
Corporations Act
A Company limited by Shares

Constitution of
AZXC EXCHANGE PTY LTD
(A.C.N. 695905269)

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1. Preliminary

1.1. Replaceable rules

All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this Constitution.

1.2. Definitions

The following expressions in this Constitution have the meaning below:

- (a) *Act* means the *Corporations Act 2001 (Commonwealth)* or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;
- (b) *at any time* means at any time or times and from time to time;
- (c) *common seal* means the common seal of the Company and includes any duplicate seal of the Company;
- (d) *Company* means the company named at the beginning of this Constitution;
- (e) *Constitution* means the rules that comprise the Constitution of the Company in force for the time being;
- (f) *corporate representative* means a natural person appointed by a member which is a body corporate to be that body's representative to exercise all or any of the powers the body may exercise at meetings of members of the Company;
- (g) *corporate representative certificate* means a certificate evidencing the appointment of a corporate representative, that certificate complying with this Constitution;
- (h) *directors* means:
 - (i) while the Company is not a Single Director Company, the directors of the Company in office for the time being, or a quorum of the directors present at a board meeting;
 - (ii) while the Company is a Single Director Company, that director;
- (i) *dividend* includes bonus;
- (j) *group directors' fees* means the remuneration for their ordinary services as directors (whether or not executive or other paid work is undertaken) of persons who are directors of either the Company or any of its wholly - owned subsidiaries at any time;
- (k) *meeting of members* means a meeting of members duly called and constituted in accordance with this Constitution and any adjourned holding of it;
- (l) *member, shareholder, or holder* means any person entered in the register as a member for the time being of the Company;
- (m) *member present* means a member present at any meeting of members, in person or by proxy or attorney or, in the case of a body corporate, by its corporate representative;
- (n) *ordinary resolution* means:
 - (i) while the Company is not a Single Shareholder Company, a resolution of a meeting of members where more than one half of the total votes cast on the resolution are in favour of the resolution;
 - (ii) while the Company is a Single Shareholder Company, a decision of the single shareholder under Section 249B of the Act;
- (o) *proxy* means a person duly appointed under a proxy form by a member who is entitled to attend and vote at a meeting of members, to attend and vote instead of the member at the meeting;

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- (p) *proxy form* means an instrument for appointing a proxy, that instrument complying with this Constitution;
 - (q) *record date* means the date fixed by the directors for identifying the persons who are entitled to dividends, new securities, or any other entitlement;
 - (r) *register* means the register of members kept under the Act and includes any overseas branch register;
 - (s) *registered office* means the registered office for the time being of the Company;
 - (t) *secretary* means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as such temporarily;
 - (u) *shares* means the shares into which the capital of the Company is at any time divided;
 - (v) *Shareholders Agreement* means the shareholders agreement or deed entered into by the Company and its shareholders in respect of the Company, as in force and as amended from time to time (if any).
 - (w) *Single Director Company* means a proprietary company which has only one director;
 - (x) *Single Shareholder Company* means a proprietary company which has only one member or shareholder;
 - (y) *special resolution* means:
 - (i) while the Company is not a Single Shareholder Company, a resolution of a meeting of members:
 - (A) of which notice as set out in Section 249L(1)(c) of the Act has been given; and
 - (B) where at least 75% of the total votes cast on the resolution are in favour of the resolution;
 - (ii) while the Company is a Single Shareholder Company, a decision of the single shareholder under Section 249B of the Act.

1.3. Interpretation

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing a gender include any gender.
- (c) Words or expressions defined in the Act have those meanings.
- (d) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (e) Headings are for convenience only, and do not affect interpretation.
- (f) A reference to:
 - (i) a party includes its administrators, successors, substitutes by novation, and assigns;
 - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
 - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity; and
 - (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.

2. Proprietary company

- (a) The Company has all the powers of a natural person. These powers may be exercised by the directors unless the Act, the Shareholders Agreement or this constitution requires the members to exercise a power at a general meeting.
- (b) The Company is a proprietary company and accordingly:
 - (i) must not have more than 50 non-employee members. For this purpose :
 - (A) members who bought their shares under a crowdsourced funding offer that satisfied the requirements contained in Part 6D.3A of the Act (CSF Offer) do not count towards the 50-shareholder limit;

- (B) members who subsequently bought shares that were originally issued under a CSF Offer do not count towards the 50-shareholder limit provided that the Company's shares have not started trading on a financial market in Australia or overseas;
- (C) joint holders of a particular parcel of shares count as one person; and
- (D) an employee member is a member who either is an employee of the Company (or of a subsidiary) or was when they became a member; and
- (ii) must not engage in any activity that would require the lodgment of a prospectus under Part 6D.2 of the Act, apart from an activity which is an offer of shares to:
 - (A) members of the Company; or
 - (B) employees of the Company or a subsidiary of the Company.

3. Share capital

3.1. Control of the directors

Subject to the provisions of this Constitution and the Act, and without prejudice to any special rights previously conferred on the holders of any existing shares:

- (a) the shares in the Company are under the control of the directors; and
- (b) the directors may allot, grant options over, or otherwise dispose of, the shares to such persons, at such times, on such terms, and having attached to them such preferred, deferred or other rights, and at such issue price, for cash or non-cash consideration, with the issue price paid or part unpaid, as the directors think fit.

3.2. Share Capital

- (a) Without limiting any power to issue shares, issued shares may include:
 - Ordinary shares
 - 'A' Class shares
 - 'B' Class shares
 - 'C' Class shares
 - 'D' Class shares
 - 'E' Class shares
 - 'F' Class shares
 - 'G' Class shares
 - 'H' Class Shares
 - 'I' Class Redeemable Preference shares
 - 'J' Class Redeemable Preference shares
 - 'K' Class Redeemable Preference shares
- (b) A member being the holder of an ordinary share holds that share subject to the following rights and conditions:
 - (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to vote for every share held;
 - (ii) the right to participate in the dividends (if any) determined by the directors to be paid on that share;
 - (iii) in a winding up of the Company - the right to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled; and
 - (iv) any other rights in the Corporations Act 2001 (Cth).
- (c) A member being the holder of an 'A' Class share holds that share subject to the following rights and conditions:
 - (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every share held;
 - (ii) the right to participate in the dividends (if any) determined by the directors to be paid on that share;

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- (iii) in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled.
 - (d) A member being the holder of a 'B' Class share holds that share subject to the following rights and conditions:
 - (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every share held;
 - (ii) the right to participate in the dividends (if any) determined by the directors to be paid on that share;
 - (iii) in a winding up of the Company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the Company.
 - (e) A member being the holder of a 'C' Class share holds that share subject to the following rights and conditions:
 - (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every share held;
 - (ii) no right to participate in any dividends;
 - (iii) in a winding up of the Company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the Company.
 - (f) A member being the holder of a 'D' Class share holds that share subject to the following rights and conditions:
 - (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every share held;
 - (ii) no right to participate in any dividends;
 - (iii) in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled.
 - (g) A member being the holder of an 'E' Class share holds that share subject to the following rights and conditions:
 - (i) no right to attend or vote at any meeting of the Company;
 - (ii) the right to participate in the dividends (if any) determined by the directors to be paid on that share;
 - (iii) in a winding up of the Company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the Company.
 - (h) A member being the holder of a 'F' Class share holds that share subject to the following rights and conditions:
 - (i) no right to attend or vote at any meeting of the Company;
 - (ii) the right to participate in the dividends (if any) determined by the directors to be paid on that share;
 - (iii) in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled.
 - (i) A member being the holder of a 'G' Class share holds that share subject to the following rights and conditions:
 - (i) the right to attend but no right whatsoever to vote at any meetings of the Company;
 - (ii) no right to participate in any dividends;
 - (iii) in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled.
 - (j) A member being the holder of a 'H' Class share holds that share subject to the following rights and conditions:
 - (i) the right to attend but no right whatsoever to vote at any meetings of the Company;
 - (ii) no right to participate in any dividends;
 - (iii) in a winding up of the Company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the Company.
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- (k) A member being the holder of a 'I' Class Redeemable Preference share holds that share subject to the following rights and conditions:
- (i) the right to attend but no right whatsoever to vote at any meeting of the Company;
 - (ii) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered holder of any Redeemable Preference Share together with the amount paid up in respect of the shares to be redeemed, the Company may at any time redeem all or from time to time redeem any one or more of the said Redeemable Preference Shares and such redemption shall take place immediately upon the expiry of seven days from the delivery or posting of the said notice of redemption and payment;
 - (iii) in a winding up of the Company to repayment of the issue price of such share in priority to all other shares in the Company but no right to participate in the division of any surplus assets or profits of the Company;
 - (iv) the right to receive from the profits of the Company as a first charge a non-cumulative preferential dividend at the rate of five percent (5%) per annum on the paid issue price of the 'I' Class Redeemable Preference shares held.
- (l) A member being the holder of an 'J' Class Redeemable Preference share holds that share subject to the following rights and conditions:
- (i) the right to attend but no right whatsoever to vote at any meeting of the Company;
 - (ii) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered holder of any Redeemable Preference Share together with the amount paid up in respect of the shares to be redeemed, the Company may at any time redeem all or from time to time redeem any one or more of the said Redeemable Preference Shares and such redemption shall take place immediately upon the expiry of seven days from the delivery or posting of the said notice of redemption and payment;
 - (iii) in a winding up of the Company to repayment of the issue price of such share in priority to all other shares in the Company except the 'I' Class Redeemable Preference shares (if any) but no right to participate in the division of any surplus assets or profits of the Company;
 - (iv) the right to participate in the dividends (if any) determined by the directors to be paid on that share.
- (m) A member being the holder of a 'K' Class Redeemable Preference share holds that share subject to the following rights and conditions:
- (i) the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every share held;
 - (ii) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered holder of any Redeemable Preference Share together with the amount paid up in respect of the shares to be redeemed, the Company may at any time redeem all or from time to time redeem any one or more of the said Redeemable Preference Shares and such redemption shall take place immediately upon the expiry of seven days from the delivery or posting of the said notice of redemption and payment;
 - (iii) in a winding up of the Company to repayment of the issue price of such share in priority to all other shares in the Company except the 'I' Class Redeemable Preference shares but no right to participate in the division of any surplus assets or profits of the Company;
 - (iv) the right to participate in the dividends (if any) determined by the directors to be paid on that share.

