

**CONSTITUTION  
OF  
COMPANY B LIMITED**

**A Company Limited by Guarantee**

**INTERPRETATION**

1. In this Constitution the following words and expressions shall have the following meanings respectively, unless the subject matter or context otherwise requires:
  - (a) “the company” means the Company incorporated and known as Company B Limited or under any other name;
  - (b) “the Companies Code” or “the Code” means the Companies (NSW) Code and every other Act incorporated therewith or any legislative amendment or replacement, including the *Corporations Act 2001*, and references to provisions of the Code include references to corresponding provisions in any amending or replacing legislation;
  - (c) “month” means calendar month;
  - (d) “the office” means the registered office of the Company;
  - (e) “the Directors”, “the Board” and “the Board of Directors” means the whole or any number (not being less than a quorum) of the Directors of the Company for the time being assembled at a meeting of Directors in accordance with this Constitution;
  - (f) “Secretary” includes any person appointed to perform the duties of the Secretary for the time being and includes an Honorary Secretary;
  - (g) “in writing” and “written” includes printing, lithography and typewriting and all other modes of representing and reproducing words in visible form;
  - (h) “Seal” means the Common Seal of the Company;
  - (i) “Notice” includes all written communications to members;

- (j) words which have a special meaning assigned to them in the Companies Code have the same meaning in this Constitution;
- (k) words importing the singular number include the plural and the converse applies;
- (l) words importing any gender include any other gender;
- (m) words importing persons include corporations and other bodies whether corporate or unincorporate.

### MEMBERS AND MEMBERSHIP

2. For the purpose of registration, the number of members of the Company is declared to be two thousand but the Directors may from time to time register an increase in the number of members.

3. The members of the Company shall consist of:

- (a) the subscribers to the Memorandum of Association;
- (b) such of the registered holders from time to time of shares or part shares in a public company presently known as Hekla Holdings Limited (“Hekla”) (whether known by that name or any other) who shall have:
  - (i) before 2 August 1984 subscribed \$100 or more to the capital of Hekla; or
  - (ii) after 2 August 1984 subscribed \$250 or more to the capital of Hekla;

and who shall apply and be admitted to membership by the Directors pursuant to this Constitution.

4. Applications for membership shall be made in such form and in such manner as the Directors may from time to time prescribe and every applicant for membership shall sign an undertaking to be bound by the provisions of the Memorandum of Association of the Company and this Constitution.

5. (a) Where an applicant has been admitted to membership the Secretary shall forthwith send to the applicant written notice of acceptance and a request for payment of the first annual subscription. Upon payment of the first annual subscription the applicant shall become a member of the Company provided nevertheless that if such a payment is not made within two (2)

calendar months after the date of the notice, the Directors may in their discretion cancel the admission of the applicant to membership of the Company.

- (b) The annual subscription payable by members of the Company shall be prescribed by the Company in general meeting from time to time provided that until the Company shall otherwise resolve the annual subscription shall be \$10.00.
  - (c) In each case admission to membership shall not become effective until the Directors have so resolved, the appropriate subscription is paid and the member's name is entered in the Company's register of members. The Directors shall not unreasonably delay in ensuring the effective admission of applicants to membership of the Company.
6. Annual subscriptions shall become due and payable in advance on 1 July in every year. If the subscription of a member shall remain unpaid for two (2) calendar months after it becomes due then the member may after notice of the default shall have been sent to him by the Secretary be debarred by resolution of the Directors from all privileges of membership and the member's name be removed from the register of members provided that the Directors may reinstate the member and restore the member's name of the register on payment of all arrears if the Directors think fit to do so.
- 7
- (a) Only members who have been admitted to membership and who have paid all subscriptions due at least one (1) month in advance of any given general meeting shall be eligible to receive notices of meetings, to receive copies of the Directors' and auditor's reports concerning the preceding financial year and to vote at the meeting including, where applicable, in postal ballots for the election of Directors.
  - (b) Any corporation, company, firm, association, or organisation which is a member of the company may by notice in writing to the Secretary authorise such person as it thinks fit to act as its representative for the purpose of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the member as the member could exercise if it were an individual member of the Company provided that any such notice shall be delivered to the Company at least one (1) week prior to the representative so acting for the member.
- 8.
- (a) Any member may withdraw from the Company by giving at least 7 days' notice in writing to the Secretary subject to the payment of any money due by the member or which the member has agreed to pay to the Company prior to the date of withdrawal.
  - (b) If any member shall wilfully refuse or neglect to comply with the provisions of the Memorandum of Association or this Constitution or any by-laws or regulations of the Company, the Directors may, by resolution, expel such member from the Company and remove that member's name from the register of members provided that at least one (1) week before the meeting of Directors at which such a resolution for expulsion is to be proposed such member shall have had notice of the meeting and of the intended expulsion and the member shall have had an opportunity of

