

## **B. SHAREHOLDERS RIGHTS**

Set out below is a summary of certain provisions of the Constitution of our Company and salient provisions of certain laws of Australia applicable to an Australian incorporated company.

Our Company was incorporated in Australia under the Australian Corporations Act as a proprietary company on 2 October 2001. It was converted to a public company limited by shares on 12 October 2017.

### **1. CLASSES OF SHARES**

Pursuant to our Constitution, our Company may issue shares in different classes, on different terms and with different rights and restrictions attaching to shares. However, our Company currently only has ordinary Shares on issue.

### **2. PRE-EMPTIVE RIGHTS ON NEW ISSUES OF SHARES**

Under the Australian Corporations Act, Shareholders do not have any right to be offered any Shares which are being newly issued for cash before those Shares can be offered to non-Shareholders.

### **3. ALTERATION OF CAPITAL**

In accordance with the Australian Corporations Act, our Company may by ordinary resolution at a general meeting convert all or any of the Shares into a larger or smaller number of shares. Subject to compliance with the Australian Corporations Act, our Company may reduce its share capital.

### **4. BUY-BACKS**

Subject to compliance with the Australian Corporations Act, our Company may buy back its own Shares.

### **5. VOTING RIGHTS**

All Shareholders of our Company — irrespective of where they are resident and including those acting and registered as a nominee of a person beneficially interested in any of the Share — are permitted to appoint proxies/corporate representatives.

The Australian Corporations Act states that:

- a member of our Company who is entitled to attend and cast a vote at a meeting of our members may appoint any person or corporate representative as that member's proxy to attend and vote for that member at the meeting; and
- a proxy appointed to attend and vote for a member has the same rights as the member that appointed that proxy, to speak and vote at the meeting and join in a demand for a poll.

- Articles 16 and 17 of our Constitution contain practical rules about entitlements to attend and vote (including by proxy) which reflect the above statutory position.

## **6. DISTRIBUTION OF ASSETS ON A WINDING-UP**

If our Company is wound up, the assets available for distribution among the members of our Company shall be distributed amongst those members entitled to assets in proportion to the Shares held by them respectively and taking into account the amounts paid up on the Shares.

## **7. TRANSFER OF SHARES**

Subject to our Constitution, a member may transfer all or any of the Shares held by that member by instrument in writing. Article 9.1 of our Constitution provides that except where permitted by the Stock Exchange of Hong Kong Limited, there is no restriction on the transfer of Shares.

## **8. VARIATION OF RIGHTS**

If at any time the issued Shares are divided into different classes, the rights attached to any class of Shares may only be varied or cancelled with either:

- the consent in writing of the holders of 75% of the issued Shares of that class; or
- the sanction of a special resolution passed at a separate meeting of the holders of Shares of that class.

## **9. DIRECTORS' INTERESTS IN MATTERS**

Each Director must declare and disclose a material interest to our Board as required by the Australian Corporations Act at the first meeting of our Board after our Director becomes a Director or our Director becomes aware of the facts give rise to the material interest.

## **10. RESTRICTIONS ON DIRECTORS VOTING**

A Director (including any Alternate Director) who has a material personal interest (directly or indirectly) in a matter that is being considered at a meeting of our Directors will only be excluded or prohibited from voting on the matter, being counted in a quorum for the purposes of the meeting or being present while the matter is being considered, if the Director is so prohibited or excluded under the Australian Corporations Act.

This is unless the matter being considered relates to any contract or arrangement or any other proposal in which the Director or any of his or her close associates has a material personal interest, in which case such Director (including any Alternate Director) will be excluded from voting on that matter and being counted in a quorum for the purposes of that meeting.

## **11. BORROWING POWERS OF OUR COMPANY**

Under Article 20.7 of our Constitution, the Directors may exercise all the powers of our Company to:

- (a) borrow money and to mortgage or charge its undertaking, assets and uncalled capital or any part of it; and
- (b) issue debentures, debenture stock and other securities whether outright or as security for any debt, contract, guarantee, engagement, obligation or liability of our Company or of any third party,

in each case, on such terms and conditions as the Directors think fit.

## **12. PROTECTION OF MINORITIES**

A Shareholder may apply for a court order where the conduct of our Company's affairs is, among other things, oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a Shareholder or Shareholders. The orders that may be sought include winding up, amendment to our Constitution, orders regulating the conduct of our Company's affairs, orders for the purchase of shares, orders that our Company institute, defend or discontinue specified proceedings, and other similar orders.

## **13. DISPOSAL OF ASSETS**

The Australian Corporations Act contains no specific restrictions on the powers of directors to dispose of the assets of a company. However, in exercising those powers, the directors must discharge their duties of care to act in good faith, for a proper purpose and in the best interests of our Company as required under directors' duties in Chapter 2D of the Australian Corporations Act and fiduciary obligations under general law in Australia.

