

**From:**

Groundswell Holdings (Pty) Ltd; Rational Expectations (Pty) Ltd; Rozendal & Associates Holdings Ltd; Rozendal Partners (Pty) Ltd; Peter D Wimsey & Associates (Pty) Ltd, Afrika Avontuur Kapitaal (Pty) Ltd, Afrika Avontuur Trust

Care of:

Groundswell Holdings (Pty) Ltd  
15 Rugby Road  
Oranjezicht  
Cape Town

**To:**

Directors  
**Gemfields Group Limited**  
1 Cathedral Piazza  
London  
SW1E 5BP

21 May 2020

**STRICTLY PRIVATE AND CONFIDENTIAL**

Dear Sirs

**Company: Gemfields Group Limited**

We are writing this letter as a group of shareholders, together holding in aggregate 86,592,029 shares in the paid-up capital of the Company, wishing to express our collective concern in relation to the Company's current standards of corporate governance and the poor performance of the group to date.

The Company's current Memorandum and Articles of Incorporation (**MOI**), specifically with regard to the appointment and removal of directors, protects directors at the expense of shareholders and effectively means that the Board is not truly accountable to shareholders.

The Board will be aware that shareholders have experienced a significant erosion in the value of their shares over time, while receiving no returns. Furthermore, there is a widening gulf between the reported NAV per share and the current price per share.

On 9 April 2020, we wrote to the Company with the purpose of drawing to its attention a number of clear deficiencies and inconsistencies in the Company's MOI and, specifically, the special resolution requirement for the appointment and removal of directors. We suggested that the annual general meeting of the Company, scheduled to take place on 24 June 2020 (**AGM**), would provide the perfect opportunity for the Company to amend its MOI and to demonstrate its commitment to improving standards of corporate governance.

In response to our requests, the Company's CEO reported that external counsel has been engaged to advise the Company on changes to the MOI, however, no timelines were provided in this regard. In addition he stated that, after consulting with the Board, the Company is unable to implement changes at the upcoming AGM due to time constraints, available resources and that

reducing the thresholds for appointing/removing directors at this time, when the share price is low, would make the Company more vulnerable to hostile takeovers.

With respect, the decision to consider the proposal to change the voting requirement with regard to appointing/removing directors is not a matter that requires any significant amount of time for consideration or legal input. We notified the Company of our concerns several weeks ago.

The MOI requires the Company to hold its annual general meeting by 15 August 2020. The Company still has ample time available to review its corporate governance procedures, amend the resolutions tabled at the AGM and provide all shareholders with adequate notice. We do not think that delaying a scheduled AGM in the current market would come as a surprise or concern to anyone.

In our opinion, the defense against any possible takeover bids (if so desired) is a matter best left for shareholders to determine and their interests are not served by the entrenchment of directors in their positions.

For shareholders to be able to maintain confidence in the current Board, it is imperative that changes are made at this AGM. We, therefore, request that as a minimum the Board addresses the following two points by amending its MOI at the AGM (**Proposals**):

- Directors should be capable of being appointed or removed from office by an Ordinary Resolution of its members, not a Special Resolution.
- The maximum number of directors in office, determined by Ordinary Resolution, should be increased from eight to ten.

Furthermore, we note that there were a number of conflicting provisions and inconsistencies in Article 18 (*Number and Appointment of Directors*) and Article 24 (*Disqualification and Removal of Directors*) of the MOI. To assist the Company, we have set out at **Appendix 1** our proposed amendments to those particular provisions of the MOI.

These Proposals are supported by institutional investors and we refer your attention to the signed letters of support at **Appendix 2** ("**Letters of Support**"). The Letters of Support reflect the views of many other shareholders and the Proposals would be overwhelmingly approved at the AGM, if tabled.

We believe that addressing the Proposals proactively is an opportunity for the Board to illustrate their commitment to improving governance, which would be appreciated by all shareholders. If the Proposals are not tabled at the AGM, we will consider all available means of ensuring that the Company implements appropriate corporate governance standards in future.


We look forward to receiving your response.