3.3. Variation of rights

If at any time the issued shares are divided into different classes, the rights attached to any class of shares (unless the terms of issue of that class otherwise provide) may only be varied or cancelled by a Special Resolution passed at a general meeting of members and either:

- (a) the sanction of a special resolution passed at a separate meeting of the class of members holding shares in the class; or
- (b) the written consent of members with at least 75% of the votes in the class.

3.4. Class meetings

In relation to any such separate meeting of the holders of shares in a class, the provisions of this Constitution which relate to meetings of members apply, as far as they are capable of application and changed as necessary, except that any member present holding shares of the class may demand a poll.

3.5. **Further issues of shares in the same class**

The rights attached to a class of shares are not to be considered as varied if further shares of that class are issued on identical terms, except if the terms of issue of that class of shares otherwise provide.

3.6. **Reclassification of shares**

Subject to this Constitution and the Act, the Company may at any time by ordinary resolution convert and reclassify all or any of the issued shares of one class into shares of another class or classes.

3.7. **Brokerage and commission**

The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company. Payments by way of brokerage or commission (in respect of the issue of any shares) may be satisfied by the payment of cash, by the allotment of fully or partly paid shares, or a combination of these.

3.8. **Recognition of third party interests**

Except as required by law or in this Constitution, the Company is not required to recognise any person as holding any share upon any trust. The Company is not bound by, or compelled in any way to recognise (even when having notice of it), any equitable, contingent, future or partial interest in any share or unit of a share or (except only as otherwise provided by this Constitution or by law) any other right in respect of any share except an absolute right of ownership of it in the registered holder.

3.9. **Alteration of capital**

The Company may by ordinary resolution:

- (a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares;
- (b) subdivide its shares or any of them into shares of smaller amount but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each reduced share is the same as it was in the case of the share from which the reduced share is derived; and
- (c) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or which have been forfeited and reduce the amount of its share capital by the amount of the shares so cancelled.

3.10. **Adjustments**

The directors may do all things necessary to give effect to any such resolution and in particular, to the extent necessary to adjust the rights of the members among themselves, may determine that fractions or incomplete multiples may be disregarded.

4. **Certificates**

4.1. **Entitlement of member to certificate**

A member is entitled, without charge, to one certificate for the shares of the Company of each class registered in the member's sole name or to several certificates each for a reasonable part of those shares.

4.2. **Certificates for joint holders**

If any shares of the Company are held by 2 or more persons, the Company is only required to issue the same number of certificates as if those shares were held by one person. Delivery of a certificate so issued to any of those persons is sufficient delivery to all of them.

4.3. **Replacement of certificates**

If a certificate is lost, destroyed, worn out or defaced, then upon production of the document (if available) to the directors they may order it to be cancelled and may issue a new certificate in substitution subject to the conditions prescribed by the Act.

5. Lien

5.1. Lien for calls

The Company has a first and paramount lien for unpaid calls and instalments, and interest on such sums, and expenses incurred in relation to those items, upon the specific shares registered in the name of each member (whether solely or jointly with others) in respect of which such money is due and unpaid. Such lien extends to all dividends at any time declared or distributed in respect of such shares. Unless otherwise agreed, the registration of a transfer of shares operates as a waiver of the Company's lien on any such shares.

5.2. Lien on payments required to be made by the Company

If any law for the time being of any place imposes or purports to impose any immediate, future or possible liability upon the Company to make any payment, or empowers any government or taxing authority or government official to require the Company to make any payment in respect of any shares registered in the register as held either jointly or solely by any member, or in respect of any dividends or other moneys due or payable or accruing due or which may become due or payable to such member by the Company on or in respect of any such shares, or for or on account of or in respect of any member and whether in consequence of:

- (a) the death of such member;
- (b) the liability for income tax or other tax by such member;
- (c) the liability for any estate, probate, succession, death, stamp or other duty by the executor or administrator of such member or by or out of the member's estate; or
- (d) any other act or thing;

in every such case the Company:

- (i) must be fully indemnified by such member or the member's executor or administrator from all liability;
- (ii) has a first and paramount lien upon all shares registered in the register as held either jointly or solely by such member and upon all dividends and other money payable in respect such shares for any liability arising under or in consequence of any such law and for any amount paid in complete or partial satisfaction of such liability and for interest on any amount so paid at the rate per cent per annum set by the directors from the date of payment to the date of repayment and may deduct from or set off against any such dividend or other money so payable any moneys so paid or payable by the Company together with that interest;
- (iii) may recover as a debt due from such member or the member's executor or administrator wherever constituted any money paid by the Company under or in consequence of any such law and interest or such money at the rate and for that period in excess of any dividend or other such money then due or payable by the Company to such member;
- (e) may, if any such money is paid or payable by the Company under any such law, refuse to register a transfer of any such shares by any such member or the member's executor or administrator until such money with that interest is set off or deducted or in case the same exceeds the amount of any such dividend or other money then due or payable by the Company to such member until such excess is paid to the Company.

5.3. Other remedies of the Company

Nothing in this Constitution prejudices or affects any right or remedy which any such law may confer or purport to confer on the Company and, as between the Company and every such member, the member's executor, administrator and estate, wherever constituted or situated, any right or remedy which such law confers or purports to confer on the Company is enforceable by the Company.

5.4. Sale under lien

The Company may sell in such manner as the directors think fit any shares on which the Company has a lien but no sale may be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the share or the person entitled to it by reason of death or bankruptcy.

5.5. **Transfer**

To give effect to any such sale the directors may authorise some person to transfer the shares sold to the purchaser of the shares. The purchaser must be registered as the holder of the shares comprised in any such transfer and the purchaser is not bound to see to the application of the purchase money nor is the purchaser's title to the shares affected by any irregularity or invalidity in connection with the sale.

5.6. **Application of proceeds**

The proceeds of the sale must be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue, if any, must (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

5.7. **Effect of forfeiture**

Any member whose shares have been forfeited is, despite that fact, liable to pay and must immediately pay to the Company all calls, instalments, interest and expenses owing upon or in respect of such shares at the time of the forfeiture together with interest on such items from the time of forfeiture until payment at such rate as the directors may determine. The directors may enforce the payment of such money, or any part of it if they think fit, but they are not under any obligation to do so.

6. **Calls on shares**

6.1. **Calls made by the directors**

Subject to the terms of issue of any shares, the directors may at any time make such calls as they think fit upon the members in respect of any money unpaid on the shares held by them respectively. A call may be made payable by instalments. A call may be revoked, postponed or extended as the directors determine.

6.2. **Time of call**

A call is deemed to be made at the time when the resolution of the directors authorising such call was passed.

6.3. **Payment of call**

Each member must pay the amount of every call so made on the member according to the terms of the notice of call. The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any of the members does not invalidate the call.

6.4. **Fixed payments**

If by the terms of issue of any shares or otherwise any amount is made payable at any fixed time or by instalments at fixed times, every such amount or instalment is payable as if it were a call duly made by the directors and of which due notice had been given. In case of non-payment, the provisions of this Constitution as to payment of interest, expenses, and forfeiture or otherwise apply as if such sum had become payable by virtue of a call duly made and notified.

6.5. **Interest on unpaid call**

If a sum called is not paid on or before the date for payment of it the person from whom the sum is due must pay interest on the sum (or on so much as remains unpaid from time to time) at such rate as the directors may determine calculated from the day appointed for the payment of it until the time of actual payment. The directors may waive such interest in whole or in part.

6.6. **Joint holders' liability**

The joint holders of a share are jointly and severally liable to pay all amounts of instalments and calls in respect of the share.

6.7. Differences in terms of issue

The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and times of payment.

6.8. Recovery action

If a call is not paid the Company may proceed to recover it with interest and expenses (if any) by action, suit or otherwise. The right of action, suit or otherwise is without prejudice to the right to forfeit the share of any member so in arrears and either or both of such rights may be exercised by the directors.

6.9. Proof of call

On the trial of any action for the recovery of any call or of any interest or expenses upon or in respect of any call it is sufficient to prove that:

- (a) the name of the member sued is entered in the register as the holder, or one of the holders, of the shares in respect of which such debt accrued;
- (b) the resolution making the call is duly recorded in the minute book;
- (c) notice of such call was duly given to the registered holder of the shares or, in the case of calls or instalments payable at fixed times, by the terms of issue of any share or otherwise to prove such terms; and
- (d) such sum or call has not been paid.

It is not necessary to prove the appointment of the directors who made the allotment or call or the passing of the resolution nor any other matters whatever but proof of those matters is conclusive evidence of the debt.

6.10. Prepayment of calls

Subject to the terms of issue of any shares, the directors may at any time receive from any member all or any part of the amount unpaid on a share although no part of that amount has been called up. The directors may at any time pay interest upon the whole or any part of the moneys so paid in advance until the amount becomes payable at such a rate as the member paying such sum and the directors agree upon. Any amount being paid in advance of calls is not included or taken into account in ascertaining the amount of dividend payable upon the shares in respect of which such advance has been made. The directors may at any time repay the amount so advanced upon giving to such member one month's notice in writing.

7. Transfer of shares

7.1. Transferability

Except where required:

- (a) by law; or
- (b) by other provisions of this Constitution; or
- (c) by the terms of issue of the shares concerned,

the directors must register each transfer of shares which complies with this Constitution, and do so without charging a fee.

7.2. Instrument of transfer

Subject to this Constitution, a member may transfer all or any of the member's shares by instrument in writing which is in the form approved by the directors.

