



**Registration of a Charge**

Company name: **FABERGE (UK) LIMITED**

Company number: **06236931**

Received for Electronic Filing: **27/05/2016**



X57VS2ZU

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**Details of Charge**

Date of creation: **26/05/2016**

Charge code: **0623 6931 0006**

Persons entitled: **MACQUARIE BANK LIMITED**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) .**

**Contains negative pledge.**

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**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

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**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**





## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 6236931

Charge code: 0623 6931 0006

The Registrar of Companies for England and Wales hereby certifies that a charge dated 26th May 2016 and created by FABERGE (UK) LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 27th May 2016 .

Given at Companies House, Cardiff on 31st May 2016

The above information was communicated by electronic means and authenticated  
by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES

Confidential

EXECUTION VERSION

Dated 26 May 2016

FABERGÉ (UK) LTD  
as Chargor

and

MACQUARIE BANK LIMITED  
as Lender

I certify that, save for material  
redacted pursuant to s.859G  
of the Companies Act 2006,  
this copy instrument is a correct copy  
of the original instrument.

Sign & Dated Norton Rose Fulbright LLP  
26 May 2016

SECURITY AGREEMENT

^  
NORTON ROSE FULBRIGHT

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Deed dated 26 May 2016

## PARTIES

**Chargor** **Fabergé (UK) Ltd**, a limited liability company incorporated in England and Wales with company number 06236931 having its registered office at 23 King Street, London, SW1Y 6QY

**Lender** **Macquarie Bank Limited**

IT IS AGREED as follows:

## Interpretation

### 1 Definitions and interpretation

#### Definitions

- 1.1 Unless otherwise defined in this Deed or the context otherwise requires, words and expressions defined in the Facility Agreement shall have the same meanings when used in this Deed. In this Deed:

**Administrative Receiver** means one or more administrative receivers appointed, or to be appointed, under this Deed

**Administrator** means one or more administrators appointed, or to be appointed, under this Deed

**Assigned Assets** means those assets which are from time to time the subject of clause 3

**Debt** means a monetary claim of any kind (whether present, future or contingent and whether originally owing to the person entitled to it or acquired by that person from someone else) and all Rights (including Security) connected with it

**Default Rate** means the rate specified in clause 8.3 (*Default interest*) of the Facility Agreement

**Disposal** means any transfer or other disposal of an asset or of an interest in an asset, or the creation of any Right over an asset in favour of another person, but not the creation of Security

**Facility Agreement** means the \$20,000,000 facility agreement dated on or about the date of this Deed between Gemfields plc as borrower, each of Fabergé (UK) Ltd, Fabergé Inc. and Gemfields USA, Inc. as guarantors and the Lender

**Fixed Charge Assets** means those assets which are from time to time the subject of clause 4.3

**Floating Charge Assets** means those assets which are from time to time the subject of clause 4.2

**Insolvency Event**, in relation to a person, means:

- (a) the dissolution, liquidation, provisional liquidation, administration, administrative receivership or receivership of that person or the entering into by that person of a voluntary arrangement or scheme of arrangement with creditors;
- (b) any analogous or similar procedure in any jurisdiction other than England; or
- (c) any other form of procedure relating to insolvency, reorganisation or dissolution in any jurisdiction

**Insolvency Legislation** means:

- (a) the Insolvency Act 1986 and secondary legislation made under it; and
- (b) any other primary or secondary legislation in England from time to time relating to insolvency or reorganisation

**Insurance Proceeds** means all proceeds of claims under the Insurance Policies and all other amounts payable to the Chargor under or in respect of the Insurance Policies, including damages for breach and return of premium

**Inventory** means stock, inventory and merchandise including any cut and polished gemstones and any finished jewellery and all warranties and other Rights relating to them

**Lender Security** means the Security created by this Deed and any other existing or future Security granted by the Chargor to the Lender to secure the payment and discharge of the Secured Obligations

**Lender Security Document** means a document creating or evidencing Lender Security

**Obligations**, in relation to a person, means all obligations or liabilities of any kind of that person from time to time, whether they are:

- (a) to pay money or to perform (or not to perform) any other act;
- (b) express or implied;
- (c) present, future or contingent;
- (d) joint or several;
- (e) incurred as a principal or surety or in any other manner; or
- (f) originally owing to the person claiming performance or acquired by that person from someone else

**Officer**, in relation to a person, means any officer, employee or agent of that person

**Receiver** means an Administrative Receiver or a Specific Receiver

**Right** means any right, privilege, power or immunity, or any interest or remedy, of any kind, whether it is personal or proprietary

**Secured Assets** means the Assigned Assets, the Fixed Charge Assets and the Floating Charge Assets

**Secured Obligations** means the Obligations undertaken to be paid or discharged in clause 2 (*Payment of Secured Obligations*)

**Specific Receiver** means one or more receivers or managers appointed, or to be appointed, under this Deed who is not an Administrative Receiver

**Third Parties Act** means the Contracts (Rights of Third Parties) Act 1999

**VAT** means value added tax.

### **Interpretation**

- 1.2 In this Deed:
- (a) the table of contents, the summary and the headings are inserted for convenience only and do not affect the interpretation of this Deed;
  - (b) references to clauses and schedules are to clauses of, and schedules to, this Deed;
  - (c) references to the Facility Agreement, any Finance Document or any other document are to that document as from time to time amended, restated, novated or replaced, however fundamentally;
  - (d) references to a person include an individual, firm, company, corporation, unincorporated body of persons and any government entity;
  - (e) references to a person include its successors in title, permitted assignees and permitted transferees;
  - (f) words importing the plural include the singular and vice versa; and
  - (g) references to any enactment include that enactment as amended or re-enacted; and, if an enactment is amended, any provision of this Deed which refers to that enactment will be amended in such manner as the Lender, after consultation with the Chargor, determines to be necessary in order to preserve the intended effect of this Deed.
- 1.3 Where this Deed imposes an obligation on the Chargor to do something if required or requested by the Lender, it will do so as soon as practicable after it becomes aware of the requirement or request.
- 1.4 It is intended that this document takes effect as a deed even though the Lender may only execute it under hand.
- 1.5 This Deed may be executed in counterparts.
- 1.6 The provisions of any other Finance Document relating to any obligation of the Lenders to make further advances, are deemed to be incorporated in this Deed.
- 1.7 Where a definition of a type of asset in clause 1.1 contains a number of categories, each category will be construed as separate from each other category.

### **Parties and third parties**

- 1.8 Each Receiver and each Officer of the Lender or a Receiver are not parties to this Deed. However, the Rights conferred on them under this Deed are enforceable by each of them under the Third Parties Act.
- 1.9 No other term of this Deed is enforceable under the Third Parties Act by anyone who is not a party to this Deed.
- 1.10 The parties to this Deed may terminate this Deed or vary any of its terms without the consent of any third party. However, they may not terminate this Deed or vary any of its terms if this would have the effect of terminating or adversely affecting the Rights of a Receiver or of an Officer of



the Lender or a Receiver under this Deed without its consent, but only to the extent that it has notified the Lender that it intends to enforce that clause at the time of the termination or variation.

## **Security**

### **2 Payment of Secured Obligations**

The Chargor will pay or otherwise discharge all Obligations from time to time incurred by it or any other Obligor under or in connection with the Finance Documents when they become due for payment or discharge.

### **3 Assignments**

3.1 The assignments contained in this clause 3:

- (a) are given to the Lender;
- (b) secure the payment and discharge of the Secured Obligations; and
- (c) are given with full title guarantee.

3.2 The Chargor assigns and will assign to the Lender absolutely all of the Rights which it now has and all of the Rights which it obtains at any time in the future in, to or in connection with the Insurance Proceeds.

### **4 Charges**

4.1 The charges contained in this clause 4:

- (a) are given to the Lender;
- (b) secure the payment and discharge of the Secured Obligations; and
- (c) are given with full title guarantee.