Yours Faithfully

  
[William Marshall-Smith \(May 21, 2020 14:51 GMT+2\)](#)

**Groundswell Holdings (Pty) Ltd**

Director

  
JPDP e Roux (May 21, 2020 14:56 GMT+2)

**Rational Expectations (Pty) Ltd**

Director

  
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**Rozendal & Associates Holdings Ltd**

Director

  
Wilhelm Hertzog (May 21, 2020 14:48 GMT+2)


**Rozendal Partners (Pty) Ltd**

Director

  
Diderik J Otto (May 21, 2020 15:37 GMT+2)

**Peter D Wimsey & Associates (Pty) Ltd**

Director

  
JPDP e Roux (May 21, 2020 14:56 GMT+2)

**Afrika Avontuur Kapitaal (Pty) Ltd**

Director

  
JPDP e Roux (May 21, 2020 14:56 GMT+2)

**Afrika Avontuur Trust**

Trustee

## Appendix 1

The Company published on its website the proposed amendments to the MOI (**Amended MOI**):

<https://gemfields.s3.amazonaws.com/Documents/2020/AGM/Amendments%20to%20the%20Articles%20of%20Incorporation.pdf>

We set out below our proposed amendments to the MOI in relation to Article 18 (Number and Appointment of Directors) and Article 24 (Disqualification and Removal of Directors). We have referred to the same numbering (below) as set out in the Amended MOI.

### 22. NUMBER AND APPOINTMENT OF DIRECTORS

22.1 Unless otherwise determined by Ordinary Resolution of the Company the Directors (disregarding alternate Directors) will not be less than four (4) nor more than ~~eight (8)~~ **ten (10)**.

22.2 The Directors shall have power at any time to appoint any person eligible in accordance with section 137 of the Law to be a Director either to fill a casual vacancy or as an addition to the existing Directors but so that the total number of Directors shall not at any time exceed the number, if any, fixed pursuant to these Articles. Any Director so appointed shall hold office only until the next following annual general meeting and shall then be eligible for re-election.

22.3 **Subject to the aforementioned, the Company may by Ordinary Resolution appoint a person who is willing to act to be a director either to fill a vacancy or as an additional director and may also determine the rotation in which any additional directors are to retire. The appointment of a person to fill a vacancy or as an additional director shall take effect from the end of the meeting.**

22.4 Investors may, by ~~Special Resolution~~ **Ordinary Resolution**, appoint a person to be a Director or remove any Director from office.

22.5 No person other than a **retiring** Director ~~at an annual general meeting~~ **shall be appointed at a general meeting or annual general meeting of the Company, unless:**

- a) recommended by the ~~Directors~~ **Board**; or
- b) ~~be eligible for election by the Company to the office of Director unless not less than 10 nor more than 35 clear Business Days before the before the meeting, notice executed by an Investor qualified to vote at the meeting (not being the person to be proposed), has been given to the secretary of the~~ **received by the Company of the intention to propose that person for appointment stating the particulars which would, if he were so appointed, be required to be included in the register of directors maintained by the Company, or re-appointment** together with notice executed by that person of his willingness to be appointed or re-appointed.

~~The Board, through the nomination committee (if the Company has a nomination committee at such point in time), should recommend the eligibility of a person to be appointed or re-appointed as a Director, taking into account the past performance and contributions made to the Company by such person.~~

~~22.6 Notwithstanding Article 22.3, the Company may, by Special Resolution, remove any Director before the expiration of his period of office and by a Special Resolution elect~~

~~another person instead in accordance with Article 22.3. The person so elected may hold office until the next following annual meeting of the Company and shall then retire and be eligible for re-election.~~

22.7 ~~Notwithstanding Article 22.3, the Company may, by Special Resolution in general meeting from time to time increase (or reduce, but not below 4 (four)), the number of directors and may also determine in which manner or rotation such increased (or reduced) number is to go out of office. Whenever such increase is made, the holders of the shares at the said meeting or failing them, the retiring Directors may fill the new seat so created. A Director shall cease to hold office as such if he is removed by Special Resolution of the Company before the expiration of his period of office or one month after he has given notice in writing of his intention to resign.~~

22.8 At the ~~every~~ annual general meeting held in each year 1/3 (one-third) of the Directors, or if their number is not a multiple of 3 (three), then the number nearest to, but not less than 1/3 (one-third) shall retire from office, provided that in determining the number of Directors to retire no account shall be taken of any director who by reason of the provisions of Article 30.1 is not subject to retirement and provided that this Article shall not apply to Executive Directors.