7.3. Proper instrument

If a member seeks to transfer all or any of the member's shares in accordance with **rule 7.2**, the Company may only register a transfer of shares where an instrument satisfying **rule 7.2** is delivered to the Company (including, for this purpose, a person authorised by the Company to receive instruments, such as a share registrar of the Company) and the instrument:

- (a) is duly stamped, if necessary; and

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- (b) is executed by the transferor and (unless the directors otherwise determine in a particular case, relating only to fully paid shares) the transferee, except where execution by either transferor or transferee is not required by law or is deemed by law to be present; and
 - (c) except where otherwise permitted by law, is accompanied by the certificate for the shares the subject of the transfer, together with such other evidence as the directors may require to prove the title of the transferor or the transferor's right to transfer the shares; and
 - (d) relates only to shares of one class.

7.4. **Restrictions on transfer**

The directors may refuse to register a transfer of shares in their absolute discretion. The directors are not obliged to give any reason for refusing to register the transfer of shares.

7.5. **Transferor remains member**

The transferor of a share remains the holder of that share until the transfer is registered and the name of the transferee is entered in the register in respect of that share.

7.6. **Retention of instruments**

If an instrument of transfer or a purported instrument of transfer is delivered to the Company, property to and title in that instrument (but not the shares the subject of it) passes to the Company which is entitled, as against all persons, to the possession of the instrument

7.7. **Notification of refusal to register**

If the directors refuse to register a transfer of shares they must give written notice of the refusal to the transferee within 2 months after the date on which the transfer was lodged with the Company.

7.8. **Powers of attorney**

All powers of attorney granted by members for the purpose, among other things, of transferring shares which may be lodged, produced or exhibited to the Company are, as between the Company and the grantor of such powers, treated as remaining in full force and effect and they may be acted upon until such time as express notice in writing of the revocation of them or of death of the grantor has been lodged at the registered office.

7.9. **Closure of register**

The directors may suspend registration of transfers of shares at the times and for the periods they determine. The periods of suspension must not exceed 30 days in the aggregate in any calendar year.

8. **Transmission of shares**

8.1. **Entitlement to shares on death**

If a member dies, the survivor or survivors, where the deceased was a joint holder, and the legal personal representative where the deceased was a sole holder is, upon producing satisfactory proof of death, the only person recognised by the Company as having any title to the deceased's interest in the share. Nothing in this Constitution releases the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by the deceased.

8.2. **Registration of persons entitled**

If a person becomes entitled to a share in consequence of the death or bankruptcy of a member or to a share of a mentally incapable member then:

- (a) that person may, upon such information being produced as is properly required by the directors, and subject to **rules 8.2(b) and 8.2(c)**, elect either to be registered as the holder of the share or to have some other person (nominated by the person becoming entitled) registered as the transferee of the share;
- (b) if the person so becoming entitled elects to be registered, that person must deliver or send to the Company a notice in writing signed by that person stating that election;

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- (c) if the person so becoming entitled elects to have another person registered, the person becoming entitled must execute a transfer of the share to that other person; and
 - (d) all the provisions of this Constitution relating to the right to transfer and the registration of transfers apply to any such notice or transfer as if the notice or transfer were a transfer executed by that member.

8.3. **Dividends and other rights**

A person entitled to be registered as a member in respect of a share by virtue of **rule 8** is, upon the production of such evidence as may at any time be properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been. If 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder they are, for the purposes of this Constitution, treated as joint holders of the share.

9. **Forfeiture and surrender of shares**

9.1. **Payment required**

If any member fails to pay the whole or any part of any call or instalment on or before the day appointed for payment of the call or instalment, the directors may, at any time while the same remains unpaid, serve a notice on the member requiring the member to pay the same together with any interest that may have accrued thereon and interest up to the date of payment and any expense that may have been incurred by the Company by reason of such non-payment.

9.2. **Forfeiture notice**

The notice must:

- (a) name a further day (not earlier than the expiry of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made;
- (b) identify the place where payment is to be made; and
- (c) state that if payment is not made by the due date and at the place appointed, the shares in respect of which such payment is due are liable to be forfeited.

9.3. **Forfeiture**

If the requirements of any such notice are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment required by the notice has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture. The right to forfeit the shares does not affect the right of the Company to sue for any allotment moneys, calls, instalments, interest and expenses due in respect of such shares.

9.4. **Cancellation of forfeiture**

The directors may, at any time before the forfeited shares have been sold or otherwise disposed of, annul the forfeiture of them upon such conditions as they think fit.

9.5. **Directors may sell**

A forfeited share becomes the property of the Company. Any forfeited share may be sold or otherwise disposed of upon such terms and in such manner as the directors think fit.

9.6. **Effect of forfeiture**

A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay, and must immediately pay, to the Company all money payable by such person in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture, until payment at such rate as the directors may determine. The Company may enforce payment of such money but is not under any obligation to do so.

9.7. Evidence of forfeiture

A statement in writing by a director or the secretary of the Company that a share in the Company has been duly forfeited on a date stated in the statement is conclusive evidence of the facts so stated as against all persons claiming to be entitled to the share.

9.8. Transfer of forfeited shares

The Company may receive the consideration, if any, given for a forfeited share on any sale or disposition of the share and may appoint some person to execute a transfer of the share in favour of the person to whom the share is sold or disposed of. The transferee must then be registered as the holder of the share and is not bound to see to the application of the purchase money, if any. The transferee's title to the share is not affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

9.9. Surrender as forfeiture

The directors may accept the surrender of any fully paid share by way of compromise of any question as to the holder being properly registered in respect of it. Any share so surrendered may be disposed of in the same manner as a forfeited share.

9.10. Fixed amounts taken to be calls

The provisions of this Constitution as to forfeiture apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

10. Single Shareholder Company

10.1. Recording resolutions

While the Company is a Single Shareholder Company:

- (a) if the shareholder records in writing (under Section 249B of the Act) the shareholder's resolution or decision to a particular effect, and signs the record, the record of the resolution or decision counts as the passing by the shareholder of a resolution to that effect; or
- (b) if the shareholder is the holding company of the Company and the corporate representative of the holding company (under Section 250D of the Act) records in writing a resolution and signs the record, the record of the resolution counts as the passing by the shareholder of a resolution to that effect.

10.2. Minutes

A written record under **rule 10.1** constitutes minutes and must be entered in the minute book.

10.3. Application of other rules of the Constitution

While the Company is a Single Shareholder Company, **rule 11** (Circulating resolution of members), **rule 12** (Meetings of members), **rule 13** (Representation at meetings), **rule 14** (Proceedings at meetings of members), and **rule 15** (Voting at meetings of members) are suspended from operation.

11. Circulating resolutions of members

If all the members of the Company entitled to vote on the resolution have signed a document (or 2 or more separate documents in identical terms) containing a statement that they are in favour of a resolution (other than to remove an auditor under Section 329 of the Act), the resolution in those terms is deemed (under Section 249A of the Act) to have been passed. The resolution is passed when the last member signed. The document constitutes a minute and must be entered into the minute book.

12. Meetings of members

12.1. No annual general meetings

While the Company is a proprietary company:

- (a) the Act does not require the Company to hold an annual general meeting;
- (b) no meeting of members called or held is to be regarded as an annual general meeting under the Act, even if it is described as an annual general meeting and if given that description:
 - (i) it has no effect on the validity of the meeting of members; and
 - (ii) it neither attracts nor creates any additional duties or rights as to the business to be conducted at the meeting or the conduct of proceedings at the meeting.

12.2. Calling of meetings

The directors may at any time call a meeting of members.

12.3. Requisition of meetings

Except as provided in Section 249D or Section 249F of the Act, no member or members may call a meeting of members.

12.4. Period of notice

Subject to the **rule 12.5**, at least 21 clear days' notice must be given of a meeting of members. This means that you exclude both the day the notice was deemed to be given and the day of the meeting of members itself.

12.5. Consent to short notice

With the consent in writing of the requisite number of members, any meeting of members (except where a resolution will be moved to remove an auditor under Section 329 of the Act) may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly. The required number is that member or those members having a right to attend and vote at that meeting who, between them, hold at least 95% of the votes that may be cast at the meeting.

12.6. Notice of meeting

Every notice of a meeting of members must:

- (a) set out the place, date and time of meeting (and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) in the case of special business, state the general nature of the meeting's business;
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (d) in the case of an election of directors, give the names of the candidates for election; and
- (e) contain a statement of the right to appoint a proxy, being to the effect that:
 - (i) a member entitled to attend and vote has a right to appoint a proxy;
 - (ii) a proxy need not be a member;
 - (iii) a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise. If there is no such specification, each proxy may exercise half of the votes.

12.7. Entitlement to notice

Written notice of a meeting of members must be given individually to:

- (a) each member (apart from any member who under this Constitution or by the terms of issue of any share is not entitled either to the notice or to vote at the meeting); and
- (b) the auditor; and

(c) each director.

12.8. Entitlement to proxy form

A proxy form (in a form determined by the directors) must be given to each member entitled to attend and vote at the meeting of members.

12.9. Omission to give notice

The accidental omission to give notice of a meeting of members (or proxy form) to, or the non-receipt of any such notice (or proxy form) by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

12.10. Cancellation or postponement of meeting

The directors may cancel or postpone the holding of any meeting of members. If the meeting was called by requisitioning members or in response to a requisition by members the directors may only cancel or postpone the holding of it with the consent of a majority of the requisitioning members. The directors may notify the members of such cancellation or postponement by such means as they see fit. If any meeting is postponed for one month or more then no less than 5 days' notice must be sent to the members of the postponed meeting but it is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

13. Representation at meetings

13.1. Persons entitled to attend

The right to attend a meeting of members is as follows:

- (a) each member may attend, apart from any member who under this Constitution or by the terms of issue of any share is not entitled to attend;
- (b) each director, secretary and auditor may attend;
- (c) each person, whether a member or not, who is a proxy, corporate representative or attorney of a member may attend;
- (d) other persons may attend only with leave of the meeting or its chair and then only while the leave is on foot and in accordance with the terms of the leave.

The right to attend is subject to the powers of the chair of the meeting both at law and under this Constitution.

13.2. Proxy eligibility

A proxy need not be a member.

