



**Government
of South Australia**

TRS20D1799

Hon Stephen Mullighan MP
Member for Lee
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Treasurer

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Stephen
Dear Mr Mullighan

APPLICATION UNDER THE *FREEDOM OF INFORMATION ACT 1991*

I refer to your application made under the *Freedom of Information Act 1991* (the Act), dated 29 May 2020.

Your application seeks access to:

"All minutes, briefings and correspondence titled 'State Owned Emergency Generators – Establishment of State Owned Company' as described on the Objective document management system, between 14 November 2019 and 29 May 2020."

The legislative prescribed timeframe to determine this application has expired and is now deemed to have refused you access to all documents relevant to your application. I refer to my letter dated 12 June 2020 where I sought additional time to make my determination.

The purpose of this letter is to advise you of my determination. An extensive search was conducted within this office. A total of 1 document was identified as answering the terms of your application.

I grant you access in part to 1 document; a copy of which is enclosed.

Document Released in Part

Document 1 is released in part as it contains information which, if released, would disclose details concerning a deliberation or decision of Cabinet. I therefore determine this exempt this information pursuant to clause 1(1)(e).

Exemptions

Clause 1 – Cabinet Documents

(1) A document is an exempt document—

- (e) if it contains matter the disclosure of which would disclose information concerning any deliberation or decision of Cabinet; or

Please note, in compliance with Premier and Cabinet Circular PC045 - *Disclosure Logs for Non-Personal Information Released through Freedom of Information* (PC045), the Department of Treasury and Finance is now required to publish a log of all non-personal information released under the Act.

In accordance with this Circular, any non-personal information determined for release as part of this application, may be published on the DTF website. A copy of PC045 can be found at the following address: <https://dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars>. Please visit the website for further information.

As I am determining this application as Principal Officer, section 29(6) of the Act does not provide for an internal review. If you are dissatisfied with my determination you are entitled to exercise your rights of external review with the Ombudsman.

Alternatively, you can apply to the South Australian Civil and Administrative Tribunal. If you wish to seek a review, section 39(3) of the Act states you must do so within 30 calendar days of receiving the determination.

If you require any further information, please contact Vicky Cathro on 8226 9769.

Yours sincerely



Hon Rob Lucas MLC
Principal Officer

26 September 2020

MINUTE

MINUTES forming ENCLOSURE

MINISTER'S OFFICE

Rec'd 17/12/19

File No: 119/023

Physical ID: 903259

File 7 SAF19/1674
Doc No A1290974



Government
of South Australia
Department of Treasury
and Finance

To The Treasurer

**STATE OWNED EMERGENCY GENERATORS
ESTABLISHMENT OF STATE OWNED COMPANY**

Timing: ROUTINE — for noting and approval

Recommendations/Issues: It is recommended that you:

- approve the establishment of a new State-owned company under the *Corporations Act 2001 (Cth)* with the business name of State Owned Generators Leasing Co Pty Ltd (Company), as part of the arrangements for the lease of the State's emergency generators currently located at Lonsdale and Elizabeth (Generators) to Infigen Energy (Infigen) and Nexif Energy (Nexif);
- note that the Treasurer is to be the sole member and shareholder of the Company, with the Company to issue one ordinary share to the Treasurer for \$2.00;
- note the attached Constitution of the Company which details the functions and powers of the Company, the composition and proceedings of the Board and the processes for dealing with the shares of the Company;
- consent to being a member and shareholder of the Company and agree to the terms of the attached Constitution by signing the Constitution where indicated;
- nominate the Company, by notice in the Government Gazette, as being a State-owned company for the purposes of the *Electricity Corporations (Restructuring & Disposal) Act, 1999*, (the Act);
- note that a proclamation under section 35 of the Act will be gazetted prior to the lease agreements with Infigen and Nexif commencing so as to provide an immunity to the Crown and the Company from any civil or criminal liability as owner of the Generators;
- approve the appointment of the following public servants to the Board of Directors of the Company for an initial term of three years from the date of the Company's incorporation:
 - Mr Stuart Hocking, Deputy Chief Executive, Department of Treasury and Finance (Chair);
 - Mr Paul Heithersay, Chief Executive Officer, Department for Energy and Mining; and
 - Mr Tim Burfield, Director Insurance and Commercial Operations, SAFA; and
- advise whether you require a Cabinet Note to advise of the appointment of Mr Hocking, Mr Heithersay and Mr Burfield to the Board of Directors of the Company. No.

