

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION
A COMPANY LIMITED BY SHARES
UNDER THE CORPORATIONS ACT 2001

The Constitution of
KINGWEST RESOURCES LIMITED

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THE CONSTITUTION
A PUBLIC COMPANY LIMITED BY SHARES UNDER THE
CORPORATIONS ACT

1. DEFINITIONS

1.1 The following words have these meanings in these clauses unless the contrary intention appears.

"**Alternate Director**" means a person appointed as alternate director under clause 23.

"**Auditor**" means the auditor of the Company.

"**Business Day**" has the meaning given to that term in the Listing Rules;

"**CHESS**" means the Clearing House Electronic Sub-Register System established and operated by the Exchange including but not limited to:

- (a) the clearing and settlement of transaction in CHESS approved securities;
- (b) the transfer of securities; and
- (c) the registration of transfers.

"**CHESS approved securities**" means securities of a company for which CHESS approval has been given in accordance with the Operating Rules.

"**Company**" means KINGWEST RESOURCES LIMITED ACN 624 972 185.

"**Constitution**" means this Constitution as amended from time to time.

"**Corporations Act**" means the Corporations Act 2001 (Cth) and the Corporations Regulations made under it as amended from time to time.

"**Director**" has the meaning given by section 9 of the Corporations Act and includes an Alternate Director.

"**Exchange**" means ASX Limited.

"**Executive Director**" means a person appointed as executive director under clause 22.

"**Home Branch**" means the State branch of the Exchange designated to the Company by the Exchange.

"**Listing Rules**" means the Listing Rules of the Exchange in force and as amended from time to time.

"**Listed Securities**" means any Shares, Share options, stock, debentures, debenture stock or other securities for the time being issued by the Company and officially quoted by the Exchange;

"Managing Director" means a person appointed as managing director under clause 22.

"Market Transfer" means:

- (a) a transfer of Shares in the Company where the transfer is pursuant to or connected with a transaction entered into on the stock market operated by the Exchange and, for the avoidance of doubt, includes a Proper ASX Transfer; or
- (b) an allotment of Shares in the Company as a result of the exercise of any rights, options or convertible notes where such rights, options or notes are traded on a market operated by the Exchange.

"Member" means a person entered in the Register as a member of the Company.

"Operating Rules" means the business rules of a Prescribed CS Facility and any other rules which are applicable while the Company has CHES approved securities, each as amended or replaced from time to time.

"Prescribed CS Facility" has the meaning given to that term in the Corporations Act.

"Proper ASX Transfer" means a transfer which is under the scope of and which complies with, or is taken to comply with, the Operating Rules.

"Quorum" means any 2 Members entitled to vote either present in person or by proxy, attorney or representative.

"Register" means the register of Members to be kept by the Company.

"Registered Office" means the registered office of the Company.

"Related Body Corporate" has the meaning given to that term in the Corporations Act.

"Restricted Securities" has the meaning given to that term in the Listing Rules;

"Seal" means the common seal of the Company.

"Secretary" means a person appointed by the Directors under clause 24.1 to perform the duties of secretary of the Company.

"Share" or **"Shares"** means any issued Share or Shares in the share capital of the Company.

"Special Resolution" has the meaning given by section 9 of the Corporations Act.

"State" means the state or territory in which the Company is from time to time registered.

2. INTERPRETATION

2.1 In this Constitution:

- (a) word importing any gender include all others genders;
- (b) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (c) the singular includes the plural and vice versa; and
- (d) references to statutes or regulations include all statutes or regulations amending, consolidating or replacing them.

2.2 Unless the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.

2.3 Headings are inserted for convenience and do not affect the interpretation of this Constitution.

2.4 Where the phrase "permitted by the Listing Rules" or similar phrase is used in this Constitution that expression shall be deemed to include any act, omission or transaction which is subject to a waiver of the Listing Rules by the Exchange.

2.5 The Replaceable Rules contained in the Corporations Act do not apply to the Company.

2.6 The Company is a public company which is limited by Shares and has the legal capacity and powers of an individual both in and outside Australia together with all powers conferred on a company by the Corporations Act.