13.3. Proxy recognition

A proxy is recognised as having been duly appointed by a member and entitled to act as a proxy for that member if, and only if, the proxy form complies with the requirements of this Constitution in relation to form, execution and lodgment.

13.4. Proxy form

The proxy form:

- (a) must contain the member's name and address;
- (b) must contain the proxy's name or the office held by the proxy;
- (c) may make provision for the chair of the meeting of members to act as the proxy either in the absence of any other appointment or if the proxy primarily appointed fails to attend the meeting of members;
- (d) must contain the company's name and either identify the meetings of members at which the proxy form may be used or be identified as a standing one;
- (e) may enable the member to at least instruct the proxy to vote for or against each notified resolution.

13.5. Chair as fall-back proxy

If a proxy form is otherwise effective except that it does not specify the proxy, the member is treated as validly appointing the chair of the meeting of members in respect of all shares of that member.

13.6. Proxy execution

A proxy form must be executed:

- (a) in the case of a member who is a natural person:
 - (i) under the hand of the member (or where there are joint members, any one of them); or
 - (ii) under the hand of the attorney of the member;
- (b) in the case of a member which is a body corporate:
 - (i) under the common seal of the body;
 - (ii) under the hand of a duly authorised officer of the body; or
 - (iii) under the hand of the attorney of the body.

13.7. Proxy lodgement

A proxy form must be lodged:

- (a) as an original, at the registered office (or at such other place as is specified for that purpose in the notice calling the meeting of members), by the start of the meeting; or
- (b) as a facsimile transmission, at a fax number at the registered office (or at such other place as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members), by the start of the meeting; or
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members, by the start of the meeting; or
- (d) as an original, with the chair of the meeting, at any time prior to the proxy voting on behalf of the appointor at the meeting.

13.8. Original proxy form

Subject to **rule 13.7**, the original executed proxy form must be lodged. A photocopy of it, a facsimile transmission of it, or other form of electronic transmission of it, is taken not to be lodgment of the original.

13.9. Proxy executed by attorney

If a proxy form is executed by the attorney of the member the relevant power of attorney (or a photocopy of it or a facsimile transmission of it) must also be lodged at the place, and by the deadline, required for the proxy form.

13.10. Corporate representative recognition

A corporate representative is recognised as having been appointed by a member (which is a body corporate) and entitled to act as a corporate representative of that member if, and only if:

- (a) the appointment is evidenced by a corporate representative certificate which complies with the requirements of this Constitution in relation to form, execution and lodgment; or
- (b) the appointment is evidenced by some other form of documentation satisfactory to the directors which is lodged at the place, and by the deadline, required for corporate representative certificates.

13.11. Form of corporate representative certificate

The corporate representative certificate:

- (a) must contain the member's name;
- (b) must specify at least one natural person, by name or by reference to a position held, to act as the body's corporate representative (but if more than one is appointed only one may exercise the body's powers at any one time);
- (c) may specify another natural person, by name or by reference to a position held, to act as the body's corporate representative if the person primarily nominated fails to attend;

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- (d) must contain the Company's name and either identify the meetings of members at which the representative may act, or be identified as a standing one;
 - (e) may set out restrictions on the corporate representative's powers.

13.12. Execution of corporate representative certificate

A corporate representative certificate must be executed:

- (a) in any case, under the common seal of the body corporate; or
- (b) where the body corporate is a company registered under the Act, in any manner identified in **rule 27** (Common seal) or **rule 28** (Execution of document without a common seal) as may be appropriate to that body.

13.13. Corporate representative certificate lodgement

The corporate representative certificate (or a photocopy of it or a facsimile of it) must be lodged:

- (a) at the registered office (or at such other place as is specified for that purpose in the notice calling the meeting of members), by the start of the meeting; or
- (b) as a facsimile transmission, at a fax number at the registered office (or at such other place as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members), by the start of the meeting; or
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members, by the start of the meeting; or
- (d) with the chair of the meeting, at any time prior to the corporate representative voting on behalf of the member at the meeting.

13.14. Power of attorney lodgement

An attorney is recognised as entitled to act as attorney for a member at a meeting of members if, and only if, the relevant power of attorney (or a photocopy of it or a facsimile of it) is lodged at the place, and by the deadline, required for proxy forms.

14. Proceedings at meetings of members

14.1. Quorum

No business may be transacted at any meeting of members unless a quorum of members is present at the time when the meeting proceeds to business. Except as provided in **rule 14.2**, while there are 2 or more members in the Company, 2 members present are a quorum and the quorum must be present at all times during the meeting.

14.2. Failure of quorum

If a quorum is not present within 15 minutes from the time appointed for a meeting of members:

- (a) where the meeting was called by, or in response to, the requisition of members made under the Act, the meeting is dissolved; or
- (b) in any other case the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the second week following at the same time and place. If at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, 2 members constitute a quorum, or where 2 members are not present, the meeting is dissolved.

14.3. Special business

No special business may be transacted at any meeting of members other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution or the Act to be transacted at such meeting.

14.4. **Chair of meeting**

The chair of the directors, or in that person's absence the deputy chair of the directors (if any), is entitled to take the chair at each meeting of members. If neither of those persons is present at any meeting of members within 15 minutes after the time appointed for holding such meeting, or neither of them is willing to take the chair, the directors present may choose one of their number as a chair and if no director present is willing to take the chair the directors may choose a person, whether a member or not, as chair of the meeting, failing which the members present must elect a person, whether a member or not, to be chair of the meeting.

14.5. **Passing the chair**

If the chair of a meeting of members is unwilling or unable to be the chair for any part of the business of the meeting:

- (a) that chair may withdraw as chair for that part of the business and may nominate any person who would be entitled under **rule 14.4** to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chair and the prior chair is entitled to resume as the chair of the meeting.

14.6. **Responsibilities of chair**

The chair of a meeting of members is responsible for the general conduct of the meeting and to ascertain the sense of the meeting in relation to the business transacted at it. For these purposes the chair of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the concurrence of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

14.7. **Admission to meetings**

The chair of a meeting of members may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chair to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the persons possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not entitled under this Constitution to attend the meeting.

This power may be exercised in respect of a person regardless of whether that person otherwise would have been entitled to attend the meeting or not.

14.8. **Adjournment of meeting**

The chair of a meeting of members at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the chair determines.

14.9. **Business at adjourned meeting**

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for one month or more, in which event notice of the adjourned meeting must be given.

14.10. **Technology meeting**

The Company may hold a meeting of its members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

15. Voting at meetings of members

15.1. **Entitlement to vote**

Subject to this Constitution and the terms of issue of any shares, each natural person who is present at a meeting of members may vote if he or she is member or a recognised proxy, attorney or corporate representative of a member.

15.2. **Number of votes**

Each natural person who is, under **rule 15.1**, entitled to vote has:

- (a) on a show of hands (or on the voices) only one vote, regardless of how many members the person may represent; and
- (b) on a poll one vote for each share (on which the total issue price is paid) held by the person or held by members for whom the person is the recognised proxy, attorney or corporate representative. If the total issue price of shares has not yet been paid, the voting rights in respect of them is in the same proportion as the amount paid is to the issue price.

15.3. **Voting restrictions**

If, to ensure that a resolution on which the Act requires that particular persons do not cast a vote so that the resolution has a specified effect under the Act, the notice of a meeting of members specifies that, in relation to particular business to be considered at that meeting, votes cast by particular persons (whether specified by name or by description of particular classes of persons) are to be disregarded by the Company, the Company must take no account, in determining the votes cast on a resolution relating to that business (whether a special resolution or an ordinary resolution) or for any other purpose, of any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that resolution. However, a person who is not entitled to vote on a resolution as a member, may vote as a recognised proxy for another member who can vote if the proxy form specifies the way the recognised proxy is to vote on the resolution and the recognised proxy votes that way.

15.4. **Calls unpaid**

A person is not entitled to vote in respect of particular shares at a meeting of members unless all calls and other sums presently payable by the member in respect of those shares have been paid.

15.5. **Attendance of member suspends the proxy**

If a member is present at any meeting of members in person (or in the case of a body corporate, by its corporate representative) the proxy or attorney of that member may not exercise the voting rights of the member while the member is present.

15.6. **Revocation of proxies**

A vote given or act done in accordance with the terms of a proxy form or power of attorney is valid despite the previous death or mental incapacity of the principal, or revocation of the proxy or power of attorney, or transfer of the share in respect of which the vote is given, or act done, provided no intimation in writing of the death or mental incapacity, revocation or transfer has been received at the registered office or by the chair of the meeting before the vote is given or act done. Any proxy may be revoked at any time. A later appointment revokes an earlier one if both appointments would not be validly exercised at the meeting. The decision of the chair as to whether a proxy has been revoked is final and conclusive.

15.7. Proxy must vote on a poll as directed

A proxy form may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands (or on the voices), but if the proxy does so, the proxy must vote that way; and
- (b) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
- (c) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

Nothing in this **rule 15.7** affects the way that the person who is a proxy can cast any votes they hold as member.

15.8. Proxy must abstain if directed

A proxy form may specify that the proxy is to abstain from voting on a particular resolution. If it does the proxy must not vote on that resolution.

15.9. Method of voting

Every resolution put to a vote at a meeting of members (except where there is an election of directors by ballot) must be determined by the voices or a show of hands (as determined by the chair of the meeting) unless a poll is properly demanded.

15.10. Who may demand a poll

At a meeting of members a demand for a poll may be made by:

- (a) the chair of the meeting; or
- (b) at least 2 persons present having the right to vote on the resolution; or
- (c) any person or persons present having the right to vote at least 5% of the votes that may be cast on the resolution on a poll.

15.11. When poll may be demanded

The poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

15.12. Declaring result of vote on show of hands

At any meeting of members (unless a poll is so demanded) a declaration by the chair of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority and an entry in the book containing the minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

15.13. Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chair of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

15.14. Casting vote of chair

If, on a show of hands or on a poll, the votes are equal the chair of the meeting does not have a casting vote in addition to the vote, if any, of the chair as a member.

