

GOLD FIELDS AUSTRALIAN FOUNDATION INCORPORATED

CONSTITUTION

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CONSTITUTION OF GOLD FIELDS AUSTRALIAN FOUNDATION INCORPORATED

1. NAME OF FOUNDATION

The name of the Foundation is Gold Fields Australian Foundation Incorporated ("**Foundation**").

2. DEFINITIONS

In this Constitution, unless the contrary intention appears:

"**Act**" means the *Associations Incorporation Act 1987* and any reference to the Act or any sections of it, includes all amendments or re-enactments and any act replacing the whole or any part of that Act;

"**Agnew**" means Agnew Gold Mining Company Pty Ltd (ACN 098 385 883);

"**Board**" means the Board of the Foundation referred to in clause 12;

"**Board Meeting**" means a meeting referred to in clause 17;

"**Board Member**" means a member of the Board of the Foundation;

"**Chairperson**" means:

- (a) in relation to the proceedings at a Board Meeting or General Meeting, the person presiding at the Board Meeting or General Meeting; or
- (b) otherwise than in relation to the proceedings referred to in paragraph (a), the person referred to in clause 14 or, if that person is unable to perform his or her functions, the Secretary;

"**Financial Year**" means:

- (a) an initial period not exceeding 15 months fixed by the Board being a period commencing on the date of incorporation of the Foundation; and
- (b) each period of 12 months ending on 30 June, or such other period fixed by the Board, commencing at the expiration of the previous financial year of the Foundation;

"**Foundation**" means the Foundation referred to in clause 1;

"**General Meeting**" means a meeting of Members convened under clause 9;

"**Gold Fields Australasia**" means Gold Fields Australasia Pty Ltd (ACN 087 624 600);

"**Gold Fields Australia**" means Gold Fields Australia Pty Limited (ACN 098 385 285);

"**Gold Fields Employee**" means a full-time employee of Agnew, St Ives, Gold Fields Australia and Gold Fields Australasia and does not include a consultant;

"**Member**" means a member of the Foundation;

"**Mine Representative**" means an employee of Agnew or St Ives;

"**Public Fund**" means the fund referred to in clause 20;

"**Public Fund Committee**" means the committee established under clause 20;

"**Secretary**" means the Secretary referred to in clause 15;

"**Special Resolution**" has the meaning given by section 24 of the Act;

"**St Ives**" means St Ives Gold Mining Company Pty Limited (ACN 098 386 273);

"**Tax Act**" means the *Income Tax Assessment Act (Cth) (1997)* and any reference to the Tax Act or any sections within includes all amendments or re-enactments and any Act replacing the whole or any part of that Act; and

"**Treasurer**" means the Treasurer referred to in clause 16.

3. OBJECTS OF THE FOUNDATION

- 3.1 The Foundation is a provider of funds for the social and economic upliftment and development of people, with special emphasis on the disadvantaged and underprivileged in such areas as health care, education, housing, job creation, small business development, and the development of people in rural and agricultural areas. For that purpose, the Foundation exists to raise the funds necessary to make grants, loans and donations to educational, training, welfare and charitable bodies.
- 3.2 The Foundation is carried on without purpose of private gain for any particular person or persons.
- 3.3 The property and income of the Foundation shall be applied solely towards the promotion of the objects of the Foundation set out in clause 3.1 and no part of that property or income may be paid or otherwise distributed or transferred, directly or indirectly, to Members, except that the Foundation may reimburse in good faith officers, employees and servants of the Foundation or other persons for out of pocket expenses rendered to the Foundation in the promotion of the objects of the Foundation.
- 3.4 For the avoidance of doubt, the out of pocket expenses referred to in clause 3.3 includes expenses such as those for car-parking and photocopying.

4. POWERS OF THE FOUNDATION

The Foundation shall have all the powers of an Association set out or implied by section 13 of the Act and in addition thereto shall have all of the powers of a body corporate and without limiting the generality of the foregoing, may do or undertake any act or thing which a corporation or person could do to achieve any one or more of its objects or in pursuance thereof.