4.2 The Chargor charges, by way of *first floating charge* all of the Rights which it now has and all of the Rights which it obtains at any time in the future in the Inventory and any Rights accruing to, derived from or otherwise connected with the Inventory (including proceeds and insurances).

4.3 The Lender may convert all or part of the floating charge created by the Chargor under clause 4.2 into a fixed charge by giving notice to that effect to the Chargor and specifying the identity of the assets concerned. This may be done on one or more occasion, but only following the occurrence of an Event of Default which is continuing.

### **5 Trust**

To the extent that any assignment and/or charge of any Secured Assets is prohibited or otherwise ineffective, the Chargor holds the Secured Assets on trust for the Lender.

### **6 Set-off**

6.1 The Lender may set off any matured Secured Obligation due from the Chargor (to the extent beneficially owned by the Lender) against any matured obligation owed by the Lender to the Chargor, regardless of the place of payment, booking branch or currency of either obligation.

6.2 If the obligations are in different currencies, the Lender may convert either obligation at a market rate of exchange in its usual course of trading for the purpose of the set-off.

- 6.3 These Rights are in addition to the security conferred on the Lender under this Deed.

## **7 Restrictions**

- 7.1 The Chargor will ensure that the restrictions contained in this clause 7 are complied with unless the Chargee agrees to the contrary.
- 7.2 No Security will exist over, or in relation to, any Secured Asset.
- 7.3 There will be no Disposal of any Assigned Asset or Fixed Charge Asset.
- 7.4 There will be no Disposal of any Floating Charge Asset otherwise than for market value in the ordinary course of trading of the Chargor.

## **8 Perfection**

### **General action**

- 8.1 The Chargor will, at its own expense, create all such Security, execute all such documents, give all such notices, effect all such registrations (whether at the Companies Registry, an asset registry or otherwise), deposit all such documents and do all such other things as the Lender may require from time to time in order to:
- (a) ensure that it has an effective first-ranking assignment over the Assigned Assets;
  - (b) ensure that it has an effective first-ranking fixed charge over the Fixed Charge Assets;
  - (c) ensure that it has an effective first-ranking floating charge over the Floating Charge Assets; and
  - (d) facilitate the enforcement of the Lender Security, the realisation of the Secured Assets or the exercise of any Rights held by the Lender or any Receiver or Administrator under or in connection with the Lender Security.
- 8.2 The scope of clause 8.1 is not limited by the specific provisions of the rest of this clause 8.1 or by any other provision of the Lender Security Documents.

### **Notice and acknowledgement**

- 8.3 The Chargor shall on the date of this Deed (and, if it acquires the Right in any Insurance Policy later, as soon as practicable after it does so), deliver a notice of this Deed to all relevant insurers, brokers and associations in the form set out in Schedule 1 (*Notice and acknowledgement of assignment of Insurance Proceeds*) and procure that those parties deliver an acknowledgement of the notice to the Lender in the form set out in those Schedules as soon as reasonably practicable (and in any event within three Business Days of the date of the notice).
- 8.4 The Chargor shall, upon request by the Lender, provide the Lender with evidence satisfactory to it that any notice delivered hereunder has been delivered to the relevant counterparty.

### **Subsequent security**

- 8.5 If the Lender receives notice that any Security has been created over Secured Assets, the Lender will be treated as if it had immediately opened a new account for the Chargor, and all payments received by the Lender from the Chargor will be treated as if they had been credited to the new account and will not reduce the amount then due from the Chargor to the Lender.

## **Enforcement**

## **9 Enforcement**

### **Time for enforcement**

- 9.1 The Lender may enforce the Lender Security at any time following the occurrence of an Event of Default which is continuing.