15.15. **Joint holders' vote**

In the case of joint holders, any one of them may vote. If on a particular occasion more than one of the joint holders votes, only the first to vote is counted. If it is not practical to determine which was first, the earliest named in the register to exercise such right (to the exclusion of those named later) prevails. Any such determination (by the chair or returning officer as the case may be) is final and conclusive. Several executors or administrators of a deceased member are, for the purposes of this rule, treated as joint holders of the share.

15.16. **Objections**

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the register held in the registered office must be adopted and acted on as the voting roll in respect of members and their shares on such register.

15.17. **Ruling on votes**

The chair of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chair is final and conclusive.

16. **Appointment and removal of directors**

16.1. **Number of directors**

The number of directors must be not less than 1 nor more than such number as the directors at any time determine.

16.2. **No share qualification**

There is no share qualification for directors.

16.3. **Appointment and removal of directors**

The directors holding office at the date of adoption of this Constitution continue in office subject to this Constitution. The members may at any time elect or remove any director by ordinary resolution.

16.4. **Casual appointment**

The directors may at any time appoint any person as a director, either to fill a casual vacancy or as an addition to the directors.

16.5. **No retirement by rotation**

Directors do not retire by rotation. Each director continues in office until that director dies, resigns, is removed from office, or the office of the director is vacated under either this Constitution or the Act.

16.6. **Resignation of director**

Any director may resign from office by giving notice in writing to the Company of the director's intention to do so. Subject to the Act, such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time in which event the resignation takes effect upon the expiration of such time or the date 3 months from the giving of the notice, whichever is the earlier.

16.7. **Vacation of office**

In addition to the circumstances in which the office of director becomes vacant by virtue of the Act or other provisions of this Constitution, the office of director, by the very fact, is vacated if the director:

- (a) becomes bankrupt or an insolvent under administration; or
- (b) cannot manage the company because of their mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it; or

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- (c) is absent from meetings of directors for a continuous period of 6 months without leave of absence from the directors; or
 - (d) fails to pay any call due on any shares held by that director for the space of one month, or such further time as the directors allow, after the time when the call has been made; or
 - (e) is removed from office by an ordinary resolution.

16.8. Less than minimum number of directors

The continuing directors may act despite any vacancy in their body but if the number falls below the minimum number fixed in accordance with this Constitution, the directors may act only:

- (a) to appoint directors up to that minimum number;
- (b) to call a meeting of members; or
- (c) in emergencies.

16.9. Death, bankruptcy or incapacity of sole Director and Member

If a person who is the sole director and member:

- (a) dies;
- (b) becomes bankrupt and as a result, the office of director becomes vacant; or
- (c) cannot manage the Company because of the person's mental incapacity, and

a personal representative or trustee is appointed to administer their estate or property, the personal representative or trustee may appoint a person (including itself) as the director.

A person appointed as a director under this clause holds that office as if they had been properly appointed under rule 16.3.

17. Alternate directors

17.1. Power to appoint alternate director

Each director may at any time appoint any person approved for that purpose by a majority of his or her co-directors to act as an alternate director in the appointor's place.

17.2. Suspension of appointment

The appointor may vary, suspend, or terminate the appointment of any alternate.

17.3. Notice of appointment

Notice of each such appointment, suspension or termination must be made in writing to the alternate, signed by the appointor, and a copy served on the Company.

17.4. Electronic notifications

Any notice under **rule 17.3** or **rule 17.5** may be served by electronic transmission and any such transmission purporting to be signed by a director is treated as being in writing signed by such director.

17.5. Role of alternate director

An alternate director:

- (a) is not entitled to receive notice of meetings of the directors unless the appointor has, by notice in writing to the Company, required it do so either generally or in particular circumstances;
- (b) may attend and vote at a meeting of the directors if the appointor is not present at that meeting;
- (c) may sign a circulating resolution under **rule 21.10** unless the appointor has, by notice in writing to the Company, suspended that right either generally or in particular circumstances;
- (d) when acting as such at any time, is an officer of the Company and not an agent of the appointor and, in those circumstances, is subject to the duties and has all the powers and rights of a director;
- (e) does not have a conflict of interest solely by reason of the fact that the appointor has (or vice versa); and

(f) is not taken into account in determining either the number of directors or rotation of directors.

17.6. Remuneration of alternate director

An alternate's only rights (if any) as to remuneration for ordinary service as a director are against the appointor and not the Company.

17.7. Multiple votes

A director or any other person may act as alternate director to represent more than one director, and have as many votes accordingly, but for the purpose of forming a quorum counts as only one director.

17.8. Termination of appointment

The appointment of an alternate director, by the very fact, is terminated:

- (a) if, by writing under the hand of the alternate, left at the registered office, the alternate resigns such appointment;
- (b) if the appointment of the alternate is terminated by the appointor;
- (c) if a majority of the co-directors of the appointor withdraw the approval of the person to act as an alternate;
- (d) if the appointment is to act as alternate for one or more directors and all of those named directors have vacated office as directors; or
- (e) on the happening of any event which, if the alternate were a director, would cause the alternate to vacate the office of director.

18. Managing director

18.1. Appointment of managing directors

The directors may at any time:

- (a) appoint one or more of their body to be managing director (or managing directors) or to some other executive office of the Company;
- (b) define, limit and restrict that person's powers;
- (c) fix that person's remuneration and duties;
- (d) subject to the provisions of any contract between that person and the Company, vary any of the powers so conferred; and
- (e) remove that person from that office (but not as a director) and appoint another (or others) in that person's place or places.

18.2. Application of other rules to managing director

A managing director, subject to the provisions of any contract between that person and the Company and subject to this Constitution, is subject to the same provisions as to resignation, disqualification and removal as the other directors and if that person ceases to hold the office of director from any cause that person, by the very fact, immediately ceases to be a managing director.

18.3. Acting managing director

If a managing director becomes at any time in any way incapable of acting as such, the directors may appoint any other director to act temporarily as managing director.

18.4. Remuneration of executive directors

Subject to the provisions of any agreement entered into in a particular case, the remuneration of a managing director or other director appointed to an executive office, may at any time be fixed by the directors. Such remuneration may be by way of fixed salary, participation in profits of the Company or of any other company in which the Company is interested, or by any or all of those modes.

19. Remuneration of directors

19.1. Group directors' fees

The Company may at any time, by ordinary resolution, approve a fixed sum that may be paid in each financial year of the Company as group directors' fees.

19.2. Proposal to increase fees for ordinary services

If there is a proposal to increase group directors' fees, the notice calling the meeting of members at which such increase is to be proposed must state the amount of the proposed increase and the maximum sum that may be paid if the increase is approved.

19.3. Fees for ordinary services of directors of the Company

In each financial year of the Company the directors must be paid out of the funds of the Company as remuneration, for their ordinary services as directors of the Company, such sum, not exceeding that last fixed by members under **rule 19.1**, as the directors determine. The sum so determined on must be divided among the directors in such proportion and manner as they may at any time determine or, in default of determination, equally.

19.4. Fees for ordinary services of directors of other group companies

The Company, through its control of its wholly-owned subsidiaries (if any), must ensure that, after taking into account the sum determined under **rule 19.3**, the group directors' fees paid in each financial year do not exceed that last fixed by members under **rule 19.1**.

19.5. Expenses of directors

Each director is entitled to be paid all travelling and other expenses incurred, or to be incurred, by him or her in connection with his or her attendance at board meetings and meetings of members or otherwise in connection with the business of the Company.

19.6. Additional remuneration for extra services

Any director who, being willing, is called upon to perform extra services or to make any special exertions or to undertake any executive or other work for the Company beyond the director's ordinary duties or to go or reside abroad or otherwise for any of the purposes of the Company is entitled to be remunerated either by a fixed sum or a salary as may be determined by the directors. Such remuneration may be either in addition to, or in substitution for, that director's share in the remuneration referred to in **rule 19.3**.

19.7. Daily accrual

The remuneration of each director for ordinary services accrues from day to day and is apportionable accordingly. A resolution of directors cancelling, suspending, reducing or postponing payment of such remuneration or any part of it binds all the directors for the time being.

19.8. Payment of retirement benefit

Upon a director ceasing, or at any time after his or her ceasing whether by retirement or otherwise, to hold that office, the directors may pay to the former director, or in the case of death to the former director's legal personal representatives, or to the director's dependants or any of them, a lump sum payment in respect of past services of such director (either in that capacity or as an officer of a related body corporate of the Company) of an amount not exceeding the amount permitted by the Act. The Company may contract with any director to secure payment of any such sum to him or her, to the director's legal personal representatives, dependents or any of them.

19.9. Contributions to a superannuation fund

The directors may at any time make contributions to a superannuation or similar fund for the benefit of any director. Any such contribution is in addition to, and not regarded as part of, the remuneration approved by members under this Constitution.

20. Single Director Company

20.1. Recording resolutions

While the Company is a Single Director Company:

- (a) if the director records in writing (under Section 248B of the Act) the director's resolution or decision to a particular effect, and signs the record, the record of the resolution or decision counts as the passing by the director of a resolution to that effect; and
- (b) if the director records in writing (under Section 248B of the Act) the director's declaration to a particular effect, and signs the record, the recording and signing of the declaration counts as the making of a declaration to that effect made at a meeting of the Company's directors.

20.2. Minutes

A written record under **rule 20.1** constitutes minutes and must be entered in the minute book.

20.3. Application of other rules of the Constitution

While the Company is a Single Director Company:

- (a) **rule 21** (Proceedings of directors) is suspended from operation; and
- (b) that director is the *chair of the directors* for the purposes of rules in relation to meetings of members while there are 2 or more members of the Company.

20.4. No director

If the Company is both a Single Director Company and a Single Shareholder Company and the individual dies, cannot manage the Company because of the person's mental incapacity, or is an insolvent under administration, Section 201F(2) of the Act applies in relation to the appointment of a director.