5. RATIFICATION OF COSTS

The Board shall ratify at the first General Meeting, all pre-incorporation costs incurred towards the establishment of the Foundation and the furtherance of its objectives.

6. MEMBERS OF THE FOUNDATION

6.1 Membership of the Foundation will comprise (of at least) the following persons:

- (a) a Chairman;
- (b) a Treasurer;
- (c) a Secretary;
- (d) 2 Mine Representatives, one from each of Agnew and St Ives; and
- (e) 1 representative from Gold Fields Australia.

6.2 The Board may, at its discretion, appoint up to 4 persons who are not Gold Fields Employees.

6.3 A person who wishes to become a Member must:

- (a) apply for membership to the Board in writing:
 - (i) signed by that person and by both of the Members referred to in paragraph (b); and
 - (ii) in such form as the Board from time to time directs; and
- (b) be proposed by one Member and seconded by another Member.

6.4 The Board must consider each application made under clause 6.3 at a Board Meeting and must at the Board Meeting accept or reject that application.

6.5 An applicant whose application for membership of the Foundation is rejected under clause 6.4 must, if he or she wishes to appeal against that decision, give notice to the Secretary of his or her intention to do so within a period of 14 days from the date he or she is advised of the rejection.

7. REGISTER OF MEMBERS OF FOUNDATION

The Secretary, on behalf of the Foundation, must comply with section 27 of the Act by keeping and maintaining a register of the Members of the Foundation and their postal or residential addresses and, upon the request of a Member, shall make the register available for the inspection of the Member and the Member may make a copy of or take an extract from the register but shall have no right to remove the register for that purpose.

8. CESSATION OF MEMBERSHIP

8.1 Any Member may resign by advising the Chairman in writing of their intention to do so. This resignation must be accepted at the next full meeting of the Board.

8.2 If a Member who is a Gold Fields Employee ceases to be a Gold Fields Employee, the Board shall have absolute discretion in determining whether that Member may continue to be a Member of the Foundation.

8.3 If the Board considers that a Member should be suspended or expelled from membership of the Foundation because his or her conduct is detrimental to the interests of the Foundation, or his or her ability to contribute to the Foundation is diminished, the Board must communicate, either orally or in writing, to the Member:

(a) a notice of the proposed suspension or expulsion and of the time, date and place of the Board Meeting at which the question of that suspension or expulsion will be decided; and

(b) particulars of that conduct,

not less than 30 days before the date of the Board Meeting referred to in paragraph 8.3(a).

8.4 At the Board Meeting referred to in a notice communicated under clause 8.3, the Board may, having afforded the Member concerned a reasonable opportunity to be heard by, or to make representations in writing to, the Board, suspend or expel or decline to suspend or expel that Member from membership of the Foundation and must, forthwith after deciding whether or not to suspend or expel that Member, communicate that decision in writing to that Member.

8.5 A Member has his or her membership suspended or ceases to be a Member 14 days after the day on which the decision to suspend or expel a Member is communicated to him or her under clause 8.4.

9. GENERAL MEETINGS

9.1 The Board:

(a) may at any time convene a General Meeting;

- (b) shall convene annual general meetings within the time limits provided for the holding of annual general meetings by section 23 of the Act;
- (c) must, within 30 days of receiving a request in writing to do so from not less than 2 Members, convene a special general meeting for the purpose specified in that request; and
- (d) must, after receiving a notice under clause 6.5, convene a general meeting, no later than the next annual general meeting, at which the appeal referred to in the notice will be dealt with. Failing that, the applicant is entitled to address the Foundation at that next annual general meeting in relation to the Board's rejection of his or her application and the Foundation at that meeting must confirm or set aside the decision of the Board.

