

COMPANY CONSTITUTION

Certificate of Registration of a Company

This is to certify that

JAR JAR BINKS SUPERANNUATION PTY LTD

Australian Company Number 637 058 523

is a registered company under the Corporations Act 2001 and
is taken to be registered in Victoria.

The company **is limited by shares.**

The company is a **proprietary** company.

The day of commencement of registration is
the twenty-fifth day of October 2019.



ASIC

Australian Securities & Investments Commission

Issued by the
Australian Securities and Investments Commission
on this twenty-fifth day of October, 2019.

A handwritten signature in black ink that reads 'James Shipton'.

James Shipton
Chair

CERTIFICATE

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**CONSTITUTION
SOLE PURPOSE SUPERANNUATION
TRUSTEE COMPANY LIMITED BY SHARES**

1. **Name.** The name of the company is the name appearing on the front page of this Constitution.
2. **Superannuation trustee.** The sole purpose of the company is to act as a trustee of a regulated superannuation fund within the meaning of section 19 of the *Superannuation Industry (Supervision) Act 1993* and to do all things as may be appropriate or necessary to carry on this function or purpose.
3. **Proprietary company.** The company is a proprietary company and, consequently, it:
 - (1) restricts the right to transfer its shares;
 - (2) limits to not more than 50 the number of its shareholders (counting joint holders of shares as one person and not counting a person who is employed by the company or any person who has, while so employed, and thereafter has continued to be, a shareholder);
 - (3) prohibits any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any shares in, or debentures of, the company; and
 - (4) prohibits any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with, the company for fixed periods or payable at call, whether bearing or not bearing interest;
4. **Liability of shareholders.** The liability of its shareholders is limited.
5. **Legal capacity and powers.** The company:
 - (a) has the legal capacity and, subject to the provisions of the *Corporations Act 2001*, all the rights, powers and privileges of a natural person;
 - (b) may exercise such powers as may be appropriate or necessary to carry on its function as trustee of any superannuation fund; and
 - (c) holds all its assets on trust for the Fund;
 - (d) may not be trustee of a family trust, a unit trust or a hybrid trust;
 - (e) may not carry on business for profit for the benefit of its shareholders.

DEFINITIONS

6. In this Constitution, unless there is something in the subject or context inconsistent therewith:
 - “**Act**” means the *Corporations Act 2001*;
 - “**clause**” means a clause of this Constitution;
 - “**company secretary**” means any person appointed to perform the duties of secretary of the company;
 - “**Constitution**” means this Constitution as amended or varied from time to time;
 - “**directors**” means the directors of the company or, where the company has only a sole director, that director;
 - “**disqualified person**” means a disqualified person within the meaning of Part 15 of the *Superannuation Industry (Supervision) Act 1993*;
 - “**domestic partner**” of a shareholder means a person with whom the shareholder is living or has lived together as a couple on a genuine domestic basis even though they are not married to each other;
 - “**financial year**” means the financial year ended 30 June in any year, and this definition applies by default unless the directors have resolved to adopt a different financial year;
 - “**Fund**” means the superannuation fund of which the company is Trustee for the time being;
 - “**general meeting**” means a general meeting of the shareholders and includes, where the context permits, a special, extraordinary or annual general meeting;
 - “**insolvent under administration**” means a person who:
 - (a) under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
 - (b) under the law of an external Territory or the law of a foreign state, has the status of an undischarged bankrupt —
 and includes:
 - (1) a person any of whose property is subject to control under:
 - (i) section 50 or Division 2 of Part X of the *Bankruptcy Act 1966*; or
 - (ii) a corresponding provision of the law of an external Territory or the law of a foreign state; or
 - (2) a person who has executed a personal insolvency agreement under:
 - (i) Part X of the *Bankruptcy Act 1966*; or
 - (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country — where the terms of the agreement have not been fully complied with;
 - “**legal personal representative**” includes executors and administrators of an estate, as well as trustees under the *Bankruptcy Act 1966* and administrators and guardians under mental health or guardianship legislation of any other State or Territory or otherwise;

“**liquidator**” includes an administrator (including an administrator under a deed of arrangement), a receiver, an official manager and a receiver and manager;

“**member**” means a member of the Fund;

“**month**” means calendar month;

“**paid**” includes set aside or credited;

“**personal representative**” includes executors, administrators and testamentary trustees of estates;