21. Proceedings of directors

21.1. Mode of meeting

The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. The directors may conduct their meetings by telephone or other form of communication without a director being in the physical presence of another director or other directors.

21.2. Quorum

A quorum for a meeting of the directors is, where there is 2 or more directors, 2 directors.

21.3. Chair calling a meeting

The chair of the directors may at any time call a meeting of the directors to be held at such time and place as the chair chooses and such meeting is not invalidated by reason only of lack of convenience if a quorum of directors forms.

21.4. Secretary calling a meeting

The secretary, upon the request of any other director, must call a meeting of the directors to be held at such time and place as is convenient to the directors.

21.5. Notice of meeting

Notice of each meeting of the directors:

- (a) may be given by such means as is convenient, including by telephone or electronic transmission; and
- (b) must be given to all eligible directors and all eligible alternate directors.

21.6. Recipients of notice

For the purposes of the **rule 21.5**:

- (a) *eligible directors* are all directors for the time being but excluding, first, all alternate directors, second, those given leave of absence, and third, those who in the belief of the person calling the meeting are absent from Australia;
- (b) *eligible alternate directors* are those alternate directors in respect of whom an appointor has, under **rule 17.5**, required the Company to give such a notice to the alternate, but excluding those alternate directors who, in the belief of the person calling the meeting, are absent from Australia; and
- (c) the accidental omission to give notice of any meeting of the directors to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

21.7. Appointment of chair

The directors may elect one of their number to be chair of their meetings and may determine the period for which that person is to hold that office. Such person is entitled to use the title *Chairman, Chair* or *Chair*. If no chair is elected or if at any meeting of the directors the chair is not present within 15 minutes of the time appointed for holding the meeting, subject to **rule 21.8**, the directors present must choose one of their number to be chair of such meeting.

21.8. Appointment of deputy chair

The directors may elect one of their number to be the deputy chair of their meetings and may determine the period for which that person is to hold that office. Such person is entitled to use the title *Deputy Chairman, Deputy Chair* or *Deputy Chair*. In the absence of the chair at a meeting of the directors, the deputy chair may exercise all the powers and authorities of the chair.

21.9. Votes of directors

Questions arising at any meeting of the directors must be decided by a majority of votes cast and each director has one vote. A person who is an alternate director is entitled (in addition to his or her own vote if a director) to one vote on behalf of each director whom the alternate represents (as an alternate director at the meeting) and who is not personally present. If there is an equality of votes the question is lost. The chair does not have a second or casting vote.

21.10. Circulating resolution of directors

If a majority in number of the eligible directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the directors held on the day on which the document was signed or, if the directors sign the documents on different days, on the day on which the document was last signed by a director thereby constituting a majority in number of the eligible directors unless the document, by its terms, is said to take effect from an earlier date.

21.11. Signing of circulating resolution

For the purposes of **rule 21.10**:

- (a) *eligible directors* are all directors for the time being but excluding, first, all alternate directors, second, those who, at a meeting of directors, would not be entitled to vote on the resolution and, third, those then outside Australia;
- (b) each director, other than one not entitled to vote on the resolution, may sign the document;
- (c) if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;
- (d) unless the right has been suspended by the appointor under **rule 17.5**, each alternate director may sign the document in the appointor's place if the alternate director reasonably believes that the appointor is unavailable to sign the document. An alternate may sign even if the available appointor could not have voted on the resolution. An alternate director who represents more than one director may sign as many times accordingly;
- (e) if there is only one eligible director, he or she may sign the document and it then takes effect under **rule 21.10**;

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- (f) an electronic transmission purporting to be signed by a director or alternate director is treated as being in writing signed by such person; and
 - (g) 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors are together treated as constituting one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

21.12. Deemed minute

The document or documents referred to in **rule 21.10 and rule 21.11** are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

21.13. Validity of acts of directors

All acts done at any meeting of the directors or of a committee of directors or other persons or by any person acting as a director or any person purporting to act as an attorney under power of the Company are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a director or attorney and was entitled to vote.

21.14. Technology meeting of Directors

- (a) A directors' meeting may be held using any technology consented to by all directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.
- (b) If a directors' meeting is held using any technology and all the directors take part in the meeting, those directors are treated as having consented to the use of the technology for that meeting.
- (c) If a technology meeting under subrule (a) is held:
 - (i) each of the directors taking part in the meeting must be able to hear, and be heard by, each of the other directors taking part in the meeting; and
 - (ii) at the commencement of the meeting, each director must announce its presence to all the other directors taking part in the meeting.
- (d) If a secretary is not present at a technology meeting, one of the directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- (e) A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

22. Material personal interests of directors

22.1. Director's duty to notify

A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest unless **rule 22.2** says otherwise.

22.2. Exemptions

The director does not need to give notice of an interest under **rule 22.1** if:

- (a) the interest:
 - (i) arises because the director is a member of the Company and is held in common with the other members of the Company; or
 - (ii) arises in relation to the director's remuneration as a director of the Company; or
 - (iii) relates to a contract the Company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the Company if it is not approved by the members; or

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- (iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company; or
 - (v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in **rule 22.2(a)(iv)**; or
 - (vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Company (but only if the contract does not make the Company or a related body corporate the insurer); or
 - (vii) relates to any payment by the Company or a related body corporate in respect of an indemnity permitted under the Act or any contract relating to such an indemnity; or
 - (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or
- (b) the other directors are aware of the nature and extent of the interest and its relation to the affairs of the Company; or
 - (c) all the following conditions are satisfied:
 - (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the Company under **rule 22.1**; and
 - (ii) if a person who was not a director of the Company at the time when the notice under **rule 22.1** was given is appointed as a director of the Company, the notice is given by someone to that person; and
 - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
 - (d) the director has given a standing notice of the nature and extent of the interest under **rule 22.4** and the standing notice is still effective in relation to the interest.

22.3. **Notice of material personal interest**

The notice required by **rule 22.1** must:

- (a) give details of:
 - (i) the nature and extent of the interest; and
 - (ii) the relation of the interest to the affairs of the Company; and
- (b) be given at a meeting of the directors as soon as practicable after the director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

22.4. **Standing notice about an interest**

A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with **rule 22.5**. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given. The standing notice may be given to the other directors before the interest becomes a material personal interest.

22.5. **Form of standing notice**

The notice under **rule 22.4** must:

- (a) give details of the nature and extent of the interest; and
- (b) be given:
 - (i) at a meeting of the directors (either orally or in writing); or
 - (ii) to the other directors individually in writing.

The standing notice is given under **rule 22.5(b)(ii)** when it has been given to every director.

22.6. **Standing notice must be tabled if given to directors individually**

If the standing notice is given to the other directors individually in writing, it must be tabled at the next meeting of the directors after it is given.

22.7. **Nature and extent of interest must be recorded in minutes**

The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

22.8. **Dates of effect and expiry of standing notice**

The standing notice:

- (a) takes effect as soon as it is given; and
- (b) ceases to have effect if a person who was not a director of the Company at the time when the notice was given is appointed as a director of the Company.

A standing notice that ceases to have effect under **rule 22.8(b)** commences to have effect again if it is given by someone to the person referred to in that **rule 22.8(b)**.

22.9. **Effect of material increase in nature or extent of interest**

The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the standing notice.

22.10. **Voting and completion of transactions**

If a director has a material personal interest in a matter that relates to the affairs of the Company and:

- (a) under **rule 22.1** the director discloses the nature and extent of the interest and its relation to the affairs of the Company at a meeting of the directors; or
- (b) the interest is one that does not need to be disclosed under **rule 22.1**;

then:

- (i) the director may vote on matters that relate to the interest; and
- (ii) any transactions that relate to the interest may proceed; and
- (iii) the director may retain benefits under the transaction even though the director has the interest; and
- (iv) the Company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under **rule 22.1**, **rules 22.10 (iii) and (iv)** apply only if the disclosure is made before the transaction is entered into.

22.11. **Effect of contravention**

A contravention of any of **rule 22** by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

23. Powers and duties of directors

23.1. **Powers generally**

Subject to the Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the directors who may exercise all such powers of the Company and do all such acts or things as are not by this Constitution or by the Act expressly required to be exercised or done by a meeting of members. No ordinary resolution, special resolution, or change in this Constitution, invalidates any prior act of the directors which would have been valid if that resolution or change in this Constitution had not been adopted or passed.

23.2. **Borrowing**

The directors have the power to raise or borrow any sum or sums of money and to secure the payment or repayment of such moneys and any other obligation or liability of the Company in such manner and on such terms in all respects as they think fit. This includes upon the security of any mortgage or by the issue of debentures or debenture stock of the Company charged upon all or any of the property of the Company (both present and future) including its goodwill, undertaking and uncalled capital for the time being or upon bills of exchange, promissory notes or other obligations or otherwise.

23.3. **Security**

Without limiting the generality of **rule 23.2**, the directors have the power to make such loans to, and to provide such guarantees and security for obligations undertaken by, directors of the Company as may be permitted by the Act or by resolution of the Company in accordance with the Act.

23.4. **Execution of negotiable instruments**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the directors at any time determine.

23.5. **Appointment of attorney**

The directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

23.6. **Delegation**

The directors may at any time confer upon any director, or such other person as they may select, such of the powers exercisable under this Constitution by the directors as they may think fit for such time and to be exercised for such objects and purposes and upon such terms and with such restrictions as they think expedient. They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the directors in that respect. They may at any time revoke, withdraw, alter or vary all or any of such powers.

23.7. **Validity of acts**

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid unless it is proved to the satisfaction of the directors or a majority of them that such omission has directly prejudiced any member financially. The decision of the directors is conclusive and final and binds all members.

24. **Committees**

24.1. **Delegation to committee**

The directors may:

- (a) delegate any of their powers to committees consisting of such one or more persons, whether directors or not, as they think fit; and
- (b) establish advisory committees (or other committees not having delegated power of directors) consisting of such person or persons as they think fit.

24.2. **Committee powers**

Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any directions that may at any time be given or imposed by the directors.

