

Member Update

Title: Adoption of a new GTA Constitution

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1 Background

The GTA Constitution has not been revised since 2003 when it was first developed. Following a review by the GTA Board Governance Committee, a new constitution was adopted by GTA members at the GTA AGM held on Tuesday 26 October 2010.

Full details of the changes were contained in the Explanatory Memorandum which was sent to all members as part of the AGM documentation. The relevant major changes to the constitution are detailed below.

2 New features of the GTA Constitution

The previous Constitution of GTA was adopted in October 2003 and has not been reviewed in any material respect since its adoption.

The new Constitution clarifies the director nomination and election process and brings the Constitution in line with current law and corporate governance practice.

The new Constitution will not result in any material change to the way the Company is currently operated. This Member Update sets out the key differences between the previous Constitution and the new Constitution:

- **Associate Member & Honorary Member** - The references in the previous Constitution to "Associate Member" and "Honorary Member" have been deleted. The Company operates on the basis that no Associate Membership or Honorary Membership is granted. There are currently no "Associate Members" or "Honorary Members" of GTA, and deletion of the references to these categories of membership reflects how GTA is currently operated.
- **Ordinary Members** - The previous Constitution has been amended by dividing the class of "Ordinary Membership" into three new levels of ordinary membership, being Level A Ordinary Members, Level B Ordinary Members and Level C Ordinary Members.

A description of the three new levels of ordinary membership are set out below:

Level A Ordinary Member means members who trade and/or store and/or handle more than 1,500,000 tonnes of grain per year.

Level B Ordinary Member includes the following:

- (a) Level B1 ordinary members who trade and/or store and/or handle between 1,000,000 and 1,500,000 tonnes of grain per year; and
- (b) Level B2 ordinary members who trade and/or store and/or handle between 500,000 and 1,000,000 tonnes of grain per year; and
- (c) Level B3 ordinary members who trade and/or store and/or handle between 250,000 and 500,000 tonnes of grain per year.

Level C Ordinary Member means members who trade and/or store and/or handle less than 250,000 tonnes of grain per year.

Under the new Constitution, the Board will have the right to determine which level of Ordinary Membership each Member falls into on an annual basis. This will enable an Ordinary Member to change levels of membership on an annual basis, determined by the level of grain the Ordinary Member handles on an annual basis.

- **Rights of Ordinary Members** - Under the previous Constitution, the Ordinary Members as a class of membership had the right to nominate up to 5 Directors to the Board of the Company. Three new levels of ordinary members have been created (as described above) and the rights of the Ordinary Members (in relation to nomination of directors) have been varied, as set out below:
 - (a) Level A Ordinary Members have the right to nominate up to two directors;
 - (b) Level B Ordinary Members as a whole have the right to nominate up to two directors; and
 - (c) Level C Ordinary Members have the right to nominate up to one director.
- **Composition of the Board** - The provisions regarding the composition of the Board have been clarified. Rule 3.1 of the previous Constitution provided that the Board shall consist of at least 6 and not more than 20 Directors. The maximum number of directors has been reduced from 20 to 16 directors, and the composition of the Board is clearly defined, as set out below.

The Board shall consist of:

- (a) *up to a maximum of 5 Directors who are nominated by the Ordinary Members of which:*
 - (i) *up to 2 Directors may be nominated by Level A Ordinary Members (if any); and*
 - (ii) *up to 2 Directors may be nominated by Level B Ordinary Members (if any); and*
 - (iii) *1 Director may be nominated by Level C Ordinary Members (if any), and*
 - (b) *up to a maximum of 3 Directors who are nominated to be Directors by the Merchant Association Members (if any); and*
 - (c) *up to a maximum of 8 other Directors which shall include*
 - (i) *Special Qualification Directors (if any); and*
 - (ii) *persons nominated to be Directors by any other class of members (if any new classes of members are created).*
- **Expelling a Member** - A provision has been inserted into the Constitution to enable the Board to pass a resolution to expel a member from the Company in the event a member becomes insolvent, or if an administrator or controller is appointed in respect to a member. In addition, the definitions of "Controller" and "Insolvent Under Administrator" have been inserted into the definitions section of the Constitution.
 - **Nomination of Directors** - Rule 3.4 of the previous Constitution provided that Ordinary Members and Merchant Association Members are able to nominate directors up to 4 - 5 days before a meeting is held. Rule 3.4 has been amended to provide that nomination forms for the appointment of new directors must be received by the Company 30 - 40 days (being the number of days determined by the Board on an annual basis) prior to a meeting being held.