3. PREVIOUS CONSTITUTION

3.1 This Constitution supersedes the constitution of the Company (if any) in force immediately prior to the adoption of this Constitution.

3.2 The adoption of this Constitution does not affect the validity or effect of anything done under any previous constitution of the Company so that (and without limitation):

- (a) every Director and Secretary in office immediately prior to the adoption of this Constitution is taken to have been appointed and will continue in office under this Constitution; and
- (b) any Seal properly adopted by the Company prior to the adoption of this Constitution is taken to be a Seal properly adopted under this Constitution.

4. LISTING RULES

4.1 If the Company has been admitted to the official list of the Exchange, then:

- (a) notwithstanding anything contained in this Constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing contained in this Constitution prevents an act being done that the Listing Rules require to be done;
- (c) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (e) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (f) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

5. SHARE CAPITAL AND VARIATION OF RIGHTS

- 5.1 Without prejudice to any special rights previously conferred on the holders of any existing Shares or class of Shares but subject to the Corporations Act, the Listing Rules and this Constitution, except as the Company in general meeting may when authorising any issue of Shares otherwise direct, Shares are under the control of the Directors who may allot or dispose of all or any Shares to such person at such times at such price and on such terms and conditions and having attached to them such preferred, deferred or other special rights or restrictions as the Directors determine.
- 5.2 Subject to the Listing Rules the Directors have the right to grant to any person options or other securities with rights of conversion to Shares or pre-emptive rights to any Shares for any consideration.
- 5.3 The Directors have the right to settle the manner in which fractions of a Share, however arising, are to be dealt with.
- 5.4 The Directors may not, without the prior resolution of the Company in general meeting, allot any Shares in the Company to any person where the allotment would have the effect of transferring a controlling interest in the Company.
- 5.5 A Director or any person associated with a Director may not participate in an issue by the Company of Shares under clause 5.1 or options or other securities under clause 5.2 unless the participation of the Director or the person associated with a director in the issue is permitted under the Listing Rules.
- 5.6 If at any time the Share capital is divided into different classes of Shares, the rights attached to any class (unless otherwise provided by the terms of issue of the Shares of that class), may, in a winding up or otherwise, be varied with the consent in writing of the holders of three quarters of the issued Shares of that class, or with the sanction of a Special Resolution passed at a separate meeting of the holders of the Shares of that class.

- 5.7 The provisions of this Constitution relating to general meetings shall apply (where applicable) to every separate meeting of the holders of a class of Shares except that:
- (a) a quorum is constituted by 2 persons who, between them, hold or represent by proxy one-third of the issued Shares of the class; and
 - (b) any holder of Shares of the class (present in person or by proxy, attorney or representative) may demand a poll.
- 5.8 The rights conferred on the holders of the Shares of any class are not deemed to be varied by the creation or issue of further Shares ranking equally with the first-mentioned Shares unless otherwise:
- (a) expressly provided by the terms of issue of the first-mentioned Shares; or
 - (b) required by the Corporations Act.

6. BROKERAGE OR COMMISSION

- 6.1 The Company may exercise the power to pay brokerage or commission conferred by the Corporations Act and the amount of brokerage or commission paid shall be disclosed in the manner required by the Corporations Act.
- 6.2 Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid Shares or by any combination of cash or allotment.
- 6.3 The Company shall comply with the requirements of the Corporations Act and the Listing Rules in the payment of such brokerage or commission.

7. SHARES HELD IN TRUST

- 7.1 Except as required by law, the Company is not bound or compelled in any way to recognise a person as holding a Share or Shares on any trust.
- 7.2 Notwithstanding clause 7.1 the Company is not bound by or compelled in any way to recognise or to investigate (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any Share or the holding of any Share upon trust or any dealing by the trustee of such 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.

8. SHARE CERTIFICATES

- 8.1 If the Company participates in a computerised or electronic share transfer system conducted in accordance with the Listing Rules, the Company is not required to issue a certificate for the Shares held by a Member and may cancel a certificate without issuing a duplicate certificate where the non-issue of a certificate is permitted by the Listing Rules or the Operating Rules.