### **Methods of enforcement**

- 9.2 The Lender may enforce the Lender Security by:
- (a) collecting, recovering and giving a good discharge for any moneys or claims in respect of the Secured Assets and permit any brokers through whom collection or recovery is effected to charge the usual brokerage for doing so;
  - (b) settling, referring to arbitration, compromising and arranging any claims, accounts, disputes, questions and demands with or by any person relating to the Secured Assets;
  - (c) bringing, prosecuting, defending or abandoning an action, suit or proceedings in relation to the Secured Assets;
  - (d) doing anything incidental or conducive to the exercise of its rights as assignee or chargee of the Secured Assets;
  - (e) appointing an Administrator of the Chargor;
  - (f) if permitted to do so by the Insolvency Legislation, appointing an Administrative Receiver of the Chargor;
  - (g) appointing a Specific Receiver of assets of the Chargor;
  - (h) going into possession of, receiving the benefit of, negotiating, storing or selling assets of the Chargor, giving notice to the Chargor or any other person in relation to any assets of the Chargor, exercising a right of set-off or in any other way it may decide; or
  - (i) taking any other action it may decide in any jurisdiction other than England.
- 9.3 To the extent that the Lender Security arises under a security financial collateral arrangement, the Lender may also enforce it by giving written notice to the Chargor that it is appropriating those Secured Assets which consist of financial collateral. On receipt of that notice by the Chargor, the Lender will automatically become the absolute owner of that financial collateral, and the Chargor will have no further interest in it. The value of the financial collateral will, as soon as practicable after it has been established, be applied in discharge of the equivalent amount of the Secured Obligations in accordance with clause 10 (*Application of proceeds*). For this purpose, the Lender will value the financial collateral as follows:
- (a) in the case of cash, by reference to its face value received by the Lender;
  - (b) in the case of credit claims, by reference to the amount actually recovered by the Lender; and
  - (c) in the case of financial instruments, by reference to such public indices, valuations or other matters as the Lender may reasonably decide.
- Expressions defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 will have the same meanings in this clause.
- 9.4 An Administrator must be appointed in accordance with the Insolvency Legislation.

## **10 Application of proceeds**

All money received by the Lender or a Receiver under or in connection with the Finance Documents (whether during, or before, enforcement of the Lender Security) will, subject to the rights of any persons having priority, be applied in the following order of priority:

- (a) first, in or towards payment of all amounts payable to the Lender, any Receiver or their Officers under clause 14 (*Expenses, liability and indemnity*) and all remuneration due to any Receiver under or in connection with the Lender Security;
- (b) secondly, in or towards payment of the Secured Obligations in such order as the Lender may determine (and, if any of the Secured Obligations are not then payable, by payment into a suspense account until they become payable); and
- (c) thirdly, in payment of any surplus to the Chargor or other person entitled to it.

## **Undertakings**

### **11 No prejudicial action**

The Chargor shall not do or (to the extent that any relevant matter is within the Chargor's power and control), permit to be done, anything which could prejudice the validity, legality, enforceability as against the Chargor in any Relevant Jurisdiction or which could prejudice the priority and ranking of the Security Documents.

### **12 General undertakings**

- 12.1 The Chargor will notify the Lender as soon as it becomes aware of any matter which might reasonably be expected to have an adverse effect on the Rights of the Lender under the Lender Security. Those matters include a claim by any person to an interest in a Secured Asset.
- 12.2 If the Chargor does not comply with its obligations under this Deed, the Lender may do so on the Chargor's behalf on such basis as the Lender may decide. That Chargor will indemnify the Lender on demand against the amount certified by the Lender to be the cost, loss or liability suffered by it as a result of doing so.
- 12.3 The Chargor shall procure that all of its rights under any Insurance Policies are freely assignable to the Lender.

## **Miscellaneous**

### **13 Duration of the security**

- 13.1 The Obligations of the Chargor under the Finance Documents and the security created by the Lender Security will continue until the Secured Obligations have been irrevocably and unconditionally paid or discharged in full, regardless of any intermediate payment or discharge in whole or in part.
- 13.2 If any payment by the Chargor or any other security provider or any release given by the Lender (whether in respect of the Secured Obligations or any security for them or otherwise) is avoided or reduced or returned to the Chargor as a result of insolvency or any similar event:
  - (a) the liability of the Chargor under this Deed will continue as if the payment, release, avoidance or reduction had not occurred; and
  - (b) the Lender will be entitled to recover the value or amount of that security or payment from the Chargor, as if the payment, release, avoidance or reduction had not occurred.