Noted and Approved / Not Approved

Rob Lucas

Hon Rob Lucas MLC
Treasurer


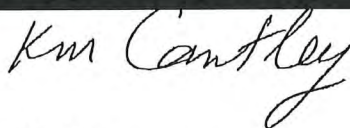
21/12/19

Key Points:

- [REDACTED], Cabinet approved [REDACTED]
- The lease with Infigen is expected to start on 1 May 2020 when it will take control of the Lonsdale site and begin operating the generators commercially for one or two years before relocating the generators to an SA Water owned site at Bolivar in 2021.
- Nexif is expected to take control of the Elizabeth site in May 2020 when it will begin works for the relocation of the generators to a Renewal SA owned site at Outer Harbour. The lease with Nexif is expected to start on 31 October 2020 when it will begin operating the generators commercially.
- Cabinet also approved [REDACTED]
- The Generators are "Prescribed Electricity Assets" for the purposes of section 13 of the Act. The Act only permits the lease of Prescribed Electricity Assets from the following types of entities:
 - o certain electricity corporations as defined in the Act, which have all since been dissolved. (Note - Generation Lessor Corporation (GLC) is not an electricity corporation for the purposes of the Act);
 - o a State-owned company; or
 - o a Minister, instrumentality of the Crown or statutory corporation (but only where it acquired the Prescribed Electricity Assets under the Act).
- In the current circumstances, the only eligible entity that can lease the Generators to Infigen and Nexif is a State-owned Company.
- Cabinet has approved [REDACTED]
- SAFA has been assisting the Department of Energy and Mining (DEM) with the establishment of the Company. The Company will be administered by SAFA which is to include the provision of accounting and financial services, corporate governance and secretarial support to the Board of Directors.
- The Company will be established under the *Corporations Act 2001 (Cth)*, with a proposed business name of State Owned Generators Leasing Co Pty Ltd. The Treasurer will be the sole member and shareholder of the Company, with the company to issue one ordinary share to the Treasurer for \$2.00.
- As part of the Incorporation process, the Company is required to have a Constitution. The attached Constitution details amongst other things, the functions and powers of the Company, the composition and proceedings of the Board and the processes for dealing with the shares of the Company.
- Pursuant to section 33(3) of the *Public Finance and Audit Act, 1987*, the Auditor-General may audit the accounts of the Company and examine the efficiency, economy and effectiveness of the Company's functions.
- It is recommended that you consent to being a member and shareholder of the Company and agree to the terms of the attached Constitution by signing the Constitution where indicated. The constitution has been prepared by Johnson Winter & Slattery Lawyers and reviewed by SAFA and the Crown Solicitor's Office.

- The Company will also need to be nominated by the Treasurer as being a State-owned company for the purposes of the Act with notice of such being published in the Government Gazette.
- A proclamation under section 35 of the Act will also be gazetted prior to the lease agreements with Infigen and Nexif commencing so as to provide an immunity to the Crown and the Company from any civil or criminal liability as owner of the Generator's
- The Board of Directors of the Company is to consist of the Chair and up to three directors appointed by the Treasurer. It is recommended that you approve the appointment of the following public servants to the Board for an initial term of three years from the date of the Company's incorporation:
 - o Mr Stuart Hocking, Deputy Chief Executive, Department of Treasury and Finance (Chair);
 - o Mr Paul Heithersay, Chief Executive Officer, Department for Energy and Mining; and
 - o Mr Tim Burfield, Director Insurance and Commercial Operations, SAFA.
- As public servants, the directors will not be entitled to any board fees.
- Consistent with Section 74 of the *Public Sector Act, 2009*, the directors of the Company are indemnified for any act or omission in the exercise or purported exercise of official powers or functions. Any action will lie instead against the Crown or body corporate whichever is applicable.
- Your advice is sought as to whether you require a Cabinet Note to advise of the appointment of Mr Hocking, Mr Heithersay and Mr Burfield to the Board of Directors.
- As the Generators are currently owned by the Minister for Energy and Mining (Minister), the Generators will need to be transferred from the Minister to the Company prior to the first lease commencing with Infigen in May 2020. The transfer of the Generators to the Company will be undertaken in accordance with section 26(2)(b) of the Act.
- The Treasurer will execute the lease agreements with Infigen and Nexif (as agent of the Company) in accordance with section 13 of the Act and Treasurer's Instruction 8 – Financial Authorisations.
- The Company will be funded via an equity contribution from the State in the amount of \$218,194,000 being the agreed transfer price for the Generators. Your approval for the payment of the equity contribution to the Company, the payment from the Company to the Minister for the transfer of the Generators and the execution of the lease agreements with Infigen and Nexif will be sought in a separate minute to you.
- Once the Company has been established and the leases executed by the Treasurer, [REDACTED]