- 8.2 Where Shares are not subject to a computerised or electronic share transfer system, a certificate for Shares (including a duplicate certificate) shall be issued in accordance with the provisions of the Corporations Act, this Constitution and the Listing Rules.
- 8.3 Where the Company has determined not to issue certificates or to cancel existing certificates, a Member will be entitled to receive such statements of holdings as are required to be distributed to a holder under the Corporations Act, the Listing Rules or the Operating Rules.
- 8.4 Subject to the provisions of this clause 8, if the Directors determine to issue a certificate for Shares held by a Member then:
- (a) a person whose name is entered as a Member in the Register or as an option holder in the register of options is entitled at no cost to receive a certificate in respect of the Shares or options registered in the person's name issued in accordance with the Corporations Act but, in respect of Shares or options held jointly by several persons, the Company is not bound to issue more than one certificate;
 - (b) delivery of a certificate for a Share may be effected by delivering it personally to the holder or by posting it in a prepaid envelope addressed to the holder at the address shown in the Register or by delivering or posting the certificate in accordance with the written instructions of the holder. Delivery of a certificate for a Share to one of several joint holders is sufficient delivery to all such holders;
 - (c) where satisfactory evidence has been received by the Company that the certificate for Shares previously issued has been stolen, lost or destroyed and has not been pledged, charged, sold or otherwise disposed of, and the holder has undertaken in writing to the Company to return any such certificate if it is found or received by the holder, then the Company shall issue a replacement certificate in accordance with the Corporations Act;
 - (d) where a certificate for Shares previously issued has been worn out or defaced and has been surrendered to the Company for cancellation and has been cancelled the person whose name is entered as the Member in respect of those Shares in the Register is entitled to receive a replacement certificate in accordance with the Corporations Act and the Listing Rules;
 - (e) the Directors may determine the number of Shares to be issued in any one certificate; and
 - (f) every certificate for Shares shall be issued in accordance with the Corporations Act and the Listing Rules.

9. JOINT HOLDERS

- 9.1 Where two or more persons are registered as the joint holders of Shares, they are deemed to hold the Shares as joint tenants with rights of survivorship, subject to this Constitution as to joint shareholdings and:

- (a) they and their respective legal personal representatives are jointly and severally liable to pay all calls, interest or other amounts payable in respect of the Shares; and
- (b) any one of them may give effective receipts for any dividend, interest or other amounts payable in respect of the Shares.

9.2 If more than three persons are registered as the joint holders of Shares, only the first three persons so registered will be regarded as the joint holders of the Shares and all other names will be disregarded by the Company for all purposes.

10. RESTRICTED SECURITIES

10.1 The Company shall comply with the requirements of the Listing Rules with respect to Restricted Securities and without limiting the generality of the foregoing:

- (a) Restricted Securities cannot be disposed of during any escrow period except as permitted by the Listing Rules or the Exchange and the Company will refuse to acknowledge any such disposal (including registering a transfer); and
- (b) during a breach of the Listing Rules relating to Restricted Securities, or a breach of a restriction agreement, the holder of the Restricted Securities is not entitled to any dividend or distribution or voting rights in respect of the Restricted Securities.

11. LIEN

11.1 The company has a first and paramount lien on every Share (other than a fully paid Share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that Share and such lien extends to all dividends, rights and other distributions from time to time declared, paid or made in respect of that Share.

11.2 The Company also has a first and paramount lien on all Shares (other than fully paid Shares) for all money presently payable by that Member to the Company and all money which the Company may be called on by law to pay in respect of those Shares together with interest and any monies so paid may be recovered from the Member or the Member's legal personal representative as a debt due by the Member or the Member's estate to the Company.