Our Company cannot give a financial benefit to a related party of our Company without Shareholder approval, unless one of the exceptions specified in Chapter 2E of the Australian Corporations Act applies. A related party is defined in section 228 of the Australian Corporations Act, which includes a director of TOP or a person or entity related to a director.

## **14. RECONSTRUCTIONS**

There are statutory provisions under Australian law which facilitate certain reconstructions and amalgamations approved by:

- a majority in number of the members present and voting; and
- 75% of the votes cast on the resolution.

Such reconstructions or amalgamations must also be approved by order of an Australian court.

## **15. WINDING UP**

Our Company may be wound up either by an order of an Australian court or voluntarily deregistered by a special resolution of its members.

## **16. TAKEOVER REGULATION**

The takeovers provisions in Chapter 6 of the Australian Corporations Act apply to certain dealings in the Shares. Those provisions apply to listed companies and unlisted companies with more than 50 members.

The Australian Corporations Act prohibits a person acquiring a “relevant interest” (basically power to vote or dispose of the share) in the voting shares in a company incorporated in Australia to which Chapter 6 of the Australian Corporations Act applies if, as a result, the “voting power” of the acquirer (or any other person) would:

- increase from 20% or below to more than 20%; or
- increase their voting power if that person already holds more than 20% but less than 90% of the voting power in that company.

This is unless an exception applies. These exceptions include acquisitions:

- under a formal takeover offer in which all Shareholders can participate;
- with the approval of our Shareholders given at a general meeting of our Company; and
- in 3% increments every six months (provided that the acquirer has had voting power of at least 19% in the target company for at least six months).

A person who has made a takeover bid where at the end of the offer period that person (and its associates) have a relevant interest in 90% or more of the issued shares and acquired 75% or more (by number) of shares held by other shareholders, may compulsorily acquire any remaining shares it does not hold at the same price offered under the bid, within one month after the end of the offer period. Even if a takeover bid has not been made, a person who otherwise lawfully acquires a relevant interest in 90% or more of the issued shares is able to acquire the remaining shares for fair value (confirmed by an independent expert), within six months after the person first acquires an interest in 90% or more of the issued shares.

Under the Australian Foreign Acquisition and Takeovers Act 1975 (Cth) and accompanying regulations, proposed acquisitions by foreign persons may require the prior approval of the Treasurer of Australia (advised by the Foreign Investment Review Board).

## **17. SHAREHOLDERS PROTECTIONS**

Our Company was incorporated in Australia and is subject to the Australian Corporations Act and other applicable laws and regulations in Australia. Set out below is a discussion on the key shareholders’ protection standards offered under our Constitution and the Australian laws and regulations that we consider material to our Shareholders and potential investors and as required under the Joint Policy Statement.

### **17.1 Matters requiring a Super-Majority Vote**

The Joint Policy Statement requires the following matters to be approved by a super-majority vote of the shareholders:

- changes to the rights attached to any class of shares of an overseas company (vote by members of that class);
- material changes to an overseas company's constitutive documents, however framed; and
- voluntary winding up of an overseas company.

Under the Australian Corporations Act, there is a "special resolution" voting threshold for certain matters, which is effectively a 75% approval threshold. Under the Australian Corporations Act and our Constitution, a special resolution of members is required to approve:

- changes to the rights attached to any class of shares;
- any modification to, or repeal of, our Constitution; and
- where our Company is being wound up by the Court or voluntarily.

### **17.2 Meanings of a Super-Majority Votes**

The Joint Policy Statement requires a super-majority vote to mean at least a two-third majority where an overseas company has a low quorum requirement. When an overseas company's threshold for deciding the matters in the paragraph headed "Matter requiring a super-majority vote" above is a simple majority only, these matters must be decided by a significantly higher quorum.

Under section 9 of the Australian Corporations Act, a special resolution means a resolution of which notice has been given in accordance with certain prescribed rules and that it has been passed by at least 75% of the votes cast by members entitled to vote on that resolution.

### **17.3 Variation of rights**

Our Constitution provides that a special resolution or the consent in writing of 75% of those in a class is required to approve a variation of rights of that class of shares. Our Constitution also provides that a quorum of shareholders who hold at least one third of the issued shares of the relevant class of shares present in person or by proxy and entitled to vote is required to form a quorum of all general meetings of that class.

### **17.4 Changes to our Constitution**

Section 136(2) of the Australian Corporations Act and our Constitution provides that a special resolution of Shareholders is required for any modification to, or repeal of, our Constitution.

## **17.5 Winding-up**

A special resolution of members of our Company is required to approve (i) winding-up by the court under section 461(1)(a) of the Australian Corporations Act or (ii) voluntary winding-up under section 491(1) of the Australian Corporations Act.