22.9 ~~Subject to the provisions of these Articles, t~~The Directors ~~se~~ to retire by rotation at each annual general meeting shall be:

- a) Firstly, ~~any Director appointed in accordance with the~~ those retiring in terms of Article 22.2 ~~on that basis they were appointed since the last annual general meeting of the Company;~~ and
- b) Secondly, ~~any Director so appointed to replace a Director removed from office in accordance with~~ those referred to in terms of Article 28.2; and
- c) lastly those who have been longest in office since their last election or appointment.

As between Directors of equal seniority, the directors to retire shall, in the absence of agreement, be selected from among them by ~~drawing~~ lots. Provided that notwithstanding anything herein contained, if, at the date of any annual general meeting any Director will have held office for a period of 3 (three) years since his last election or appointment he shall retire at such meeting, either as one of the Directors to retire in pursuance of the foregoing or additionally thereto. A retiring Director shall act as a director throughout the meeting at which he retires. The length of time a Director has been in office shall, save in respect of Directors appointed or elected in terms of the provisions of Articles [22.2] and [28.2], be computed from the date of his last election or appointment. Directors subject to retire by rotation may offer themselves up for re-election.

22.10 The period of office for Executive Directors shall be subject to and determined by the terms of their employment.

22.11 ~~If t~~The Company ~~does not fill the vacancy~~ at the meeting at which a Director retires ~~in manner aforesaid,~~ the retiring director shall, ~~may fill the vacated office by appointing a person thereto by Special Resolution and in default the retiring Director shall,~~ if willing to act, be deemed to have been re-appointed unless at such meeting it is expressly resolved not to fill the vacated office or a resolution for the reappointment of such Director shall have been put to the meeting and lost. ~~The Company at such meeting may also (subject to Article 22.1) fill any other vacancies.~~

~~22.12 Without prejudice to the powers of the Directors, the Company in general meeting may appoint any person to be a Director either to fill a casual vacancy or as an additional Director and shall approve any person appointed by the Directors pursuant to Article 22.2.~~

22.13 A Director who retires at an annual general meeting may, if willing to act, be re-appointed. If he is not re-appointed, he shall retain office until the meeting appoints someone in his place, or if it does not do so until the end of the meeting.

22.14 At a general meeting a motion for the appointment of two or more persons as Directors of the Company by a single resolution shall not be made unless a resolution that it shall be so made has been first agreed to by the meeting without any vote being given against it.

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## 28. DISQUALIFICATION AND REMOVAL OF DIRECTORS

28.1 A Director shall cease to hold office:

- a) if he (not being a person holding for a fixed term an executive office subject to termination if he cease from any cause to be a Director) resigns his office by written notice signed by him sent to or deposited at the Office;
- b) if he shall have absented himself (such absence not being absence with leave or by arrangement with the Directors on the affairs of the Company) from meetings of the Directors for a consecutive period of twelve (12) months and the Directors resolve that his office shall be vacated;
- c) if he dies or becomes of unsound mind or incapable;
- d) if he becomes insolvent suspends payment or compounds with his creditors;
- e) if the Company by Ordinary Resolution votes to remove the Director from office;
- f) if the Company by ~~Special~~ Ordinary Resolution vote to remove the Director from office; or
- g) if he becomes ineligible to be a Director in accordance with section 137 of the Law.

28.2 If the Company in general meeting removes any Director before the expiration of his period of office, it may by ~~Special Resolution~~ Ordinary Resolution appoint another person to be a Director in his stead who shall retain his office so long only as the Director in whose stead he is appointed would have held the same if he had not been removed. Such removal shall be without prejudice to any claims such Director may have for damages for breach of any contract of service between him and the Company.

## **Appendix 2 – Letters of Support**