“**Register of Shareholders**” includes the principal register and any branch register kept pursuant to the Act;

“**registered office**” means the registered office for the time being of the company;

“**resolution**” means a resolution other than a special resolution, except where the company has only a sole director or shareholder, in which case it means a written record of the decision of the director or shareholder;

“**seal**” means the common seal of the company (if any);

“**shareholders**” means the shareholders of the company or, where the company has only a sole shareholder, that shareholder;

“**special resolution**” means a resolution:

(a) of which notice has been given; and

(b) that has been passed by at least 75% of the votes cast by shareholders entitled to vote on the resolution;

“**Trust Deed**” means the trust deed creating or establishing the Fund.

7. The headings are inserted for convenience only and do not form part of this Constitution and do not affect its construction or interpretation.
8. Unless the context or subject matter is inconsistent, words importing persons include corporations.
9. Unless the contrary intention appears, an expression, has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

SHAREHOLDERS

10. **Shareholders.** A person is a shareholder if they:
 - (a) are a shareholder on its registration; or
 - (b) agree to become a shareholder after its registration and their name is entered on the Register of Shareholders.
11. Every member of the Fund is entitled to acquire shares and become a shareholder of the company.
12. **Register of Shareholders.** The company must keep a Register of Shareholders.

COMPANY OFFICERS Appointment and Removal

13. **Number of directors.** If the Fund is a single member fund, then:
 - (a) the sole member of the Fund must be the sole director; or
 - (b) the sole member of the Fund:
 - (1) must be one of only two directors; and
 - (2) must not be an employee of the other director unless they are related.
14. If:
 - (a) the Fund is *not* a single member fund; and
 - (b) the Fund has four or less members —
 then:
 - (1) each director must be a member of the Fund;
 - (2) each member of the Fund must be a director; and
 - (3) no member of the Fund may be an employee of another member of the Fund unless they are related.
15. Despite the preceding two clauses, if a member of the Fund is a minor, then the member’s parent or guardian may be a director in place of the member.
16. **Company may appoint a director.** The company may appoint a person as a director by resolution passed in general meeting.
17. **Prerequisites to appointment as director.** The director must:
 - (a) consent in writing to holding the position of director;
 - (b) no later than 21 days after being appointed as director, sign a declaration in the approved form that they understand their duties as a director of a company which is the Trustee of the Fund.
 The current directors must ensure that each new director complies with paragraph (b).
18. The following shall not be appointed as a director:
 - (a) a person which is disqualified as a director; or
 - (b) a person in their capacity as personal representative of a disqualified person.

19. The share qualification for directors may be fixed by the general meeting and, unless so fixed, no shareholding qualification is required.
20. **Other offices.** A director may hold any other office or offices with the company (except that of auditor) in conjunction with the office of director or managing director.
21. **Directors may appoint other directors.** The directors may appoint a person as a director in order to make up a quorum for a directors' meeting even if the total number of directors is not enough to make up that quorum. If the company has a sole director, that director may appoint another director by recording the appointment and signing the record.
22. **Confirmation by meeting within two months.** If a person is appointed under the preceding clause as a director, the company must confirm the appointment by resolution within two months after the appointment is made. If the appointment is not confirmed, the person ceases to be a director at the end of those two months.
23. **Effectiveness of acts.** An act done by a director is effective even if their appointment, or the continuance of their appointment, is invalid because the company or director did not comply with this Constitution or any provision of the Act.
24. The preceding clause does not affect the question whether an effective act by a director:
- (a) binds the company in its dealings with other people; or
 - (b) makes the company liable to another person.
25. **Vacation of office.** In addition to the circumstances in which the office of a director becomes vacant by virtue of the Act, the office of a director becomes vacant if:
- (a) the director dies;
 - (b) the director is disqualified from being a director by the Act;
 - (c) the director becomes disqualified from being a director by reason of an order made under the Act;
 - (d) the director becomes an insolvent under administration;
 - (e) the director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (f) the director is unable to carry out the functions of a director because of mental or physical incapacity;
 - (g) the director is convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct;
 - (h) a civil penalty order was made in relation to the director;
 - (i) the director is or becomes a disqualified person within the meaning of Part 15 of the *Superannuation Industry (Supervision) Act 1993*;
 - (j) otherwise becomes a disqualified person;
 - (k) continuing in office as director would result in the Fund no longer satisfying the conditions of the Act applicable to self managed superannuation funds;
 - (l) the director is absent without the consent of the directors from meetings of the directors held during a period of six months;
 - (m) the director is directly or indirectly interested in any contract or proposed contract with the company and fails to disclose the nature of their interest as required by clause 40;
 - (n) the director resigns the office by notice in writing to the company.
26. If a director who is a member of the Fund has died, then their personal representative may be a director in their place during the period:
- (a) beginning when they died; and
 - (b) ending when death benefits commence to be payable in respect of them.
27. If a director who is a member of the Fund:
- (a) is under a legal disability; or
 - (b) a personal representative has an enduring power of attorney in respect of that director —
- then their personal representative may be a director in their place during the period that:
- (1) they are under a legal disability; or
 - (2) their personal representative has an enduring power of attorney.
28. The other directors must sign any documents to enable the personal representative to be appointed as a director in place of a person who is unable to act as director.
29. A person in their capacity as personal representative of a disqualified person shall not be appointed as a director:
30. **Director may resign by giving written notice to company.** A director may resign as a director by giving a written notice of resignation to the company at its registered office.
31. **Removal by shareholders.** The company:
- (a) may by resolution remove a director from office; and
 - (b) may by resolution appoint another person as a director instead.
- If the director was appointed to represent the interests of a particular shareholder (for example, a minor or a member under a disability), the resolution to remove the director does not take effect until a replacement to represent their interests has been appointed.
32. Notice of the intention to move such a resolution must be given to the company at least two months before the meeting is to be held.
33. However, if the company calls the meeting after the notice of intention is given, the meeting may pass the resolution even though the meeting is held less than two months after the notice of intention is given.