11.3 Whenever any law of any place:

- (a) imposes any immediate, future or potential liability on the Company to make any payment; or
- (b) empowers any government or taxing authority or government official to require the Company to make any payment

in respect of any Share or any dividends or other moneys paid or due or payable the Company:

- (c) shall be fully indemnified by the Member holding the Shares or that Member's executor or administrator from all liability;
 - (d) has a lien on the Shares and all dividends payable in respect of those Shares for all money payable by the Company in respect of those Shares together with interest at a rate not exceeding 20% per annum as determined by the Directors from the date of payment to the date of repayment;
- 11.4 Nothing in this Constitution prejudices or affects any right or remedy which any law may confer on the Company.
- 11.5 The Company's lien on a Share is extinguished if a transfer of the Share is registered without the Company giving notice of the claim to the transferee.
- 11.6 Subject to clause 11.7, the Company may sell, in such manner as the Directors may determine, any Share on which the Company has a lien.
- 11.7 A Share on which the Company has a lien may not be sold unless:
 - (a) a sum in respect of which the lien exists is presently payable; and
 - (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the Share, or a person otherwise entitled to the Share, a notice in writing setting out and demanding payment of such part of the amount in respect of which the lien exists as is presently payable.
- 11.8 For the purpose of giving effect to a sale mentioned in clause 11.6, the Company may receive the consideration (if any) paid for the Share and may execute a transfer of the Share in favour of the buyer or where the transfer of Shares is to be effected as a Market Transfer, the Company may do all things necessary or appropriate to effect the transfer.
- 11.9 The title of the transferee to the Share is not affected by any irregularity or invalidity in connection with the sale of the Share.
- 11.10 The Company shall apply the net proceeds of any sale of Shares under clause 11.6 in or towards satisfaction of that part of the amount in respect of which the lien exists as is presently payable together with any interest on that amount and expenses paid or payable in connection with the enforcement of the lien and the sale of the Shares.
- 11.11 The Company shall pay any balance of the net proceeds of sale (subject to any like lien for sums not presently payable that existed upon the Shares before the sale) to the person entitled to the Shares at the date of the sale.
- 11.12 The Directors may at any time exempt a Share or Shares wholly or in part from the provisions of this clause.

12. CALLS ON SHARES

- 12.1 Subject to the requirements of the Corporations Act and the Listing Rules the Directors may make calls on a Member in respect of any money unpaid on the Shares and not made payable at fixed times.

- 12.2 The Directors may determine that a call may be payable by instalments.
- 12.3 The Directors may revoke or postpone a call.
- 12.4 A call is deemed to be made at the time when the resolution of the Directors authorising the call is passed.
- 12.5 Each Member shall, on receiving at least 15 Business Days notice (or such longer period as the Listing Rules shall require) specifying:
- (a) the name of the Member;
 - (b) the number of Shares held by the Member;
 - (c) the amount of the call;
 - (d) the due date for payment of the call;
 - (e) the consequences of non-payment of the call;
 - (f) any taxation deductions applicable and how they may be applied for;
 - (g) market details regarding the Shares and any other shares as required by the Listing Rules; and
 - (h) such other information as required by the Listing Rules,
- pay to the Company at the time and place specified in the notice the amount called on the Shares.
- 12.6 The joint holders of a Share are jointly and severally liable to pay all calls in respect of the Share.
- 12.7 The accidental omission to give notice of any call or the non-receipt of any notice by any Member or Members does not invalidate the call.
- 12.8 If a sum called in respect of a Share is not paid before or on the day appointed for payment, the person from whom the sum is due shall pay interest on the sum from and including the day for payment to the time of actual payment at a rate not exceeding 20% per annum as determined by the Directors, and the Directors may waive payment of that interest wholly or in part.
- 12.9 Subject to the Listing Rules any sum that, by the terms of issue of a Share, becomes payable on allotment or at a fixed date shall for the purpose of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable and, in the case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.
- 12.10 The Directors may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
- 12.11 The Directors may accept from a Member an advance payment of the whole or a part of the amount unpaid on a Share and the Directors may authorise payment by the Company of interest upon the whole or any part of an amount

so accepted until the amount becomes payable at such rate as is determined the Directors in their absolute discretion.