attending such meeting and of giving any oral or written explanation or defence which the may desire to offer.

## DIRECTORS

9. The Company and the business affairs and property thereof shall be managed by a Board of Directors, who shall pay all expenses incurred in setting up and registering the Company, and may exercise all such powers, authorities and discretions of the Company as are not by the Code, or by the Constitution, required to be exercised by the Company in general meeting, subject nevertheless to such regulations, being not inconsistent with this Constitution, as may be prescribed by the Company in general meeting, or by the Directors pursuant to this Constitution. No regulation shall invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

10. The first Directors of the Company are:

ROBYN ARCHER	10 BELGRAVE STREET PETERSHAM	WRITER/MUSICIAN/ PERFORMER
NEIL ARMFIELD	70 HILL STREET LEICHHARDT	THEATRE DIRECTOR
MAUREEN BARRON	26A CHURCH STREET HUNTERS HILL	SOLICITOR
RICHARD NUGENT COTTRELL	12 ENNIS STREET BALMAIN	THEATRE DIRECTOR
DIANA DREW	14 WILDNA AVENUE NORTH SYDNEY	DIRECTOR
LEWIS FITZGERALD	3/2 MUSGRAVE STREET MOSMAN	ACTOR
NONI HAZLEHURST	18 RAINE STREET BONDI JUNCTION	PERFORMER/ WRITER/ DIRECTOR
JOHN DAVID RAYMENT	14 THE SERPENTINE BILGOLA BEACH	LIGHTING DESIGNER/ STAGE DIRECTOR
WILLIAM FRANCIS SHANAHAN	72 QUEEN STREET WOOLLAHRA	ADMINISTRATOR/ AGENT

11. With effect from October 27, 2003, the Board of Directors shall consist of:

- (a) the Managing Director and the Artistic Director of the Company from time to time appointed in accordance with this Constitution (together referred to as the **Executive Directors**); and
- (b) not less than five (5) and not more than nine (9) other Directors (together referred to as the **Non-Executive Directors**), elected by the members of the Company.

12. An Executive Director's appointment as a Director terminates if that person resigns from, is terminated or otherwise ceases to hold the executive position that entitled him or her to be appointed as an Executive Director. Any successor

appointed to that position shall be an Executive Director in accordance with Article 11.