9.2 The Members making a request referred to in clause 9.1(c) must:

- (a) state in that request the purpose for which the special general meeting concerned is required; and
- (b) sign that request.

9.3 If a special general meeting is not convened within the relevant period of 30 days referred to in clause 9.1(c), the Members who made the request concerned may themselves convene a special general meeting as if they were the Board.

9.4 When a special general meeting is convened under clause 9.3, the Foundation must pay the reasonable expenses of convening and holding the special general meeting.

9.5 Written notice of each General Meeting shall be served on each Member no later than 14 days (21 days for an annual general meeting or where a Special Resolution is proposed) prior to the meeting or any other period as all Members may agree upon as adequate for the holding of a meeting. That notice must specify:

- (a) when and where the General Meeting concerned is to be held; and
- (b) particulars of the business to be transacted at the General Meeting concerned and of the order in which that business is to be transacted.

Failure by any Member to receive due notice of any meeting shall not invalidate the proceedings of that meeting.

9.6 In the case of an annual general meeting the order in which business is to be transacted is:

- (a) first, the consideration of the accounts and reports of the Board;
- (b) second, the election of Board Members to replace outgoing Board Members; and

- (c) third, any other business requiring consideration by the Foundation in a General Meeting.

10. PROCEEDINGS AT GENERAL MEETINGS

- 10.1 The quorum for General Meetings shall be 4 Members.
- 10.2 If within half an hour from the time appointed for the General Meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Chairperson may determine.
- 10.3 There shall not be transacted at an adjourned General Meeting any business other than business left unfinished or on the agenda at the time when the General Meeting was adjourned.
- 10.4 When a General Meeting is adjourned for a period of 30 days or more, the Secretary shall give notice under clause 18.1 of the adjourned General Meeting as if that General Meeting were a fresh General Meeting.
- 10.5 All questions arising at a General Meeting shall be decided by show of hands or if demanded by a Member by a poll taken in such a manner as the Chairperson may determine.
- 10.6 A resolution signed by all Members shall be as valid and effectual as if it had been passed at a meeting of the Members duly convened and held. Any such resolution may consist of one or several documents in like form each signed by one or more Members.

11. VOTING RIGHTS OF MEMBERS OF FOUNDATION

Subject to this Constitution, each Member present in person at a General Meeting is entitled to one vote.

12. THE BOARD

- 12.1 The affairs of the Foundation shall, subject to this Constitution and the Act, be managed exclusively by a Board comprising of:
 - (a) the Chairperson;
 - (b) the Secretary;
 - (c) a Treasurer; and
 - (d) not less than 3 other persons,all of whom must be Members of the Foundation.
- 12.2 Board Members must be elected to Board membership at an annual general meeting or appointed under clause 12.8.

- 12.3 Subject to clause 12.8, a Board Member's term of office will be from his or her election at an annual general meeting until the next annual general meeting after his or her election, but he or she is eligible for reappointment as a Board Member.
- 12.4 Except for nominees under clause 12.7, a person is not eligible for election to Board membership unless a Member has nominated him or her for election by delivering notice in writing of that nomination, signed by:
- (a) the nominator; and
 - (b) the nominee to signify his or her willingness to stand for election,
- to the Secretary not less than 7 days before the day on which the annual general meeting concerned is to be held.
- 12.5 A person who is eligible for election or re-election under this clause may:
- (a) propose or second himself or herself for election or re-election; and
 - (b) vote for himself or herself.
- 12.6 If the number of persons nominated in accordance with clause 12.4 for election to Board membership does not exceed the number of vacancies in that membership to be filled:
- (a) the Secretary must report accordingly to; and
 - (b) the Chairperson must declare those persons to be duly elected as Board Members at,
- the annual general meeting concerned.
- 12.7 If vacancies remain on the Board after the declaration under clause 12.6, additional nominations of Board Members may be accepted from the floor of the annual general meeting. If such nominations from the floor do not exceed the number of vacancies the Chairperson must declare those persons to be duly elected as Board Members. Where the number of nominations from the floor exceeds the remaining number of vacancies on the Board, elections for those positions must be conducted.
- 12.8 If a vacancy remains on the Board after the application of clause 12.7, or when a casual vacancy within the meaning of clause 13 occurs in the Board membership:
- (a) the Board may appoint a Member to fill that vacancy; and
 - (b) a Member appointed under this clause will:
 - (i) hold office until the election referred to in clause 12.2; and
 - (ii) be eligible for election to Board membership,

at the next annual general meeting.