Powers and Duties of Directors

34. **Powers of directors.** The business of the company is to be managed by or under the direction of the directors. The directors may exercise all the powers of the company except any powers that the Act or this Constitution requires the company to exercise in general meeting.
35. If the company has a sole director, then the business of the company is to be managed by or under the direction of the director. The director may exercise all the powers of the company except any powers that the Act or this Constitution requires the company to exercise in general meeting.
36. **Negotiable instruments.** If the company:
- (a) has two or more directors, any two directors;
 - (b) has only a sole director, that director —
- may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
37. The directors (or, if the company has a sole director, that director) may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.
38. **Agent under power of attorney.** The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.
39. Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think appropriate and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him or her.
40. **Duty to notify other directors of personal interest.** 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. This clause does not apply to if the company has a sole director.
41. The notice required by the preceding clause must:
- (a) give details of:
 - (1) the nature and extent of the interest;
 - (2) the relation of the interest to the affairs of the company; and
 - (b) be given at a directors' meeting 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.
42. The director does not need to give notice of an interest if:
- (a) the interest:
 - (1) arises because the director is a shareholder and is held in common with the other shareholders;
 - (2) relates to a contract the company is proposing to enter into that is subject to approval by the shareholders and will not impose any obligation on the company if it is not approved by the shareholders;
 - (3) 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;
 - (4) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in paragraph (3);
 - (5) 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);
 - (6) relates to any payment by the company or a related body corporate in respect of an indemnity permitted under section 199A of the Act or clause 329 or any contract relating to such an indemnity; or
 - (7) 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:
 - (1) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the company under clause 40;
 - (2) if a person who was not a director at the time when the notice under clause 40 was given is appointed as a director, the notice is given to that person;
 - (3) 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 clause 43 and the notice is still effective in relation to the interest.
- The notice may be given to the person referred to in clause 44(c)(2) by someone other than the director to whose interests it relates (for example, by the company secretary).
43. A director who has an interest in a matter may give the other directors a standing notice of the nature and extent of the interest in the matter in accordance with the next clause.

