in respect of insurance for the benefit of the auditor or an employee of the Company who is not a Director, Secretary or executive officer concerned in the management of the Company.