13. CASUAL VACANCIES IN BOARD MEMBERSHIP

13.1 A casual vacancy occurs in the office of a Board Member if the Board Member:

- (a) dies;
- (b) resigns by notice in writing delivered to the Chairperson or, if the Board Member is the Chairperson, to the Secretary;
- (c) is convicted of an offence under the Act;
- (d) is permanently incapacitated by mental or physical ill-health; or
- (e) ceases to be a Member of the Foundation.

13.2 The Chairperson may grant a leave of absence to a Board Member on such terms and conditions as the Board determines.

14. CHAIRPERSON

14.1 Subject to this clause, the Chairperson shall preside at all General Meetings and Board Meetings.

14.2 In the event of the absence from a General Meeting of the Chairperson, a Member elected by the other Members present at the General Meeting must preside at the General Meeting.

14.3 In the event of the absence from a Board Meeting of the Chairperson, a Board Member elected by the other Board Members present at the Board Meeting must preside at the Board Meeting.

15. SECRETARY

15.1 The Secretary shall:

- (a) co-ordinate the correspondence of the Foundation;
- (b) keep full and correct minutes of the proceedings of the Board and of the Foundation;
- (c) comply on behalf of the Foundation with:
 - (i) section 27 of the Act in respect of the register of Members of the Foundation;
 - (ii) section 28 of the Act in respect of keeping and maintaining an up to date condition of the Constitution of the Foundation;

- (iii) section 29 of the Act in respect of keeping a record of the names and addresses of office holders, and any trustees of the Foundation;
- (d) have custody of all books, documents, records and registers of the Foundation other than those to be kept and maintained by, or in the custody of, the Treasurer; and
- (e) perform such other duties as are imposed by the Board on the Secretary from time to time.

16. TREASURER

16.1 The Treasurer shall:

- (a) be responsible for the receipt of all moneys paid to or received by, or by him or her on behalf of, the Foundation and shall issue receipts for those moneys in the name of the Foundation;
- (b) pay all moneys referred to in paragraph (a) into such account or accounts of the Foundation as the Board may from time to time direct;
- (c) ensure that all cheques are signed by 2 Board Members;
- (d) ensure that all EFT transactions are authorised by 2 Board Members;
- (e) **comply on behalf of the Foundation with sections 25 and section 26 of the Act in respect of the accounting records of the Foundation;**
- (f) whenever directed to do so by the Board, submit to the Board a report, balance sheet or any other financial statement in accordance with that direction;
- (g) have custody of all securities, books and documents of a financial nature and accounting records of the Foundation, including those referred to in paragraphs (e) and (f); and
- (h) perform such other duties as are imposed by the Board on the Treasurer from time to time.

17. PROCEEDINGS AT BOARD MEETINGS

- 17.1 The Board shall meet together for the dispatch of business not less than once in each quarter and the Chairperson, or at least half the Board Members may at any time convene a meeting of the Board.
- 17.2 Written notice of each Board Meeting shall be served on each Board Member no later than 14 days prior to the meeting or such other period as Board Members may agree upon as adequate for the holding of a meeting. Failure by any Board Member to receive a notice of any meeting shall not invalidate the proceedings of that meeting.