13. The Directors may, by a resolution passed by not less than a two-thirds majority of the Directors for the time being, appoint a person to fill any casual vacancies of Non-Executive Directors, provided that the number of Non-Executive Directors shall not at any time exceed the maximum number specified in Article 11(b). A Non-Executive Director appointed under this provision holds office only until the next AGM following his or her appointment.
14. In the event of any vacancy or vacancies occurring among the Directors, the continuing Directors may act notwithstanding such vacancy or vacancies, but, if the number of all continuing Directors falls below five (5), the Directors may not act so long as the number is below that minimum, except for the purpose of filling vacancies.
15. At every AGM one third (rounded up to the nearest whole number) of the Non-Executive Directors shall retire from office. The retiring Non-Executive Directors will include:
  - (a) those Directors who are deemed to have vacated office in accordance with Article 23(g); and
  - (b) those Directors that have held office without being elected or re-elected at any of the three previous AGMs.
16.
  - (a) If the number of Non-Executive Directors retiring from office at an AGM in accordance with Article 15 is less than one third (rounded up to the nearest whole number) of the Non-Executive Directors, the other Non-Executive Directors to retire will be those who have been longest in office since their last election or re-election, so that one third (rounded up to the nearest whole number) of the Non-Executive Directors retire at the AGM in accordance with Article 15. As between persons who became Directors on the same day, those to retire will, unless they otherwise agree among themselves, be determined by drawing lots. A retiring Director may act as a Director throughout the meeting at which it retires and at any adjournment.
  - (b) The Chair must notify all of the Directors, no less than 45 days before the date of an AGM, of the names of those Directors who will be retiring from office at that AGM.
17. Any person seeking election or re-election at an AGM must be nominated by a member of the Company and seconded by another member of the Company in accordance with this Constitution, no more than 45 and no less than 28 days before the date of that AGM. The nomination must be received at the registered office of the Company and accompanied by a consent to accept appointment

signed by the candidate. The Chair may, in its discretion, waive any deficiency in notice or in form of a nomination.

18. Where the number of valid nominations received in accordance with this Constitution:
  - (a) exceeds the number of available Non-Executive Director positions on the Board at the AGM, the election of Directors shall be conducted by postal ballot at such time and in such manner as the Directors for the time being shall prescribe; or
  - (b) equals or is less than the number of Non-Executive Director available positions on the Board at the AGM, those nominated will be declared elected at that AGM.

For the purposes of this Article 18, the number of available Non-Executive Director positions means the number of Non-Executive Directors retiring in accordance with Articles 15 and 16 plus any additional positions on the Board which the Directors choose to make available, subject to the maximum number of Directors as set out in Article 11.

The election of Directors by postal ballot under Article 18(a) must be completed prior to the AGM. Those Directors who are elected in accordance with the postal ballot will be elected to the Board with effect from that AGM.

19. In any voting or publicity material issued in connection with a postal ballot, candidates will be listed in strict alphabetical order.
20.
  - (a) No person shall be eligible for election or appointment as a Non-Executive Director unless the person is a member of the Company or a representative appointed as provided by this Constitution of a member being a company, corporation, firm, association or organization.
  - (b) No director of Hekla, currently known at Belvoir Street Theatre Limited, shall be eligible for election or appointment as a Director of the Company while a director of Hekla.
21. A Director may retire from office at any time upon giving seven (7) days' notice in writing to that effect to the Secretary and such resignation shall take effect upon the expiration of such notice or its earlier acceptance by the Directors.
22.
  - (a) At the first meeting of Directors after each AGM, the Board for the time being shall elect from among the Non-Executive Directors a chairperson ("the Chair") who shall hold office for a term of twelve (12) months from the date of his or her election, whereupon the Director so elected shall retire from Chair, but shall be eligible for re-election.