This will enable the Company sufficient time to prepare and distribute to members a Notice of Meeting, Proxy Form and Explanatory Memorandum setting out details of each director who has been nominated for appointment to the Board (within the time periods required by the *Corporations Act 2001*).

In addition, it will provide members with sufficient time to consider the candidates who have been nominated for election as directors prior to the AGM at which they will be considered for election.

- **Special Qualification Directors** - The previous Constitution permitted that the Board could nominate and determine persons to appoint to the Board who have special qualifications relevant to the business and objects of GTA. The Constitution clarifies the following points:
 - that the Directors are permitted by resolution of the Board to appoint Special Qualification Directors following each AGM, or at any other time during the year (provided the Board has no more than 16 Directors);
 - Special Qualification Directors are to be appointed for a one year term, unless reappointed by the Board; and
 - Special Qualification Directors are to be required to provide a consent to act as a Director prior to their appointment as a director becoming effective.

- **Rotation of Directors** - Rule 3.8 of the previous Constitution provided that at each AGM one third of the Directors must retire from office and may be eligible for re-election. The previous Constitution does not specify which Directors are to retire at each AGM. Rule 3.8 (which has become Rule 3.9 of the new Constitution) has been amended to provide for the rotation of Directors as set out below:
 - (a) *At the AGM held following the financial year ended 30 June 2011, and every third AGM thereafter, the following Directors must retire from office:*
 - (i) *one Director who has been nominated by Level A Ordinary Members (if any);*
 - (ii) *one Director who has been nominated by Level B Ordinary Members (if any); and*
 - (iii) *one Director who has been nominated by Merchant Association Members (if any).*
 - (b) *At the AGM held following the financial year ended 30 June 2012 and every third AGM thereafter, the following Directors must retire from office:*
 - (i) *one Director who has been nominated by Level A Ordinary Members (if any);*
 - (ii) *one Director who has been nominated by Level C Ordinary Members (if any); and*
 - (iii) *one Director who has been nominated by Merchant Association Members (if any).*
 - (c) *At the AGM held following the financial year ended 30 June 2013 and every third AGM thereafter, the following Directors must retire from office:*
 - (i) *one Director who has been nominated by Level B Ordinary Members (if any); and*
 - (iii) *one Director who has been nominated by Merchant Association Members (if any).*
 - (d) *When determining which Directors (excluding the Special Qualification Directors) who should retire in accordance with the above requirements:*
 - (i) *it shall be those Directors who have been in office as a Director for the longest period of time; and*
 - (ii) *in respect to those Directors who have held office for the same period of time:*
 - (A) *it shall be the Director determined by agreement between the Directors who have held office for the same period of time; or*
 - (B) *in the event an agreement between the Directors cannot be reached, then it shall be the Director determined by lot.*
 - (e) *No Director shall hold office as a Director for more than a three year term, unless they are re-elected as a Director in accordance with the Constitution.*
 - (f) *Where the number of Directors is less than the maximum number of Directors (determined in accordance with the requirements set out in rule 3.3(a)), then the rotation provisions set out above will only apply in the particular year in respect to a particular Director, if the retiring Director will have served as a Director for three years since being elected.*

- **Casual Vacancies in the Board** - Rule 3.13 of the previous Constitution provided that if a casual vacancy occurs (i.e. a Director resigns mid term), then the members can elect a new Director either:
 - (a) at the next general meeting (if a general meeting is to be held within 60 days from the date the position becomes vacant), or
 - (b) by postal ballot of members.

Rule 3.13 is amended to provide that:

- (a) the Directors be authorised to fill casual vacancies on the Board; and
- (b) Directors appointed by the Board to fill a casual vacancy hold office for the duration of the term for which the Directors they have replaced would have held office.

This change will create minimal disruption should a Director retire mid term, as the Board will be able to act quickly to replace the Director without having to hold a general meeting of members, or conduct a postal ballot of members.

- **Electronic Banking** - Rule 6.1 is amended to enable the Board to determine the manner in which electronic and on-line banking for the Company can be conducted and approved. This amendment will update the Previous Constitution to provide for modern banking practices.
- **Quorum** - Rule 14.2 of the Previous Constitution provided that the quorum for a meeting of members is 8 members. This has changed and the quorum for a meeting of members is reduced to 6 members or fifty percent (50%) of members, whichever is less. This amendment will mean that if a meeting of a particular class of members is required that the likelihood of the meeting failing due to lack of quorum will be reduced.
- **Legal Referencing** - A number of references throughout the Previous Constitution have been amended to clarify that they are references to the *Corporations Act 2001*. In addition, a number of section references in the *Corporations Act 2001* throughout the Previous Constitution are incorrect or have now changed. The Previous Constitution has been varied to update the section references so they accurately refer to current legislation.