- [REDACTED]

Kevin Cantley
GENERAL MANAGER, SAFA

16 December 2019

Contact Officer	John Strawbridge
Telephone	60190
Email	John.strawbridge@sa.gov.au

Supported / Not Supported



David Reynolds

CHIEF EXECUTIVE

Department of Treasury and Finance

Date.....(7/12/19.....

CONSTITUTION

STATE OWNED GENERATORS LEASING CO PTY LTD
[INSERT ACN]

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CONSTITUTION

STATE OWNED GENERATORS LEASING CO PTY LTD

1 Definitions and Interpretation

1.1 Definitions

In this Constitution unless the contrary intention appears:

Act means the Corporations Act 2001 (Cth) as amended from time to time.

Company or **SOGLC** means State Owned Generators Leasing Co Pty Ltd.

Constitution means the constitution of the Company as in force from time to time.

Director means a director of the Company.

Directors or **Board** means any number (not being less than a quorum) of the Directors for the time being of the Company constituting a meeting of Directors, or authorised to act, in accordance with this Constitution.

Dividend includes bonus and interim dividend.

in writing or **written** includes any means of representing or reproducing words in a visible form.

Member means a person who is registered as the holder of any Share.

Minister has the meaning given to that term in the *Administrative Arrangements Act 1994*.

Paid includes credited as paid.

Qualified Person means:

- (a) any Minister; and
- (b) any company which falls within paragraph (a) of the definition of State-owned company in the *Electricity Corporations (Restructuring and Disposal) Act 1999* (as that definition may be amended, supplemented or replaced from time to time).

Register of Members means the register of Members required under Chapter 2C of the Act.

Seal means any common seal or duplicate common seal of the Company.

Secretary includes any person appointed to perform the duties of secretary temporarily.

Securities has the meaning given to the term "securities" in section 92(1) of the Act.

Shares means shares in the capital of the Company.

SOGLC Assets means the electricity generating sets and associated equipment owned by the Company.

SOGLC Lease Agreement means a sale/lease agreement under the *Electricity Corporations (Restructuring and Disposal) Act 1999* pursuant to which a lease is granted of SOGLC Assets by the Company to another party.

SOGLC Leases means each lease granted by the Company by virtue of a SOGLC Lease Agreement.

State means the State of South Australia.

Treasurer means the Treasurer of the State of South Australia acting as a body corporate.

1.2 Interpretation

- (a) The singular includes the plural and vice versa. Words importing a gender include the other genders. Words importing persons include corporations.
- (b) Unless a contrary intention appears:
 - (i) words used in this Constitution and given meaning in the Act have the meaning given to them in the Act; and
 - (ii) an expression in a clause that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision of the Act.
- (c) A reference to a clause is a reference to a clause of this Constitution.
- (d) A reference to a paragraph is a reference to a paragraph of the clause in which the reference appears.
- (e) Division 8 of Part 1.2 of the Act to the extent applicable, applies with necessary modifications, as if this Constitution were provisions of the Act.
- (f) A reference to legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision.

2 Replaceable Rules

The replaceable rules contained in the Act do not apply to the Company.

3 Functions and Powers

- (a) The functions of the Company are limited to the following:
 - (i) to be the lessor under a lease granted in respect of the SOGLC Assets by a SOGLC Lease Agreement;
 - (ii) to be a party to an instrument related to a lease referred to in paragraph (i) above or related to property the subject matter of such a lease;
 - (iii) to be the operator of the SOGLC Assets on expiration or sooner termination of such a lease;
 - (iv) to hold the SOGLC Assets as owner or lessor for the purposes of a function referred to in a preceding paragraph of this clause 3(a);
 - (v) to carry out other functions conferred on the Company by the Treasurer; and
 - (vi) to do anything necessary or expedient to be done for the purposes of a function referred to in a preceding paragraph of this clause 3(a).

