

WRITTEN RESOLUTIONS
ADOPTION OF UPDATED GOVERNING RULES
Version April 2019

The Graham Huxley Family Fund

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1. Explanatory Note

- 1.1 These resolutions will permit the trustee (“the Trustee”) of the Superannuation Fund to update the governing rules which currently apply to the Superannuation Fund by the adoption of the TBCL Governing Rules Version April 2019.
- 1.2 Version April 2019 of the TBCL Governing Rules has been prepared by Townsends Business & Corporate Lawyers.
- 1.3 These resolutions are suitable for both corporate and individual trustees.
- 1.4 To sign and complete these resolutions:
 - (a) each member must sign Part C;
 - (b) each Trustee/director must complete and sign Part E.
- 1.5 Once signed the written resolutions must be kept as part of the Trustee’s records of the Superannuation Fund.
- 1.6 Once the resolutions are signed, the Amendment Deed must be signed:
 - (a) where a company is the Trustee – by two directors (or the sole director if the company is a single director company);
 - (b) where individuals are Trustees – by all trustees.

Note: The signature of each trustee must be witnessed by a person who is not a trustee.
- 1.7 Once the resolutions and the Amendment Deed have been signed then:
 - (a) Version April 2019 of the TBCL Governing Rules will apply to the Superannuation Fund (in place of the previous governing rules);
 - (b) (for NT) – stamp duty of \$20 must be paid on the Amendment Deed.

Written resolutions in respect of The Graham Huxley Family Fund (“the Superannuation Fund”)

1. Part A - Purpose of resolution

- 1.1 The purpose of these resolutions is to authorise the amendment of the current governing rules of the Superannuation Fund by completely replacing the existing governing rules with Version April 2019 of the TBCL Governing Rules.
- 1.2 Version April 2019 of the TBCL Governing Rules incorporates various changes which have arisen from legislative and taxation changes and changes in SMSF practice since the governing rules were last updated.

2. Part B – proposed amendment: details & impact on members

2.1 Nature of amendment

The amendment will update the governing rules of the Superannuation Fund as a consequence of legislative and taxation changes which have occurred since the governing rules were last updated, and also new developments in SMSF practice.

In particular, the update will permit the Trustee to undertake the following actions:

(a) **Downsizer Contributions**

The Governing Rules have been amended to allow members to make Downsizer contributions in respect of themselves or their spouse and for the Trustee to receive such contributions.

Downsizer contributions are contributions made from the proceeds of the sale of a current or former principal place of residence of the member. Generally such contributions can only be made when certain conditions are satisfied such as the place of residence has been held for 10 or more years, the sale occurs after 1 July 2018 and the contribution is made after age 65 and within 90 days of the sale. The maximum amount which can be contributed is \$300,000 per member. These contributions are not subject to the “non-concessional contribution cap rules” but they will count towards the total superannuation balance of the member. Further, these contributions do not increase the \$1.6m transfer balance cap.

(b) **First Home Super Saver Scheme**

This scheme permits eligible members to save for their first home using superannuation funds (and their favourable taxation treatment) as the savings vehicle.

Eligible members, by making or having their employer make, voluntary super contributions, can withdraw the net voluntary super contributions and calculated earnings. While there are various rules and restrictions – such as only voluntary super contributions made since 1 July 2017 are eligible, only the first \$15,000 of voluntary super contributions can be counted and the maximum amount of voluntary super contributions which can be accessed is \$30,000.

The Governing Rules have been amended to permit the Trustee to act upon release authorities issued in connection with the First Home Super Saver Scheme and to permit the Trustee to accept, as non-concessional contributions, amounts released under the Scheme which have not been used within the specified period to purchase a first home.

(c) **Early stage innovation companies**

The Governing Rules have been amended to expressly permit investment in companies which qualify as early stage innovation companies. Acquisition of newly issued shares in these companies may give rise to taxation incentives.

(d) **Proposed increase in the maximum number of members from 4 to 6**

The Morrison Government has proposed to increase the maximum number of members of self managed superannuation funds to 6 members from the current limit of 4. This proposal is intended to apply from 1 July 2019.

While the proposal has not, as yet been enacted, the amendment of the Governing Rules will accommodate the proposal assuming the proposal is enacted. This will be achieved by removing from the references to “four” or “4” as being the maximum number of members and replacing them with a reference to “four, or if a greater number is specified, that greater number”.