44. The notice under the preceding clause must:
- (1) give details of the nature and extent of the interest; and
 - (2) be given:
 - (a) at a directors' meeting (either orally or in writing); or
 - (b) to the other directors individually in writing.
45. The standing notice is given under clause 44(2)(b) when it has been given to every director.
46. 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.
47. The standing notice may be given to the other directors before the interest becomes a material personal interest.
48. If the standing notice is given to the other directors individually in writing, it must be tabled at the next directors' meeting after it is given.
49. 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.
50. 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 at the time when the notice was given is appointed as a director.
51. A standing notice that ceases to have effect under clause 50(b) commences to have effect again if it is given to the person referred to in that paragraph.
52. The notice may be given to the person referred to in clause 50(b) by someone other than the director to whose interests it relates (for example, by the secretary).
53. 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 notice.
54. A contravention of clauses 40 to 52 by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.
55. If a director has a material personal interest in a matter that relates to the affairs of the company and:
- (a) 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 clause 42 —
- then:
- (1) the director may vote on matters that relate to the interest; and
 - (2) any transactions that relate to the interest may proceed; and
 - (3) the director may retain benefits under the transaction even though the director has the interest; and
 - (4) the company cannot avoid the transaction merely because of the existence of the interest.
56. If disclosure is required under clause 40, then paragraphs (3) and (4) of the preceding clause apply only if the disclosure is made before the transaction is entered into.

Committees

57. **Delegation to committees.** The directors may delegate any of their powers to a committee of directors.
58. A committee must exercise the powers delegated to it in accordance with any directions of the directors.
59. The effect of the committee exercising a power in this way is the same as if the directors exercised it.
60. The delegation must be recorded in the minute book.
61. The shareholders of such a committee may elect one of their number as chair of their meetings.
62. Where such a meeting is held and:
- (a) a chair has not been elected as provided by the preceding clause; or
 - (b) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act —
- the shareholders present shall elect one of their number to be chair of the meeting.
63. A committee may meet and adjourn as it thinks proper.
64. Questions arising at a meeting of a committee shall be determined by a majority of votes of the shareholders present and voting.
65. In the case of an equality of votes, the chair, in addition to his or her deliberative vote (if any), has a casting vote.

Alternate Directors

66. **Alternate directors.** With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.
67. If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.
68. When an alternate exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.
69. The appointing director may terminate the alternate's appointment at any time.
70. An appointment or its termination must be in writing. A copy must be given to the company.
71. An alternate director is not required to have any share qualification.

72. The company shall not pay an alternate director remuneration but may pay him or her the expenses provided by this Constitution.
73. The appointment must be in writing. A copy must be given to the company. It may be in the following form:

(Name of Company)

I, [name], a director of [name of company], under the power contained in the Constitution of the company, nominate and appoint [name] of [address] to act as alternate director in my place to exercise and discharge all my duties as a director of the company at such times or on such occasions as I may be absent from general/board meetings.

Dated: [date] Signed: [signature]

Managing Director

74. The directors may appoint one or more of themselves to the office of managing director for the period, and on the terms as the directors see fit.
75. A director so appointed is, unless the contract between him or her and the company otherwise provides, subject to the same provisions as to resignation and removal as the other directors.
76. The directors may confer on a managing director any of the powers that the directors can exercise.
77. Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the directors.
78. The directors may revoke or vary:
- (a) an appointment; or
 - (b) any of the powers conferred on the managing director.
79. A person ceases to be managing director upon ceasing to be a director.
80. A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment automatically terminates if he ceases from any cause to be a director.

Associate Directors

81. The directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment.
82. The directors may from time to time determine the powers and duties of any person so appointed.
83. A person so appointed is not required to hold any shares to qualify him or her for appointment but, except by the invitation and with the consent of the directors, does not have any right to attend or vote at any meeting of directors.

Company Secretary

84. The person listed with the consent as company secretary in the application for registration of the company becomes the company secretary on its registration.
85. The company secretary is appointed by the directors.
86. The company secretary must consent in writing to holding the position of company secretary.
87. The company secretary holds office on the terms and conditions that the directors determine.
88. The company secretary:
- (a) ceases to hold office if they are or become a disqualified person within the meaning of Part 15 of the *Superannuation Industry (Supervision) Act 1993*;
 - (b) ceases to hold office if they otherwise becomes a disqualified person; and
 - (b) may resign by giving written notice of the resignation to the company.
89. The company secretary may be removed by the directors.
90. Assistant company secretaries may also be appointed and removed.
91. The same person may be both a director and the company secretary or assistant company secretary.

DIRECTORS' MEETINGS

Resolutions and Declarations without Meetings

92. **Circulating resolutions of company with more than one director.** The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
93. Separate copies of a document may be used for signing by the directors if the wording of the resolution and statement is identical in each copy.
94. The resolution is passed when the last director signs.
95. Passage of such a resolution must be recorded in the minutes.
96. **Resolutions and declarations of a sole director company.** If the company has a sole director, that director may pass a resolution by recording it and signing the record.
97. If the company has a sole director, that director may make a declaration by recording it and signing the record. Recording and signing the declaration satisfies any requirement in the Act that the declaration be made at a directors' meeting.
98. Passage of such a resolution or declaration must be recorded in the minutes.