- 13.3 Section 93 of the Law of Property Act 1925 will not apply to the Lender Security.

#### **14 Expenses, liability and indemnity**

- 14.1 The Chargor will, within five (5) Business Days of a written demand, pay all legal and other costs and expenses (including any stamp duty, registration or other similar taxes) incurred by the Lender or by any Receiver in connection with the Lender Security. This includes any costs and expenses relating to the enforcement or preservation of the Lender Security or the Secured Assets and to any amendment, waiver, consent or release required in connection with the Lender Security.
- 14.2 Neither the Lender nor a Receiver nor any of their Officers will be in any way liable or responsible to the Chargor for any loss or liability of any kind arising from any act or omission by it of any kind (whether as mortgagee in possession or otherwise) in relation to the Secured Assets or the Lender Security, except to the extent caused by its own negligence or wilful misconduct.
- 14.3 The Chargor will, within five (5) Business Days of a written demand, indemnify each of the Lender, a Receiver and their Officers in respect of all costs, expenses, losses or liabilities of any kind which it incurs or suffers in connection with:
- (a) anything done or omitted in the exercise of the powers conferred on it under the Lender Security, unless it was caused by its negligence or wilful misconduct;
  - (b) a claim of any kind (whether relating to the environment or otherwise) made against it which would not have arisen if the Lender Security had not been granted and which was not caused by its negligence or wilful misconduct; or
  - (c) any breach by the Chargor of the Finance Documents.

#### **15 Payments**

- 15.1 All payments by the Chargor under the Lender Security Documents will be made in full, without any set-off or other deduction.
- 15.2 If any tax or other sum must be deducted from any amount payable by the Chargor under the Lender Security Documents, the Chargor will pay such additional amounts as are necessary to ensure that the recipient receives a net amount equal to the full amount it would have received before such deductions.
- 15.3 All amounts payable by the Chargor under the Lender Security Documents are exclusive of VAT. The Chargor will, in addition, pay any applicable VAT on those amounts.
- 15.4 If the Chargor fails to make a payment to a person under the Lender Security Documents, it will pay interest to that person on the amount concerned at the Default Rate from the date it should have made the payment until the date of payment (after, as well as before, judgment).
- 15.5 No payment by the Chargor (whether under a court order or otherwise) will discharge the Obligation of the Chargor unless and until the Lender has received payment in full in the currency in which the Obligation is denominated. If, on conversion into that currency, the amount of the payment falls short of the amount of the Obligation concerned, the Lender will have a separate cause of action against the Chargor for the shortfall.
- 15.6 Any certification or determination by the Lender of an amount payable by the Chargor under this Deed is, in the absence of manifest error, conclusive evidence of that amount.

## **16 Remedies**

- 16.1 The Rights created by this Deed are in addition to any other Rights of the Lender against the Chargor or any other security provider under any other documentation, the general law or otherwise. They will not merge with or limit those other Rights, and are not limited by them.
- 16.2 No failure or delay by the Lender to exercise any Right under this Deed will operate as a waiver of that Right. Nor will a single or partial exercise of a Right by the Lender preclude its further exercise.
- 16.3 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of that provision in any other respect or under the law of any other jurisdiction will be affected or impaired in any way.

## **17 Power of attorney**

The Chargor, by way of security, irrevocably appoints each of the Lender and any Receiver severally to be its attorney to do anything:

- (a) which the Chargor is obliged to do under the Lender Security Documents; and
- (b) which the attorney may require to exercise any of the Rights conferred on the attorney by the Lender Security Documents or by law.

## **18 Notices**

The provisions of clause 31 (*Notices*) of the Facility Agreement shall apply (with necessary changes) to the giving of notices and other communications under this Deed.