(e) **Automatic restart of pensions which have not satisfied the pension standards**

New Rule 15.7A has been inserted to ensure that where a pension has failed to satisfy an applicable pension standard in a financial year (typically failing to pay the minimum pension amount), the pension will, unless the pension recipient determines otherwise, have automatically recommenced for taxation purposes immediately upon the start of the following financial year. The recommenced pension will be on the same terms as applied immediately before the start of the financial year in which the pension failed to satisfy the applicable pension standard.

(f) **Binding Death Benefit Nominations**

The Governing Rules have been amended to expressly refer to binding death benefit nominations as being non-lapsing. Binding death benefit nominations under the Governing Rules have always been of indefinite duration (but revocable at any time) and so not subject to any time based lapsing condition. However, to satisfy expectations, Rule 15.18 has been amended to expressly refer to the indefinite duration nominations as non-lapsing.

This change has been effected by amending Rule 15.18 (penultimate paragraph) by inserting “*is both binding on the Trustee and non-lapsing*” for “is binding on the Trustee”.

(g) **Extension of crowd-sourced funding regime to proprietary companies**

The Governing Rules have been amended to expressly permit investment in securities issued by unlisted proprietary companies pursuant to offers which qualify as crowd-sourced funding offers. Currently the Governing Rules only permits investment in securities issued by unlisted public companies.

This change has been effected by amending the definition of “CSF Offer” set out in Rule 1.2 as follows: the current definition of “CSF Offer” has been amended to include “*made by an eligible CSF company (within the meaning of s738H and whether a public company or a proprietary company)*”.

(h) **Extension of permitted investments to include Foreign Passport Fund Products**

The Governing Rules have been amended to expressly permit investment in foreign investment funds which have been registered in Australia under the Asia Region Funds Passport regime of the Corporations Act for investment by retail investors.

(i) **UK Pension Transfers**

The Governing Rules have been amended to update the provisions relating to UK pension transfers in light of changes made to UK legislation relating to such transfers.

Impact on members’ benefits

Adopting Version April 2019 of the TBCL Governing Rules will not reduce the amount of a member’s accrued benefit and will not restrict the circumstances in which a member’s benefit can be accessed.

Impact on existing death benefit nominations

Adopting Version April 2019 of the TBCL Governing Rules will not adversely affect death benefit nominations (whether binding or non-binding) which were made before the adoption of the updated governing rules.

3. Part C – notice to members & consent of members

As the Superannuation Fund is a self managed superannuation fund, the members are involved in the management of the Superannuation Fund by their participation as trustees or as directors of the company which acts as trustee (as the case may be). The members have had effective notice of the proposed amendment and of the details and consequences.

Consent of members

By signing below the members consent to the proposed amendment of the current governing rules of the Superannuation Fund by the Amendment Deed.

.....
Graham Charles Huxley – Member

Date: / /

.....
Sasha Huxley – Member

Date: / /

.....
Philippa Alexandra Huxley – Member

Date: / /

4. Part D – Resolutions of the trustee

Resettlement/new fund

Noted that signing the Amendment Deed:

- (a) will neither cause a resettlement to occur in respect of the Superannuation Fund nor create a new superannuation fund;
- (b) will not alter the membership of the Superannuation Fund;
- (c) will not give rise to any transfer of value between members; and
- (d) will not alter the identity of the Superannuation Fund for taxation or regulatory purposes.

Amendment Deed

Upon execution of the Amendment Deed, the governing rules currently applying to the Superannuation Fund will be completely replaced by the Version April 2019 of the TBCL Governing Rules.

Execution of Amendment Deed

Resolved that the Amendment Deed be executed by the Trustee.

Notice to members

Resolved that the members have had (by virtue of their participation in the management of the Superannuation Fund and by their signing Part C of these resolutions) sufficient notice of the impact of the amendment on their benefits.

Identification of governing rules

Noted that the Amendment Deed incorporates Version April 2019 of the TBCL Governing Rules.

5. Part E – Signing & dating – trustees/directors

For the purposes of this Part “Trustee” means the company which acts as Trustee or the group of individuals which constitute the Trustee (as the case may be).

Signed as written resolutions of Moreberth Pty. Limited ACN 050 957 803 as Trustee of the Superannuation Fund

.....
Graham Charles Huxley - Director/Company Secretary

Date: / /

.....
Sasha Huxley - Director

Date: / /

.....
Philippa Alexandra Huxley - Director

Date: / /