- 17.3 The quorum for a Board Meeting shall be 4 Board Members.
- 17.4 Each Board Member has one vote.
- 17.5 A question arising at a Board Meeting shall be decided by a majority of votes, but, if there is an equality of votes, the person presiding at the Board Meeting shall have a casting vote in addition to his or her one vote.
- 17.6 Any Board Member who has a direct or indirect pecuniary interest, which he or she has not previously disclosed pursuant to this clause, in any matter:
- (a) which is before a Board Meeting at which the Board Member is present; or
 - (b) on which the Board Member has advised the Board, whether or not the Board Member is present at the meeting where the matter is considered,
- shall, as soon as possible after the relevant facts have come to the Board Member's knowledge, disclose the fact and nature of his or her interest to the Board and the Board shall ensure that the information disclosed is recorded in the minutes.
- 17.7 Where a Board Member discloses an interest under clause 17.6 in any matter the Board Member will be:
- (a) excluded from a Board Meeting whilst that matter is under consideration; and
 - (b) prohibited from voting on any question with respect to that matter.
- 17.8 Clause 17.6 does not apply with respect to a pecuniary interest that exists only by virtue of the fact that the Board Member is an employee of the Foundation.
- 17.9 Subject to these clauses, the procedure and order of business to be followed at a Board Meeting shall be determined by the Board Members present at the Board Meeting.
- 17.10 A resolution signed by all Board Members shall be as valid and effectual as if it had been passed at a Board Meeting duly convened and held. Any such resolution may consist of one or several documents in like form each signed by one or more Board Members.

18. NOTICE OF BOARD MEETING AND GENERAL MEETING

- 18.1 The Secretary may give a notice under clauses 9.5 or 17.2 by:
- (a) serving it on a Member or Board Member personally; or
 - (b) sending it by post to the address of the Member or Board Member appearing in the register of Members kept and maintained under section 27 of the Act.

- 18.2 When a notice is sent by post under clause 18.1, sending of the notice shall be deemed to be properly effected if the notice is sufficiently addressed and posted to the Member or Board Member concerned by ordinary mail and the Member or Board Member is deemed to have received the notice the next business day after it is posted.

19. MINUTES OF MEETINGS OF FOUNDATION

- 19.1 The Secretary shall cause proper minutes of all proceedings of all General Meetings and Board Meetings to be taken.
- 19.2 The Chairperson shall ensure that the minutes taken of a General Meeting or Board Meeting under clause 19.1 are checked and signed correct by the Chairperson of the General Meeting or Board Meeting to which those minutes relate or of the next succeeding General Meeting or Board Meeting, as the case requires.
- 19.3 When minutes have been entered and signed as correct under this clause, they shall, until the contrary is proved, be evidence that:
- (a) the General Meeting or Board Meeting to which they relate (in this subclause called "**the meeting**") was duly convened and held;
 - (b) all proceedings recorded as having taken place at the meeting did in fact take place there at;
 - (c) all appointments or elections purporting to have been made at the meeting have been validly made; and
 - (d) all resolutions purporting to have been put and passed at the meeting have been validly put and validly passed.

20. GIFT FUND

- 20.1 The Foundation shall establish and maintain a gift fund to be called the Gold Fields Australian Foundation Gift Fund (the "**Gift Fund**") for the specific purpose of supporting the objects of the Foundation specified in clause 3.
- 20.2 The Foundation shall open a bank account where all monetary donations to the Gift Fund shall be deposited forthwith. The Gift Fund bank account shall be kept separate from other funds and bank accounts (if any) of the Foundation.
- 20.3 Any donation (monetary or otherwise) made to the Gift Fund and interest on donations, income derived from donated property and money received from the realisation of the sale of the donated property shall be deposited into the Gift Fund bank account and shall be applied solely for the objects of the Foundation specified in clause 3.
- 20.4 The Gift Fund shall not receive any other money or property other than donations (monetary or otherwise) pursuant to clause 20.3. Certain money and property must not go to the Gift Fund including any income from corporate

sponsorship, income from commercial activities and proceeds from raffles, auctions or fundraising dinners.