- (b) In the performance of those of its functions that concern the enforcement of a SOGLC Lease, or the exercise of its power, right or entitlement under a SOGLC Lease, the Company shall act consistently with the objectives of:
 - (i) efficiently performing those functions and exercising those powers, rights and entitlements in a cost effective manner;
 - (ii) maximising the value of the SOGLC Assets that are returned to the Company at the expiration or sooner determination of a SOGLC Lease.
- (c) Unless otherwise authorised by the Treasurer (or, if the Treasurer is not a Member, the Company in general meeting), the Company's investment activities are limited to:
 - (i) setting aside out of available funds such sums as are considered by the Board to be appropriate as reserves and provisions for the purposes of its activities; and
 - (ii) investing surplus funds with the Treasurer or the South Australian Government Financing Authority in accordance with sound investment practices.
- (d) Unless authorised by the Treasurer (or, if the Treasurer is not a Member, the Company in general meeting) or as required by the SOGLC Lease Agreement or any lease thereunder to which Company is party, the Company must not:
 - (i) transfer, sell or dispose of its property; or
 - (ii) acquire or purchase property;
 - (iii) borrow money or obtain any other form of financial accommodation; or
 - (v) lend or advance to any person any money, securities or property.

4 Capital

The capital of the Company is divided into shares.

5 Share Issues

- (a) Subject to control by the Company in general meeting (but not so as to invalidate any prior act of the Directors) and to the provisions of this Constitution, the Shares will be under the control of the Directors.
- (b) The Directors may (subject to the provisions of the Act) allot or issue Shares, or grant options over unissued Shares:
 - (i) to any Qualified Person on such terms and conditions as the Directors think fit;
 - (ii) at such times as the Directors think fit;
 - (iii) subject to such special terms and conditions or restrictions and with such special rights and privileges attaching to them;
 - (iv) with or subject to any fixed, preferential, deferred or qualified rights or conditions in regard to dividends, interest, voting, return of capital, payment of calls or otherwise;

- (v) upon the terms that Shares are, or at the option of the Company are liable, to be redeemed; and
- (vi) generally with and subject to such preferential, or special or qualified rights, privileges and conditions as the Directors think fit.

6 Membership

- (a) Except as required by law, the Company will not recognise a person as holding any Share on any trust.
- (b) The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or right concerned) any equitable, contingent, future or partial interest in any Share or unit of a Share or (except as otherwise provided by this Constitution or by law) any other right in respect of a Share except an absolute right of ownership in the registered holder.

7 Certificates for Shares

- (a) A Member is entitled without payment to receive a certificate in respect of the Shares held by that person in accordance with the Act but, in respect of Shares held jointly by several persons, the Company need not issue more than one certificate.
- (b) Delivery of a certificate for a Share to any one of the persons registered as joint holders is sufficient delivery to all those holders.
- (c) A certificate for Shares shall be in a form that the Directors from time to time decide.
- (d) Subject to clause 7(b), the provisions of the Act with respect to certificates which are lost or destroyed shall apply to certificates which are worn out or defaced. The Directors may exercise all the powers in relation to certificates which are lost, destroyed, worn out or defaced as are exercisable by the Company or its Directors under the Act in relation to certificates that are lost or destroyed.
- (e) The Company:
 - (i) shall issue a certificate in replacement of a worn out or defaced certificate only if the certificate to be replaced is received by the Company for cancellation and is cancelled; and
 - (ii) may require the payment of any amount as the Directors determine in connection with the issue of a replacement certificate.

8 Transfer of Shares

- (a) Subject to this Constitution, a Member may transfer all or any of that Member's Shares by written instrument (a **Transfer**) to any Qualified Person in any usual or common form or in any other form which the Directors approve or by any other manner permitted by the Act.
- (b) A transferor of Shares remains the holder of the Shares transferred until the Transfer is registered and the name of the transferee is entered in the Register of Members in respect of the Shares.
- (c) The Transfer (or other evidence of transfer permitted by the Act) must be left for registration at the registered office of the Company, together with such fee (if any) not exceeding \$1.00 as the Directors require, accompanied by the certificate of the

Shares to which it relates and/or such other information as the Directors require to show the right of the transferor to make the Transfer and the Company must then, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the Shares described in the Transfer.