24.3. **Committee meetings**

The meetings and proceedings of any committee consisting of 2 or more persons are governed by the provisions in this Constitution for regulating the meetings and proceedings of the directors so far as they are capable of application and not affected by any resolution made, or direction given, by the directors under **rule 24.2**.

24.4. **Committee members as officers**

Each person appointed to a committee under **rule 24.1(a)**, if not otherwise an officer of the Company, is when exercising the powers so delegated or functions entrusted, an officer of the Company.

25. **Secretary**

25.1. **Appointment of secretary**

A secretary may be appointed by the directors and holds office until the secretary's services are terminated by the directors, or the secretary resigns by written notice to the Company, whichever is the earlier.

25.2. **Duties of secretary**

The secretary must perform such duties as are required of that person by the Act and this Constitution and, in addition, must perform such duties and exercise such powers as may at any time be directed by the directors.

25.3. **Assistant secretary**

The directors may also appoint an assistant secretary or assistant secretaries and temporary substitutes for the secretary. Any such assistant secretary or temporary substitute is, for the purposes of this Constitution, treated as and may fulfil the duty of the secretary subject to any limitation prescribed by the directors.

26. **Minutes**

Any minutes of a meeting of members or of the directors, if purporting to be signed by any person purporting to be either the chair of such meeting, or the chair of the next succeeding meeting, must be received in evidence without any further proof as sufficient evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as recorded or appearing and of the regularity of those things in all respects and that the same took place at a meeting duly called and held.

27. **Common seal**

27.1. **Optional**

The Company may at any time have a common seal.

27.2. **Use of common seal**

The common seal must not be affixed to any document unless it is done by the authority of the directors or of a committee of them.

27.3. **Mode of execution by common seal - not a Single Director Company**

While the Company is not a Single Director Company, every document to which the common seal is fixed must be signed, to witness the fixing of the seal, by 2 persons. One must be a director. The other must be the secretary, a second director, or such other person as the directors may appoint for that purpose. No person may sign in more than one capacity.

27.4. **Mode of execution by common seal - Single Director Company**

While the Company is a Single Director Company:

- (a) in which the only director is also the only secretary, every document to which the common seal is fixed must be signed, to witness the fixing of the seal, by that person, who must state next to the signature that the person witnesses the fixing of the seal in the capacity of sole director and sole secretary of the Company; or
- (b) in which the secretary is a different person from the only director, every document to which the common seal is fixed must be signed, to witness the fixing of the seal, by 2 persons. One must be the director. The other must be the secretary or such other person as the director may decide in writing for that purpose.

27.5. **Presence during execution**

It is not necessary for a person signing under either of **rule 27.3** or **rule 27.4** to be present either when the common seal is fixed or when another person signs the document under either of **rule 27.3** or **rule 27.4**.

27.6. **Delegation of authority to use common seal**

The directors may delegate to the managing director or any other director power and authority to fix the common seal to such documents as the directors may at any time by resolution determine. When so fixed and signed by the managing director or such other director, it is binding on the Company in all respects as if it were duly signed by 2 directors.

27.7. **Certificate seal**

The Company may at any time have a duplicate common seal to be known as the certificate seal which must be a facsimile of the seal with the addition on its face of the words *share seal* or *certificate seal*. Any certificate may be issued under such a duplicate seal and if so issued is treated as being sealed with the seal of the Company.

27.8. **Fixing the certificate seal**

The certificate seal and the signature of any director, secretary or other person authorising the same may be reproduced and fixed by some mechanical means on to certificates which have first been approved for sealing by a person appointed for that purpose by the Company and bear evidence of such approval.

27.9. **Certificates**

For the purpose **rule 27.7** and **rule 27.8**, *certificate* means a certificate in respect of shares, debentures, certificates of debenture or any certificate or other document evidencing any options or rights to take up shares or other interests in the Company.

28. Execution of document without a common seal

28.1. **Use of common seal optional**

Rule 28 operates regardless of whether the Company has a common seal.

28.2. **Mode of execution - not a Single Director Company**

While the Company is not a Single Director Company, the Company may execute a document (including a deed if it is expressed to be executed as a deed) without using a common seal if the document is signed by 2 persons. One must be a director. The other must be the secretary or a second director. No person may sign in more than one capacity.

28.3. **Mode of execution - Single Director Company**

While the Company is a Single Director Company:

- (a) in which the only director is also the only secretary, the Company may execute a document (including a deed if it is expressed to be executed as a deed), without using a common seal, if the document is signed by that person, who must state next to the signature that the person is the sole director and sole secretary of the Company; or
- (b) in which the secretary is a different person from the only director, the Company may execute a document (including a deed if it is expressed to be executed as a deed), without using a common seal, if the document is signed by 2 persons. One must be the director. The other must be the secretary.

29. Overseas branch register

29.1. **Transactions on overseas branch registers**

The directors may make such provisions as they think fit respecting the keeping of any branch register of members at a place outside Australia. The directors may appoint any such person as they think fit to approve

and register or reject transfers and make entries in any overseas branch register and to issue certificates in respect of shares on the overseas branch register and may make such other provisions relating to it as they may think fit.

29.2. Transfers between registers

The directors may transfer shares from one register to another and may at any time discontinue any overseas branch register.

30. Dividends and reserves

30.1. Directors declare dividends

- (a) The directors may at any time declare a dividend to be paid to the members entitled to it. The directors must fix the record date and the date for payment.
- (b) For the avoidance of doubt and subject to the terms of issue of any shares set out in clause 3.2, the directors shall have the uncontrolled and absolute right to declare separate dividends of equal or unequal amounts in respect of each of the share classes set out in clause 3.2 to the intent that the directors shall have the right to exclude all or any of the share classes from dividends in respect of any period or declare a larger dividend for all or any of the share classes than for the other or others of them.

30.2. Interim dividends

The directors may at any time declare such interim dividends to be paid to the members entitled to them as appear to the directors to be justified by the profits of the Company.

30.3. No interest on dividends

A dividend does not bear interest against the Company.

30.4. Accumulation of reserves

The directors may before declaring any dividend set aside out of the profits of the Company such sums as they think proper as reserves which will, at the discretion of the directors, be applicable for any purpose to which the profits of the Company may be properly applied and pending any such application may at the like discretion either be employed in the business of the Company or be invested in such investments as the directors may at any time think fit. The directors may also without placing the same to reserve carry forward any profits which they may think prudent not to divide.

30.5. Apportionment

Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends must be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid. No amount paid or credited as paid on a share in advance of calls may be treated for the purpose of this rule as paid on the share. All dividends must be apportioned and paid pro rata to the proportion of the total issue price paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid unless, in the case of partly paid shares issued on a pro rata basis to members, it was a term of the issue of such shares that each such share is entitled to participate on the same basis as fully paid shares. If any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.

30.6. Deductions from dividends

The directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by the member to the Company on account of calls or otherwise in relation to the shares of the Company.

30.7. Payment of dividend in specie

The directors, when declaring a dividend, may direct payment of such dividend wholly or partly by the distribution of specific assets. This may include paid up shares, debentures or debenture stock of any other body corporate or in any one or more of such ways. Where any difficulty arises in regard to such distribution

the directors may settle the same as they think expedient and fix the value for distribution of such specific assets or any part of those assets and may determine that cash payments be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as may seem expedient to the directors.

30.8. Dispatch and payment of dividends

A dividend due to a member may, if that member elects under a plan or arrangement offered at any time by the Company, be credited directly to a bank account. Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque, sent through the post directed to the registered address of the holder or in the case of joint holders to the registered address of that one of the joint holders who is first named on the register or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque must be made payable to the person to whom it is sent and may be made payable to bearer. Any one of 2 or more joint holders may give effectual receipts for any dividends or other money payable in respect of the shares held by them as joint holders.

30.9. Call satisfied by dividend

The directors, when declaring a dividend, may make a call on the members of such amount as they may fix but so that the call on each member must not exceed the dividend payable to the member and so that the call is made payable at the same time as the dividend and the dividend may, if so arranged between the Company and the member, be set off against the call.

30.10. Unclaimed dividend

All dividends declared but unclaimed may:

- (a) in the case of dividends not to be distributed as money, be realised into money; and
- (b) in any case, be invested for the benefit of the Company until claimed or until required to be dealt with under any applicable law dealing with unclaimed money.

30.11. Dividends to those on register at declared record date

All dividends belong and must be paid (subject to any lien of the Company) to those members whose names are on the register at the record date fixed by the directors, despite any subsequent transfer or transmission of shares.

30.12. Share plans

The directors may at any time adopt and implement any number of plans on terms they determine, by which a member may elect to receive shares as, or instead of, dividends. Such plans may include:

- (a) a plan under which a member who elects to participate in respect of a share held by the member is entitled to an issue of bonus shares instead of a dividend distributed as money in respect of that share; and
- (b) a plan under which a dividend to be distributed as money to a member in respect of a share is, if the member elects that the share participate in the plan, retained by the Company and applied in subscription for fully paid shares.

30.13. Powers concerning share plans

The directors have all powers necessary or desirable to implement and carry out fully any plan adopted under **rule 30.12** and may (without limitation) at any time:

- (a) amend the terms of any plan as they consider desirable; and
- (b) suspend for any period or terminate the operation of any plan as they consider desirable.

31. Capitalisation of profits

31.1. Capitalisation of profits or reserves

The directors may at any time resolve that it is desirable to capitalise any sum being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members and that such sum may be applied for the benefit of members

in proportion to the number of shares (being shares which entitle the holder to participate in the type of distribution being made pursuant to this rule) held by them in any of the ways mentioned in **rule 31.2**.

31.2. **Application**

The ways in which a sum may be applied under **rule 31.1** are:

- (a) in paying up any amounts unpaid on the issue price of shares;
- (b) in paying up in full the issue price of unissued shares or debentures; or
- (c) partly as mentioned in **rule 31.2(a)** and partly as mentioned in **rule 31.2(b)**.