- (b) Any casual vacancy occurring in the Chair shall be filled by a Non-Executive Director and the Non-Executive Director so elected shall hold office for the residue of the term of office of the predecessor but shall be eligible for re-election.
23. A Director shall be deemed to have vacated office if the Director:
- (a) ceases to be a Director by virtue of the Code;
  - (b) becomes bankrupt or makes any arrangement or composition with creditors generally;
  - (c) becomes prohibited from being a director of a company by reason of any order made under the Code;
  - (d) becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under the law of relating to mental health;
  - (e) resigns the office by notice in writing to the Company;
  - (f) for more than (3) months is absent without permission of the Directors held during that period;
  - (g) is a Non-Executive Director and has served as a Non-Executive Director for six (6) consecutive twelve (12) month periods (in which event that Non-Executive Director will be deemed to have vacated office with effect from the next AGM); or
  - (h) is removed from office by special resolution passed in general meeting.
24. (a) Directors of the company shall not receive remuneration in that capacity.
- (b) Notwithstanding the provisions of Article 24(a), where any Non-Executive Director is engaged by the Company to perform professional services for the purposes of the Company, the Company may remunerate such Director by a fixed sum or otherwise as may be determined by the Directors.
25. The full-time and the permanent employees of the Company may elect one of their number to be the employees representative to attend meetings of the Board and of the Company as a representative only of the employees and participate fully in the business of the meetings without being a Director or having a right to vote on any question considered at meetings of the Board. Each employee so elected by the employees will hold office for a term of 3 years but will be eligible for re-election for a second term of 3 years but may not hold the office for more than six consecutive years. In the event that the employees' representative ceases to be a

full-time or a permanent employee of Company B Limited, that person's appointment as the employees' representative immediately terminates. In such circumstances, the full-time employees may elect another of their number to be the employees representative in accordance with this Article.

26. (a) Subject to the Code, a Director may execute on behalf of the Company any documents in respect of any contract or arrangement in which that Director is interested and may be counted for the purpose of any resolution regarding the same in the quorum present at the meeting.
- (b) Where it appears to the Board that any matter before the Board concerns a contract, arrangement or other matter of any kind in which one or more Directors are interested, the disinterested members of the Board may, by a majority vote, require the interested Director or Directors to leave the meeting and/or refrain from voting on any such matter.
27. The Managing Director and Artistic Director shall be appointed to their positions by a resolution passed by not less than a two-thirds majority of the Directors for the time being and shall be referred to by whatever title the Non-Executive Directors determine.
28. The Directors may:
  - (a) delegate to or give the Managing Director and Artistic Director any powers, discretions and duties they decide;
  - (b) withdraw, suspend or vary any of the powers, discretions and duties given to the Managing Director or Artistic Director, subject to the terms of engagement of that person; and
  - (c) authorise the Managing Director and Artistic Director to delegate any of the powers, discretions and duties given to that person.
29. The Directors:
  - (a) shall appoint a secretary as provided by the Code for such term and at such remuneration and upon such conditions as they think fit and any Secretary so appointed may be removed from that office by the Directors; and
  - (b) may appoint any member, including any Director, as Honorary Secretary and remove from that office any person so appointed.
30. The Directors may define the powers, authorities, discretions, function and duties of the Secretary and, subject to this Constitution, of any other office of the Company and from time to time may confer or limit such powers, authorities, duties, discretions and authorise in such manner as they think fit.



31. The Directors shall cause minutes to be kept in books provided for the purpose:
  - (a) of all appointments of officers made by the Directors;
  - (b) of the names of the Directors and any other persons present at each meeting of the Directors and of any committee of the Directors;
  - (c) of all resolutions and proceedings at all meetings of the Company and of the Directors and of the committees of the Directors.
32. Any member may attend any meeting of the Board subject to such conditions as may be imposed by the board concerning the confidentiality of matters before that meeting.

### PROCEEDINGS OF DIRECTORS

33. The Directors shall meet at least once in each three month period, and subject thereto, may meet together for the dispatch of business, adjourn or otherwise regulate their meetings and proceedings as they think fit and may determine the quorum necessary for the transaction of business. Until otherwise determined by the Directors, the presence of six Directors and/ or persons acting as the management for the time being in office ( but not more than two representatives of the Management) shall constitute a quorum of Directors.
34. The Chair shall preside at all meetings of the Directors and if at any meeting the chair is not present within ten minutes after the time appointed for the meeting, the Directors present shall choose one of their number to chair the meeting.
35. Questions arising at any meeting duly convened at which quorum is present, shall be decided by a majority of the votes of the Directors and the Management present and in the case of the equality of votes the chair shall have a second or casting vote.
36. Upon the written requisition of any three Directors, The chair or, in the absence of the Chair, the Secretary shall convene a special meeting of Directors to be held within fourteen days after the receipt of the requisition. The written requisition shall set forth the objects for which the meeting is required.
37. A meeting of Directors at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the rules of the Company for the first time being vested in or exercisable by the Directors generally.
38. The directors may delegate any of their powers to committees consisting of any two or more Directors as they think and may from time to time revoke such delegation. Any committee so formed shall in the exercise of the powers so delegated conform to any rules that may from time to time be imposed upon it by the Directors. The meetings and proceedings of any such committee shall be