Directors' Meetings

99. **Calling directors' meetings.** A directors' meeting may be called by a director giving reasonable notice individually to every other director.
100. A director who has appointed an alternate director may ask for the notice to be sent to the alternate director.
101. **Use of technology.** A directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.
102. **Chairing directors' meetings.** The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.
103. The directors must elect a director present to chair a meeting, or part of it, if:
- (a) a director has not already been elected to chair the meeting; or
 - (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.
104. **Quorum at directors' meetings.** Unless the directors determine otherwise, the quorum for a directors' meeting is such number as is determined by the directors and, unless so determined, is 2, and the quorum must be present at all times during the meeting.
105. An alternate director shall be counted in a quorum if present as an alternate.
106. **Passing of directors' resolutions.** A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
107. The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

MEETINGS OF SHAREHOLDERS Resolutions Without Meetings

108. **Circulating resolutions of company with more than one shareholder.** The company may pass a resolution without a general meeting being held if all the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. If a share is held jointly, each of the joint shareholders must sign. This clause only applies to resolutions of the shareholders that the Act and this Constitution requires or permits to be passed at a general meeting. It does not apply to a resolution to remove an auditor.
109. Separate copies of a document may be used for signing by shareholders if the wording of the resolution and statement is identical in each copy.
110. The resolution is passed when the last shareholder signs.
111. Passage of the resolution must be recorded in the minutes.
112. The company that passes a resolution without holding a meeting satisfies any requirement to give shareholders information or a document relating to the resolution, by giving shareholders that information or document with the document to be signed.
113. The passage of the resolution satisfies any requirement in this Constitution that the resolution be passed at a general meeting.
114. **Resolutions of sole shareholder company.** If the company has a sole shareholder, the company may pass a resolution by the shareholder recording it and signing the record.
115. Passage of the resolution must be recorded in the minutes.
116. The passage of the resolution satisfies any requirement in this Constitution that the resolution be passed at a general meeting.

Who May Call Meetings of Shareholders?

117. **Calling of meetings of shareholders by director.** A director may call a meeting of the shareholders.
118. **Calling of general meeting by directors when requested by shareholders.** The directors must call and arrange to hold a general meeting on the request of at least one shareholder.
119. The request must:
- (a) be in writing;
 - (b) state any resolution to be proposed at the meeting;
 - (c) be signed by the shareholders making the request; and
 - (d) be given to the company.
120. Separate copies of a document setting out the request may be used for signing by shareholders if the wording of the request is identical in each copy.
121. The percentage of votes that shareholders have is to be worked out as at the midnight before the request is given to the company.
122. The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than two months after the request is given to the company.
123. **Failure of directors to call general meeting.** Shareholders with more than 50% of the votes of all of the shareholders who make a request under clause 118 may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to the company.
124. The meeting must be called in the same way, so far as is possible, in which general meetings may be called. The meeting must be held not later than 3 months after the request is given to the company.

125. To call the meeting the shareholders requesting the meeting may ask the company for a copy of the register of shareholders. The company must give the shareholders the copy of the register without charge.
126. The company must pay the reasonable expenses the shareholders incurred because the directors failed to call and arrange to hold the meeting.
127. The company may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with clause 118. The directors who are liable are jointly and individually liable for the amount. If a director who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to the director.
128. **Calling of general meetings by shareholders.** A shareholder may call, and arrange to hold, a general meeting. The shareholders calling the meeting must pay the expenses of calling and holding the meeting.
129. The meeting must be called in the same way, so far as is possible, in which general meetings may be called.
130. The percentage of votes that shareholders have is to be worked out as at the midnight before the meeting is called.