31.3. **Settlement of difficulties**

The directors may do all things necessary to give effect to the resolution and in particular to the extent necessary to adjust the rights of the members among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions;
- (b) fix the value for distribution of any specific assets or any part of them;
- (c) determine that cash payments be made to any members upon the footing of the value so fixed or that fractions of less value than 50 cents may be disregarded in order to adjust rights of all parties;
- (d) vest any such cash or specific assets in trustees upon trusts for the persons entitled to the dividend or capitalised fund; and
- (e) authorise any person to make, on behalf of the members entitled to any further shares or debentures upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the Company on their behalf of the amounts remaining unpaid of the issue price on their existing shares by the application of their respective proportions of the sum resolved to be capitalised;

and any agreement made under an authority referred to in **rule 31.3(e)** is effective and binding on all the members concerned.

32. **Notices**

32.1. **Service of notices**

Where this Constitution, the Act or other legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this **rule 32.1** referred to as *served*), the document may be served on the person:

- (a) by delivering it to the person personally; or
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to the address of the place of residence or business of the person last known to the person serving the document or, in the case of a member, to the address of the member entered in the register and the document, by such dispatch, is regarded as left at that address; or
- (c) subject to the Act, by publication in a newspaper circulating generally in the State in which the registered office is located.

32.2. **Date of deemed service**

A document served under **rule 32.1** is treated as having been duly served, irrespective of whether it is actually received:

- (a) where **rule 32.1(b)** applies - on the day following the day when dispatch occurred; and
- (b) where **rule 32.1(c)** applies - on the day the newspaper is first published.

32.3. **Overseas members**

Where the Company proposes to send a document to a member by pre-paid post and the notice is to be sent outside Australia, the Company must send the notice by airmail.

32.4. **Notices to joint holders**

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

32.5. **Counting of days**

Subject to the Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

32.6. **Binding on others**

Every person who by operation of law, transfer or other means whatever becomes entitled to any shares is bound by every notice in respect of such shares which, previous to that person's name and address being entered on the register, has been duly given to the person from whom that person derives that person's title and to every previous holder of such shares.

32.7. **Service on Company or its officers**

Every document required to be served upon the Company or upon any officer of the Company may be served by leaving it at the registered office.

32.8. **Signature**

The signature to any document to be given by the Company may be written, printed or stamped.

33. **Indemnity**

33.1. **Definitions**

For the purposes of this Constitution:

- (a) *Officer* means a Director, an alternate Director, a Secretary, an officer as defined by the Act; and
- (b) *Legal Proceedings* means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the Company or the employment of the Officer with the Company.

33.2. **Indemnity**

Every Officer and past Officer (with the exception of any auditor) of the Company is hereby indemnified by the Company to the fullest extent permitted by law against a liability incurred by that person as an Officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings.

33.3. **Insurance premiums**

The Company may pay the premium on a contract insuring a person who is or has been an Officer of the Company to the fullest extent permitted by law.

33.4. **Indemnity to employees**

Every employee who is not a Director, Secretary or executive officer of the Company may (if the Company elects and to the extent permitted by law) be indemnified out of the property of the Company against a liability:

- (a) incurred by the employee acting in that capacity; and
- (b) for the costs and expenses incurred by an employee:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

34. Division 7A loans

34.1. Division 7A Loan Agreement

In order to avoid an Advance made by the Company to a Borrower being deemed to be a dividend under Division 7A of the 1936 Tax Act, the provisions of this clause 34 shall comprise the written terms of an agreement for the purposes of Division 7A of the 1936 Tax Act, which will be deemed to apply from the day immediately preceding the Lodgment Day (or if the Company lodges its return of income for the Accounting Period before the Lodgment Day, then the day immediately preceding the day it lodges its return of income) covering the provision of the Advance.

34.2. Definitions

The following expressions in this clause 34 of the Constitution have the meaning set out below:

- (a) *Accounts* means the accounts of the Company which record the total of all Advances made to a Borrower or on behalf of a Borrower during any Accounting Period less any repayments made by the Borrower to the Company during that Accounting Period;
- (b) *Accounting Period* means the period from the date of the incorporation of the Company until 30 June next following and thereafter the period commencing on 1 July and ending 30 June in the following year, and, if the Company is wound up on or before 30 June in any year, then the last Accounting Period of the Company shall be the period commencing on 1 July last preceding the date of winding up and ending on the date of winding up;
- (c) *Advance* means each amount lent by the Company to the Borrower or each amount of credit or other financial accommodation granted by the Company to the Borrower and each amount of unpaid interest referred to in clause 34.4, which amount shall not be a Secured Advance unless otherwise agreed by the Company and the Borrower;
- (d) *Associate* has the meaning as it is defined in section 318 of the 1936 Tax Act or any successor provision;
- (e) *Benchmark Interest Rate* has the same meaning as those words have in Section 109N(2) of the 1936 Tax Act (or any successor provision) except that the words *for each year ended 30 June during the Term* are to be substituted for the words *for the year of income* and the words *before the start of that year ended 30 June* are to be substituted for the words *before the start of the year of income* in Section 109N(2);
- (f) *Borrower* means a person who is:
 - (i) a shareholder of the company; or
 - (ii) an associate of such a shareholder,who received an Advance from the Company, or
 - (iii) a person who had received the Advance because the shareholder or associate had been such a shareholder or associate;
- (g) *Distributions* means all monies of any nature whatsoever that may become due and payable by the Company its members, shareholders or beneficiaries (as the case may be) including without limitation all dividends, returns of capital, distributions of capitalised profits, share redemptions, share forfeitures, capital reductions, distributions or otherwise;
- (h) *Lodgment Day* means the due date for lodgment of the Company's return of income for the Accounting Period;
- (i) *Relevant Interest Rate* means the Benchmark Interest Rate or such higher interest rate as the Lender and the Borrower agree upon from time to time;
- (j) *Secured Advance* means an Advance that is secured by mortgage over real property that has been registered in accordance with a law of a State or Territory of Australia;
- (k) *Term* means, subject to subsections 109N(3), (3A), (3B), (3C) and (3D) of the 1936 Tax Act (or any successor provision), the period during which any Advance is owed by the Borrower to the Company; and
- (l) *1936 Tax Act* means the *Income Tax Assessment Act 1936* (Cth).

34.3. **Minimum yearly repayments**

- (a) Commencing with the Accounting Period ended 30 June immediately after that in which the relevant Advance was made, the Borrower must repay to the Company during each year ended 30 June during the Term, that part of each Advance and interest on that Advance calculated under clause 34.4, such that the Company is not taken to pay a dividend to the Borrower pursuant to Division 7A of the 1936 Tax Act.
- (b) For the avoidance of doubt, in addition to and notwithstanding anything else contained in this clause 34, the Borrower will, as part of its obligation to repay the Advance, pay to the Company such amount as is required in accordance with the formula for minimum yearly repayments prescribed under the provisions of Section 109E(6) of the 1936 Tax Act or any successor provision.

34.4. **Interest**

- (a) The Borrower must pay to the Lender interest on each Advance at a rate equal to the Relevant Interest Rate, calculated from 1 July after the relevant Advance was made.
- (b) Subject to clause 34.3(a), interest paid under clause 34.4(a) in respect of each year ended 30 June during the Term must be paid no later than 30 June.
- (c) If interest is not paid in accordance with this clause 34, then as from the due date for payment, that amount of unpaid interest will for all purposes be treated as a further Advance by the Company to the Borrower pursuant to this clause 34.

34.5. **Repayments of Advance**

- (a) The Borrower will repay the Advance to the Company in cleared funds, or by set-off from Distributions received from the Company, no later than 30 June in each Accounting Period in the manner specified in clause 34.3(b) and until the Advance is paid in full.
- (b) Subject to clause 34.5(c), any repayment of the Advance to the Company will only be credited to the Borrower when the repayment is actually received (or otherwise credited by way of set-off) by the Company.
- (c) Any repayment of the Advance will not be taken into account if a reasonable person would conclude that when the repayment of the Advance was made the Borrower intended to obtain a loan from the Company of an amount similar to or larger than the repayment.

34.6. **Miscellaneous**

In the event that the provisions of Division 7A of the 1936 Tax Act are altered, amended or otherwise re-enacted and further or other conditions are imposed that must be satisfied in order to avoid any Advance by the Company to a Borrower being deemed to have been the distribution of a dividend, this Constitution applies as if those further conditions had been expressly included in this Constitution from the date the further conditions are imposed.

35. **Winding Up**

35.1. This rule 35 does not add to or detract from the rights of the holders of preference shares or other shares issued on special terms.

35.2. In the event that the Company is being wound up, the liquidator may with the approval of a special resolution:

- (a) distribute the whole or any part of the Company's assets (whether consisting of property of the same sort or not) in kind among some or all of the shareholders and for that purpose set such value as the liquidator considers fair on the property so distributed and determine how the distribution is to be carried out as between different shareholders or different classes of shareholders; and
- (b) vest the whole or any part of the Company's assets (whether consisting of property of the same sort or not) upon such trusts for the benefit of some or all of the shareholders or some or all of any class of shareholders as are approved by the special resolution,

but a shareholder may not be compelled to accept any shares in a body corporate or other securities in respect of which there is a liability.

36. Shareholder Agreement

If there is an inconsistency between this Constitution and the Shareholders Agreement, to the maximum extent permitted by law, the provisions of the Shareholders Agreement prevail. An inconsistency will be considered to exist if, regardless of the purpose of the provision, the relevant subject matter or action to be taken (including the issue or disposal of securities) is dealt with differently in the Shareholders Agreement than it is in this Constitution. To the maximum extent permitted by law, the parties agree to waive any provisions contained in this Constitution to the extent that the provisions are inconsistent with the provisions in the Shareholders Agreement, so that they have no force or effect.

37. Rights of inspection and access

- (a) Directors have the rights of access to the Company books under section 198F of the Act.
- (b) Subject to the Shareholders Agreement, a member does not have the right to inspect any document of the Company (other than the minute books for the meetings and any resolutions of its members) except as:
 - (i) provided by law; or
 - (ii) authorised by the directors, or authorised by the Company in a general meeting.