governed by the provisions of this Constitution for regulating the meeting and proceedings of the Directors so far as the same are applicable thereto and are not superseded by any rule made by the Directors under this Article.

39. All acts done by any meeting of Directors or by any person acting as a director shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors or persons acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was fully qualified.
40. A resolution in writing signed by all directors shall be as valid and effectual as if it had been passed at a meeting of directors duly called and constituted.

#### GENERAL MEETING

41. The first annual general meeting of the Company shall be held at such time within eighteen (18) months of the incorporation of the Company and at such place as the Directors may determine.
42. Subsequent annual general meetings shall be held in every calendar year at such time (not being more than fifteen (15) months after the holding of the last preceding annual general meeting) and place as may be prescribed by the Directors or, in default, at such time in the third months following that in which the anniversary of the Company's incorporation occurs, and at such place as the Director's shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be convened by any ten (10) members in the same manner as nearly possible as that in which general meetings are to be convened by the Directors.
43. All general meetings other than annual general meetings shall be called extraordinary general meetings.
44. The Director may, whenever they think fit, convene an extraordinary general meetings. Extraordinary general meetings shall be convened on such requisition, or in default may be convened by such requisitions, as provided by Section 241 of the Code.

If at any time they are not, within New South Wales, sufficient Directors capable of acting to form a quorum, a Director or any ten (10) members of the Company may convene an extraordinary general meeting in the same manner as nearly possible as that in which extraordinary general meetings may be convened by the Directors.

45. Subject to the provisions of Section 248 of the Code relating to special resolutions, fourteen (14) days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which the notice is given), specifying the place, the day and the hour of the meeting, and, in case of special business, the general nature of that business shall be given in the manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting, to such persons as are, under this

Constitution, entitled to receive such notice from the Company. General meetings may be convened by such shorter notice as may be agreed upon as provided by Section 242(3) of the Code.

46. The accidental omission to give notice of a meeting to, or the non receipt of notice of a meeting by, any member shall not invalidate the proceedings at any meeting.
47. All business shall be deemed special that is transacted at an extraordinary general meeting. All business that is transacted at the annual general meeting, with the exception of the consideration of accounts, balance sheets and the report of the Directors and auditor prescribed by the Code and the fixing of the remuneration of the auditor shall be deemed special.
48. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. Except as provided otherwise ten (10) members personally present shall be a quorum.
49. If within ten (10) minutes from the time appointed for the 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, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

When a meeting is adjourned for ten (10) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

50. At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least five (5) members present in person or by proxy entitled to vote. Unless a poll is so demanded, a declaration by the Chair 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 of proceedings of the Company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against that resolution.
51. If a poll is duly demanded, it shall be taken in such manner as the Chair directs, and unless the meeting is adjourned, the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
52. In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands or the poll takes place, shall be entitled to a second or casting vote.
53. A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith.

A poll demanded at a meeting on any other question shall be taken at such time at that meeting as the Chairman of the meeting directs.