## **19 Law and jurisdiction**

- 19.1 This Deed and any non-contractual obligations connected with it are governed by the laws of England and Wales.
- 19.2 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed or any non-contractual obligations connected with it (including a dispute regarding the existence, validity or termination of this Deed) (a **Dispute**).
- 19.3 The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and, accordingly, that they will not argue to the contrary.
- 19.4 Clause 19.2 is for the benefit of the Lender only. As a result, the Lender will not be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Lender may take concurrent proceedings in any number of jurisdictions.

**This Deed has been executed as a deed, and it has been delivered on the date stated at the beginning of this Deed.**

**Schedule 1**  
**Notice and acknowledgment of assignment of Insurance Proceeds**

To: [Counterparty]

Date: \_\_\_\_\_ 2016<sup>1</sup>

Dear Sirs

**Notice of Assignment**

- 1 We give you notice that, under an English law security agreement dated [●] 2016 entered into by us in favour of Macquarie Bank Limited (the **Lender**), we have assigned to the Lender by way of first assignment all of our right, title and interest, present and future, in and to all proceeds of the policies and contracts of insurance taken out or in existence from time to time in respect of our stock, inventory and merchandise and all other amounts payable to us under or in respect of such policies and contracts of insurance including damages for breach and return of premium, including without limitation *[insert details of the Insurance Policy concerned]* and any replacement or renewal of it (the **Insurance Policy**).
- 2 We will remain liable for our obligations under the Insurance Policy. The Lender has no obligations under it.
- 3 We instruct you to:
  - (a) make all payments due to us under the Insurance Policy to our US dollar account with Barclays Bank plc with the following details:

Bank: Barclays Bank

Account number [REDACTED] and sort code [REDACTED]

or to such other bank account as the Lender may notify you from time to time; and
  - (b) disclose to the Lender, without further approval from us, such information regarding the Insurance Policy as the Lender may from time to time request and to send it copies of all notices issued by you under the Insurance Policy.
- 4 This instruction cannot be varied or terminated without the consent of the Lender.
- 5 Please sign the enclosed acknowledgement and return it to the Lender at Ropemaker Place, 28 Ropemaker Street, London EC2Y 9HD marked for the attention of Andy Wiley.

.....  
for and on behalf of

**FABERGÉ (UK) LTD**

<sup>1</sup> To be dated not earlier than the date of the assignment.

### Acknowledgement

To: Macquarie Bank Limited

- 1 We acknowledge receipt of the notice described above and consent to the assignment referred to therein.
- 2 We have not received notice that any other person has an interest in the Insurance Policy.
- 3 All payments under the assigned insurances are payable in US dollars (and not in any other currency).
- 4 We will comply with the instructions in the notice.

Executed as a )  
deed by ) .....  
[Counterparty] ) Director  
acting by: ) .....  
Director/Secretary

Date: \_\_\_\_\_ 2016<sup>2</sup>

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<sup>2</sup> To be dated not earlier than the date of the notice.



## SIGNATORIES

### The Chargor

Executed as a deed by


**FABERGÉ (UK) LTD**

acting by:



Director / Authorised Signatory


in the presence of:



Name of witness:



Address:



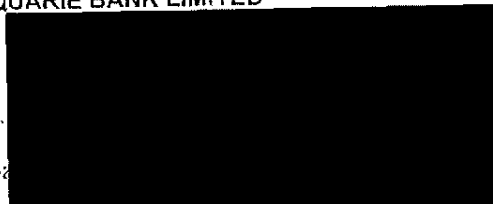
### The Lender

**MACQUARIE BANK LIMITED**

by: ....

Name:

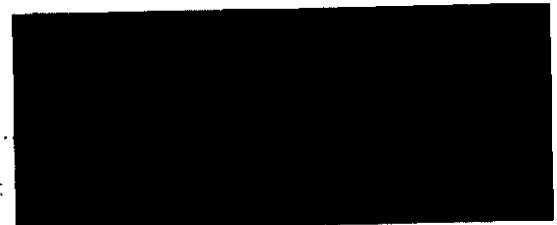
Position: Attorney-in-fact



by: ....

Name:

Position: Attorney-in-fact



Signed in London, POA Ref: #2090  
dated 26 Nov 2015