- 20.5 All property and income of the Gift Fund shall be applied solely toward the promotion of the objects of the Foundation set out in clause 3.
- 20.6 The Gift Fund shall issue a receipt to the donor for all donations over \$2.00 made to the Gift Fund detailing the following:
- (a) the date the donation was made;
 - (b) the name of the Foundation;
 - (c) the Foundation's ABN;
 - (d) the name of the Gift Fund;
 - (e) the fact that the receipt is for a gift;
 - (f) the name of the donor; and
 - (g) the amount (or description) of the gift donated by the donor to the Gift Fund.
- 20.7 The Foundation shall notify the Australian Taxation Office within a reasonable time of any changes to this clause 20 or any other rules governing the Gift Fund.
- 20.8 The Foundation shall, if requested, provide to the Australian Taxation Office statistical data about donations made to the Gift Fund during the Financial Year, in the form required by the Australian Taxation Office from time to time.
- 20.9 The Gift Fund shall operate on a non-profit basis. No part of the income or property of the Gift Fund shall be applied for the benefit of or paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of pecuniary profit to any of the Members or Board Members provided that the Foundation may reimburse in good faith from the Gift Fund, officers, employees and servants of the Foundation or other persons for out of pocket expenses rendered to the Foundation in promotion of the objects of the Foundation.
- 20.10 If upon the winding up or dissolution of the Gift Fund there remains after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members or Board Members, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Gift Fund and which is a fund, authority or institution referred to in subsection 78(4) of the *Income Tax Assessment Act 1936 (Cth)* and which is a fund, authority or institution that is eligible for tax deductibility of donations under subdivision 30-B, section 30-45 of the Tax Act.

20.11 The Foundation shall provide to the Australian Taxation Office information requested by the Australian Taxation Office from time to time.

21. ACCOUNTS AND REPORTS

21.1 The Board shall ensure that the Foundation keeps proper accounts and records of the transactions and affairs of the Foundation and such other records as sufficiently explain its financial operations and financial position pursuant to section 25 and 26 of the Act.

21.2 The books of accounts, documents and securities of the Foundation shall be kept at such place or places as the Board thinks fit from time to time.

21.3 The Board shall after the end of each Financial Year cause to be prepared in accordance with Australian Accounting Standards, a Statement of Income and Expenditure for the Financial Year, a Balance Sheet as at the end of the Financial Year and a Statement of Cash Flows for the Financial Year to be audited by a member of either the Institute of Chartered Accountants in Australia or CPA Australia.

22. RULES OF FOUNDATION

The Foundation may alter or rescind this Constitution in accordance with the procedure set out in section 17, 18 and 19 of the Act.

23. COMMON SEAL OF FOUNDATION

23.1 The Foundation shall have a common seal on which its corporate name shall appear in legible characters.

23.2 The common seal of the Foundation shall not be used without the express authority of the Board and every use of that common seal shall be recorded in the minute book.

23.3 The affixing of the common seal of the Foundation shall be witnessed by any two of the Chairperson, the Secretary and the Treasurer.

23.4 The common seal of the Foundation shall be kept in the custody of the Secretary or of such other person as the Board from time to time decides.

24. INSPECTION OF RECORDS OF FOUNDATION

A Member may at any reasonable time inspect without charge these Rules, the books, documents, records and securities of the Foundation.

25. DISTRIBUTION OF SURPLUS PROPERTY ON WINDING UP OF FOUNDATION

If, on the winding up of the Foundation, any property of the Foundation remains after satisfaction of the debts and liabilities of the Foundation and the costs, charges and

expenses of that winding up, that property shall be given or transferred to another association incorporated under the Act which has similar objects to the Foundation and which is eligible for tax deductibility of donations under subdivision 30-B, section 30-45 of the Tax Act and which incorporated association shall be determined by resolution of the Members.