54. (a) Every member present in person and every member present in the case of an individual by his proxy, and in the case of a member being a company, corporation, association or firm by its representative duly appointed in writing, shall have one (1) vote.
- (b) The instrument appointing a proxy or representative shall be in writing under the hand of the appointer or his attorney duly authorised in writing. A proxy or representative need not be a member of the Company.
- (c) An instrument appointing a proxy or representative may be in or to the effect of the following form, or any other form which the directors may approve:

“ I ..... , being a member of ..... , hereby appoint .....or ..... , as my proxy to vote for me and on my behalf at the general meeting of the Company to be held on ..... and at the general meeting of the Company to be held on ..... and at any adjournment thereof.

SIGNED this                      day of                      in the presence of:

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COMMON SEAL

55. The Seal shall not be affixed to any instrument except by a resolution of the Directors and in the presence of two (2) Directors, or a Director and the Secretary or other person appointed by the Directors for the purpose, and such persons shall sign every instrument to which the Seal is to be affixed in their presence.

ACCOUNTS

56. The Directors shall cause proper accounting and other records to be kept and shall distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto), accompanied by a copy of the auditor’s report thereon as required by the Code provided however that the Directors shall cause to be made out and laid before each annual general meeting a balance sheet and profit and loss account made up to a date not more than five (5) months before the date of the meeting.
57. The Directors shall from time to time determine in accordance with the Memorandum of Association at what times and place and under what conditions or regulations the accounting and other records of the Company shall be open to the inspection of members not being Directors and no member (not being a Director) shall have any right to inspect any accounts, books or papers of the Company except as conferred by statute or by the Memorandum of Association at what times and places and under what conditions or regulations the accounting

and other records of the Company shall be open to the inspection of members not being directors and no member (not being a director) shall have any right to inspect any accounts, books or papers of the Company except as conferred by statute or by the Memorandum of Association or as authorised by the Directors or by the Company in general meeting.

#### AUDIT

58. A properly qualified auditor shall be appointed and the auditor's remuneration fixed and duties regulated in accordance with the Code and the Memorandum of Association.

#### NOTICES

59. A notice may be given by the Company to any member either personally or by sending it by post to the registered address, or (if the member has no registered address within New South Wales) to the address, if any, within New South Wales supplied to the Company for the giving of notices to that member. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.
60. (a) Except as hereinbefore provided, notice of every general meeting shall be given in the manner authorised by this Constitution to:
- (i) every member except those members who (having no registered address within New South Wales) have not supplied to the Company an address within New South Wales for the giving of notices to them; and
  - (ii) the auditor for the time being of the Company.
- (b) No other person shall be entitled to receive notices of general meetings.

#### WINDING UP

61. The provisions of Clause 7 of the Memorandum of Association relating to the winding up or dissolution of the Company shall have effect and be observed as if that clause were repeated in this Constitution.

#### INDEMNITY

62. Every Director, auditor, Secretary and other officer for the time being of the Company shall be indemnified out of the assets of the Company against any liability incurred by him in defending any proceedings, whether civil or criminal,

in which judgment is given in that person's favour or in which that person is acquitted or in connection with any application under the Code in which relief is granted to that person by a court in respect of any negligence, default, breach of duty or breach of trust.

#### BY-LAWS, RULES AND REGULATIONS

63. The Directors shall have power from time to time to make such by-laws, rules and regulations not inconsistent with the Memorandum of Association and this Constitution as in the opinion of the Directors are necessary and desirable for the proper control, administration and management of the Company's operations, finances, affairs, interests, effects and property and the duties, obligations and responsibilities of the members and to amend or rescind from time to time any such by-laws or regulations.

We, the several persons whose names and addresses are subscribed, being subscribers to the Memorandum of Association of Company B Limited, hereby agree to the foregoing Constitution.

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Signature of subscribers

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Witness to signature

ROBYN ARCHER

DIANA MANSON  
10 BELGRAVE STREET  
PETERSHAM NSW

NEIL ARMFIELD  
MAUREEN BARRON  
RICHARD NUGENT  
DIANA DREW  
LEWIS FITZGERALD  
NONI HAZLEHURST  
JOHN DAVID RAYMENT  
WILLIAM FRANCIS SHANAHAN