- (d) The registration of Transfers may be suspended at any time and for any period as the Directors may from time to time determine not exceeding 30 days in any year.
- (e) For clarity, a Member may not transfer any its Shares to any person who is not a Qualified Person.
- (f) If the sale or transfer of any Member's Shares would reduce the number of Members below the number required under the Act or any Act in force in the State for the carrying on of the Company's business without subjecting the Company or any Member to any penalty or any liability additional to that ordinarily attaching to the Company or the Members, the Member who proposes to sell will remain registered as the holder of at least one Share or of any other number of Shares required to remain a Member.

9 Share Buy-backs

Subject to the Act, the Company may buy Shares in itself.

10 Reconstruction of Capital

The Company may convert all or any of its Shares into a larger or smaller number of Shares in accordance with the Act.

11 Reduction of Capital

The Company may reduce its share capital in accordance with the Act.

12 General Meetings

- (a) A Director may convene a general meeting at any time by notice given in accordance with this Constitution (a **Notice of General Meeting**).
- (b) A Notice of General Meeting must contain all the information required by the Act.
- (c) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of accounts and the reports of the Directors and (if applicable) auditors, the election of Directors in place of those retiring or (if applicable) the appointment and fixing of the remuneration of the auditors.
- (d) The non-receipt of a Notice of General Meeting by, or the accidental omission to give notice to, any person entitled to receive such a notice does not invalidate the proceedings or any resolution passed at the relevant meeting.
- (e) The Directors may, no later than 72 hours before the time at which a general meeting is to be held in accordance with a Notice of General Meeting, by giving written notice to all persons to whom the Notice of General Meeting was given and to any other person who is then entitled to notice of general meetings, postpone that general meeting, change the place at which that general meeting is to be held, or both.

- (f) Any notice postponing a general meeting or changing the place at which it is to be held will specify the place, date and time of that meeting which when held will be deemed to have been duly convened pursuant to the notice first convening it.
- (g) The Directors may withdraw and cancel a Notice of General Meeting other than a Notice of General Meeting given to convene a meeting pursuant to section 249D or section 249E of the Act. Written notice of the withdrawal and cancellation of a Notice of General Meeting pursuant to this clause must be given to all persons to whom that notice was given and to any other person who is then entitled to notice of general meetings.
- (h) If the Company has only one Member, section 249B of the Act applies and clauses 12 to 18 (inclusive) shall not apply, other than this clause 12(h).

13 Proceedings at General Meetings

- (a) No business will be transacted at any general meeting unless a quorum of Members is present at the time the meeting proceeds to business.
- (b) The quorum for a general meeting is one Member present in person or by proxy, representative or attorney.
- (c) For the purpose of determining whether a quorum is present, a Member attending through a proxy, representative or attorney who is present at the meeting will be deemed to be present at the meeting.
- (d) If a quorum is not present within 30 minutes after the time appointed for the meeting:
 - (i) where the meeting was convened on the requisition of Members, the meeting will be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to a day, time and place as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
 - (B) if at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the meeting will be dissolved.

14 Chairperson of General Meetings

- (a) Subject to clause 14(b), the chairperson of Directors or, in the chairperson's absence, the deputy chairperson shall preside as chairperson at every general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no chairperson or deputy chairperson; or
 - (ii) the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chairperson of the meeting,

the Directors present shall choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members present in person or by proxy, representative or attorney and entitled to vote will elect one of their number to be chairperson of the meeting.