13. FORFEITURE OF SHARES

- 13.1 On or before the day appointed for payment, if any Member fails to pay any call or instalment of a call or any money payable under the terms of allotment of a Share, the Directors may at any time after that day and while any part of the call, instalment or other monies remains unpaid, serve a notice on the Member requiring payment of:
- (a) the unpaid call, instalment or other monies;
 - (b) any interest that may have accrued on the unpaid call, instalment or other monies; and
 - (c) any costs and expenses that may have been incurred by the Company as a result of the non-payment of the call, instalment or other monies.
- 13.2 A notice sent to a Member pursuant to clause 13.1 shall:
- (a) name a further day (not being less than 10 Business Days from the date of the notice) on or before which the call, instalment or other monies and all interest and expenses that have accrued are to be paid;
 - (b) identify the place where payment is to be made; and
 - (c) include a statement to the effect that in the event of non-payment of all of the monies on or before the date and at the place appointed, the Shares in respect of which the payment is due will be liable to be forfeited.
- 13.3 If the requirements of a notice served under clause 13.1 are not complied with, any Share in respect of which the notice has been given is thereupon forfeited without any resolution of the Directors to that effect.
- 13.4 A forfeiture includes all dividends declared in respect of the forfeited Share and not actually paid before the forfeiture,
- 13.5 A Share forfeited under clause 13.3 may be sold, re-allotted or otherwise disposed of to whom and on such terms and conditions (subject to the Corporations Act and Listing Rules) as the Directors determine and the forfeiture may be cancelled on such terms as the Directors may determine at any time before a sale, re-allotment or disposition.
- 13.6 If any Share is forfeited under clause 13.3, notice of the forfeiture shall be given to the Member holding the Share immediately prior to the forfeiture and an entry of forfeiture shall be made in the Register.
- 13.7 The Directors may accept the surrender of any Share which they are entitled to forfeit on such terms as they determine and any Share so surrendered is deemed to be a forfeited Share.
- 13.8 A person whose Shares have been forfeited ceases to be a Member in respect of the forfeited Shares, but remains liable to pay the Company all money

that, at the date of forfeiture, was payable by that person to the Company in respect of the Share (including interest at a rate not exceeding 20% per annum as determined by the Directors which may be charged from the date of forfeiture on the money unpaid) PROVIDED THAT the person's liability ceases if and when the Company receives payment in full of all money (including interest and expenses) payable in respect of the Shares.

- 13.9 A statutory declaration in writing declaring that the person making the statement is a Director or a Secretary and that a Share in the Company has been duly forfeited on a date stated in that declaration is prima facie evidence of the facts stated in that declaration as against all persons claiming to be entitled to the Share.
- 13.10 The Company may receive the consideration (if any) given for a forfeited Share on any sale or disposition of the Share and may effect a transfer of the Share in favour of the transferee.
- 13.11 The transferee of a forfeited Share shall be registered as the holder of the Share and is not bound to see to the application of any money paid as consideration.
- 13.12 The title of the transferee to the Share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the Share.
- 13.13 Where the transfer of forfeited Shares is to be effected by an ASX regulated transfer, the Company may do all such things as may be necessary or appropriate for it to do under the Operating Rules.

14. TRANSFER OF SHARES

- 14.1 Subject to this Constitution, a Member may transfer all or any of the Member's Shares by:
- (a) a Market Transfer; and
 - (b) an instrument which is in writing in any usual form or in any other form that the Directors approve or a sufficient instrument or transfer of marketable securities under the Corporations Act or in a form approved by the Exchange.
- 14.2 Where an instrument of transfer referred to in clause 14.1(b) is to be used by a Member to transfer Shares:
- (a) it shall be executed by or on behalf of both the transferor and the transferee or as otherwise may be executed in accordance with the Corporations Act;
 - (b) the instrument of transfer shall be left for registration at the Share registry of the Company, accompanied by the Share certificate (if any) and such information as the Directors properly require to show the right of the transferor to make the transfer;
 - (c) the Company shall register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without charge