In addition, if our Company is wound up, Article 35.2 of our Constitution provides that a liquidator may (with the sanction of a special resolution of the members of our Company):

- divide among the members in kind all or part of the assets of the Company;
- set such value as the liquidator deems fair on any asset to be dividend;
- determine how the division shall be carried out as between the members or different classes of members; and/or
- vest the whole or part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit.

## **17.6 Individual Members to Approve Increase in Members' Liability**

The Joint Policy Statement requires that there should not be any alteration in an overseas company's constitutional document to increase an existing member's liability to the company unless such increase is agreed by such member in writing.

Under section 140(2)(b) of the Australian Corporations Act, unless a member of our Company agrees in writing to be bound, that member will not be bound by any alteration of our Constitution made after the date on which they became a member, if and to the extent that alteration increases the member's liability to contribute to the share capital of, or otherwise to pay money to, our Company.

## **17.7 Appointment of Auditors**

The Joint Policy Statement requires that the appointment, removal and remuneration of auditors must be approved by a majority of an overseas company's members or other body that is independent of the board of directors, for example the supervisory board in systems that have a two tier board structure. Australian law does not require two tier board structures.

## **17.8 Appointment**

Section 327B(1) of the Australian Corporations Act provides that a public company must appoint an auditor at its first annual general meeting and must appoint an auditor to fill any vacancy in the office of auditor at each subsequent annual general meeting. Appointments are made by way of a resolution passed by a simple majority of members.

## **17.9 Removal**

Section 329(1) of the Australian Corporations Act provides that an auditor of the company may be removed by simple majority resolution of the members of a company at a general meeting, provided notice of intention to move the resolution is given to the company at least two months before the meeting.

## **17.10 Remuneration**

Section 250R(1) of the Australian Corporations Act provides that the business of an annual general meeting may include the consideration of the annual financial report, directors' report and auditor's report, the election of directors, the appointment of the auditor, and the fixing of the auditor's remuneration. However, there is no requirement under the Australian Corporations Act for the auditor's remuneration to be approved by a majority of members. It is a matter for the Board of directors under Australian law.

## **17.11 Annual General Meetings**

The Joint Policy Statement requires that an overseas company is required to hold a general meeting each year as its annual general meeting. Generally, not more than 15 months should elapse between the date of one annual general meeting of the overseas company and the next.

Section 250N of the Australian Corporations Act provides that our Company must hold an annual general meeting at least once in each calendar year and within five months after the end of its financial year.

## **17.12 Notice of General Meetings**

The Joint Policy Statement requires that an overseas company must give its members reasonable written notice of its general meetings.

Section 249H(1) of the Australian Corporations Act provides that a company must give at least 28 days' notice of a meeting of members. However, our Company may call, on shorter notice, (i) an annual general meeting, if all the members entitled to attend and vote at the annual general meeting agree beforehand; and (ii) any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand. An Australian listed company is required to give at least 28 days' notice of meeting of members. Our Constitution provides that at least 28 days' notice of a meeting of members needs to be given.

However, our Company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting at which a resolution will be moved to remove or appoint a director or remove an auditor. Written notice of a meeting of a company's members must be given individually to each member entitled to vote at the meeting and to each director. Notice need only be given to one member of a joint membership. Notice to joint members must be given to the joint member named first in the register of members.

### **17.13 Rights to speak and vote at the General Meetings**

The Joint Policy Statement requires that all members must have the right to speak and vote at a general meeting, except in cases where a member is required by the Hong Kong Listing Rules to abstain from voting to approve the transaction or arrangement (e.g. the member has a material interest in the transaction or arrangement).

Under the Australian Corporations Act, written notice of a meeting of a company's members must be given individually to each member entitled to vote at the meeting and to each director. A notice of meeting must set out, among other things, the time, date and place of the meeting and the general nature of the meeting's business. Section 250 of the Australian Corporations Act also provides that the chair at an annual general meeting must allow reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the company.

### **17.14 Proxies or Corporate Representatives**

The Joint Policy Statement requires that a recognised Hong Kong clearing house must be entitled to appoint proxies or corporate representatives to attend general meetings and creditors meetings. These proxies/corporate representatives should enjoy statutory rights comparable to those of other shareholders, including the right to speak and vote.

The Australian Corporations Act does not contain any provision to the effect that a recognised clearing house would be prohibited from appointing proxies/corporate representatives. Article 17.1(b) of our Constitution expressly gives Hong Kong Securities Clearing Company Limited the right to appoint a proxy.

Our Constitution also provides that any voting member shall be entitled to appoint another person as his proxy to attend a general meeting and vote instead of him or her at that meeting. A voting member who is the holder of two or more Shares may appoint more than one proxy to represent him and vote on his behalf at a general meeting of our Company or at a class meeting.