15 Adjournment of General Meetings

- (a) The chairperson may with the consent of any meeting at which a quorum is present, and will if directed by the meeting, adjourn the meeting to another time and to another place, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (c) Except as provided by clause 15(b), it is unnecessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

16 Voting at General Meetings

- (a) At any general meeting a resolution put to the vote of the meeting will be decided on a show of hands unless before or on the declaration of the result of the show of hands, a poll is demanded by:
 - (i) the chairperson;
 - (ii) at least 2 Members present in person or by proxy, representative or attorney, who are entitled to vote on the resolution;
 - (iii) a Member or Members present in person or by proxy, representative or attorney and representing not less than one-tenth of the total voting rights of all the Members having the right to vote at the meeting; or
 - (iv) a Member or Members present in person or by proxy, representative or attorney holding Shares conferring a right to vote at the meeting being Shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all of the Shares conferring that right.
- (b) Unless a poll is demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (c) The demand for a poll may be withdrawn.
- (d) If a poll is duly demanded, it will be taken in the manner described in this Constitution and (subject to clause 16(e)) either immediately or after an interval or adjournment or as the chairperson directs and the result of the poll will be a resolution of the meeting at which the poll was demanded.
- (e) A poll demanded on the election of a chairperson or on a motion to adjourn a meeting will be taken immediately.
- (f) In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his or her deliberative vote (if any), has a casting vote.
- (g) Subject to any rights or restrictions attached to any class or classes of Shares:
 - (i) at meetings of Members or classes of Members each Member entitled to vote may vote in person, or by proxy or attorney or, where the Member is a company, by representative; and

- (ii) on a show of hands every Member present in person or by proxy has one vote, and on a poll has one vote for each Share that Member holds or represents.
- (h) In the case of joint holders, the vote of the holder first named in the Register of Members in respect of the Share who tenders a vote, whether in person, or by proxy, representative or attorney, will be accepted to the exclusion of the votes of the other joint holders.
- (l) (I) If a Member is:
 - (A) of unsound mind;
 - (B) a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (C) a minor,

that Member's committee or trustee or such other person who properly has the management or guardianship of that Member's estate or affairs may, subject to clause 16(i)(ii), exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.
- (ii) Any person with powers of management or guardianship shall not exercise any rights under clause 16(l)(a) unless and until the person has provided the Directors with satisfactory evidence of the person's appointment and status.
- (j) A Member is not entitled to vote at a general meeting unless all calls and other sums presently payable by that Member in respect of Shares have been paid.
 - (i) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
 - (ii) Any such objection will be referred to the chairperson of the meeting, whose decision is final.
 - (iii) A vote not disallowed pursuant to such an objection is valid for all purposes.

17 Proxies

- (a) An instrument appointing a proxy will be in writing under the hand of the appointor or of that appointor's attorney duly authorised in writing or, if the appointor is a corporation, either under the hands of a director and a director or secretary of the corporation or under the hand of a duly authorised officer or attorney of the corporation.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (c) An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- (d) Despite clause 16(h), where an instrument appointing a proxy is signed by all of the joint holders of any Shares, the votes of the proxy so appointed must be accepted in respect of those Shares to the exclusion of any votes tendered by a proxy for any one of those joint holders.

- (e)
 - (i) The documents to be received by the Company under the Act for an appointment of a proxy to be effective must be received by the Company at least 48 hours before the meeting commences or resumes (as the case may be).
 - (ii) For an instrument appointing an attorney to act on behalf of a Member at all meetings of the Company or at all meetings for a specified period to be effective, the following documents must be received by the Company at least 48 hours (or any shorter period as the Directors may permit) before commencement of the meeting or adjourned meeting at which the attorney proposes to vote:
 - (A) the power of attorney or a certified copy of that power of attorney; and
 - (B) any evidence that the Directors may require of the validity and non-revocation of that power of attorney.
 - (iii) For the purposes of paragraphs (i) and(ii), the Company receives documents when they are received at any of the following:
 - (A) the Company's registered office;
 - (B) a fax number at the Company's registered office; or
 - (C) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- (f) A vote exercised in accordance with the terms of an instrument of proxy or of a power of attorney is valid despite:
 - (i) the previous death or unsoundness of mind of the principal;
 - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or power of attorney; or
 - (iii) the transfer of the Share in respect of which the Instrument or power is given,

If no written notice of the death, unsoundness of mind, revocation or transfer has been received by the Company at its registered office at least 48 hours before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
- (g) 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.
- (h)
 - (i) No instrument appointing a proxy shall be treated as invalid merely because it does not contain:
 - (A) the address of the appointor or of a proxy;
 - (B) the proxy's name or the name of the office held by the proxy; or
 - (C) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
 - (ii) Where the instrument does not specify the name of a proxy, the instrument is taken to be given in favour of the chairperson of the meeting.