How to Call Meetings of Shareholders

131. **Amount of notice of meetings.** Subject to the next clause, at least 21 days notice must be given of a meeting of the shareholders.
132. **Calling meetings on shorter notice.** The company may call on shorter notice:
- (a) an AGM, if all the shareholders entitled to attend and vote at the AGM agree beforehand; and
 - (b) any other general meeting, if shareholders with at least 75% of the votes that may be cast at the meeting agree beforehand.
133. **Shorter notice not allowed for removing auditor.** At least 21 days notice must be given of a meeting at which a resolution will be moved to remove an auditor.
134. **Notice of meetings of shareholders to directors and shareholders.** Written notice of a meeting of the shareholders must be given individually to each shareholder entitled to vote at the meeting and to each director.
135. **Auditor entitled to notice and other communications.** The company must give its auditor:
- (a) notice of a general meeting in the same way that a shareholder is entitled to receive notice; and
 - (b) any other communications relating to the general meeting that a shareholder is entitled to receive.
136. An auditor may appoint a representative to attend the meeting.
137. **Contents of notice of meetings of shareholders.** A notice of a meeting of the shareholders must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (b) 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; and
 - (d) if a shareholder is entitled to appoint a proxy, contain a statement setting out the following information:
 - (1) that the shareholder has a right to appoint a proxy;
 - (2) whether or not the proxy needs to be a shareholder;
 - (3) that a shareholder who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
138. **Notice of adjourned meetings.** When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

Shareholders' Rights to put Resolutions etc at General Meetings

139. **Shareholders' resolutions.** The following shareholders may give notice of a resolution that they propose to move at a general meeting:
- (a) shareholders with at least 25% of the votes that may be cast on the resolution; or
 - (b) at least one shareholder who is entitled to vote at a general meeting.
140. The notice must:
- (a) be in writing;
 - (b) set out the wording of the proposed resolution; and
 - (c) be signed by the shareholders proposing to move the resolution.
141. Separate copies of a document setting out the notice may be used for signing by shareholders if the wording of the notice is identical in each copy.
142. The percentage of votes that shareholders have is to be worked out as at the midnight before the shareholders give the notice.
143. **Company giving notice of shareholders' resolutions.** If the company has been given notice of a resolution under clause 139, the resolution is to be considered at the next general meeting that occurs more than two months after the notice is given.
144. The company must give all its shareholders notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

145. The company is responsible for the cost of giving shareholders notice of the resolution if the company receives the notice in time to send it out to shareholders with the notice of meeting.
146. The shareholders requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the company in giving shareholders notice of the resolution if the company does not receive the shareholders' notice in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.
147. The company need not give notice of the resolution:
- (a) if it is more than 1,000 words long or defamatory; or
 - (b) if the shareholders making the request are to bear the expenses of sending the notice out, unless the shareholders give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.
148. **Shareholders' statements to be distributed.** Shareholders may request the company to give to all its shareholders a statement provided by the shareholders making the request about:
- (a) a resolution that is proposed to be moved at a general meeting; or
 - (b) any other matter that may be properly considered at a general meeting.
149. The request must be made by shareholders with at least 25% of the votes that may be cast on the resolution.
150. The request must be:
- (a) in writing;
 - (b) signed by the shareholders making the request; and
 - (c) given to the company.
151. Separate copies of a document setting out the request may be used for signing by shareholders if the wording of the request is identical in each copy.
152. The percentage of votes that shareholders have is to be worked out as at the midnight before the request is given to the company.
153. After receiving the request, the company must distribute to all its shareholders a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.
154. The company is responsible for the cost of making the distribution if the company receives the statement in time to send it out to shareholders with the notice of meeting.
155. The shareholders making the request are jointly and individually liable for the expenses reasonably incurred by the company in making the distribution if the company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.
156. The company need not comply with the request:
- (a) if the statement is more than 1,000 words long or defamatory; or
 - (b) if the shareholders making the request are responsible for the expenses of the distribution, unless the shareholders give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

Holding Meetings of Shareholders

157. **Time and place for meetings of shareholders.** A meeting of the shareholders must be held at a reasonable time and place.
158. **Technology.** The company may hold a meeting of its shareholders at two or more venues using any technology that gives the shareholders as a whole a reasonable opportunity to participate.
159. **Quorum.** The quorum for a meeting of the shareholders is two shareholders (except where it is a sole shareholder company) and the quorum must be present at all times during the meeting.
160. In determining whether a quorum is present, count individuals attending as proxies. However, if a shareholder has appointed more than one proxy or representative, count only one of them. If an individual is attending both as a shareholder and as a proxy, count them only once.
161. A meeting of the shareholders that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the directors specify. If the directors do not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified, the same day in the next week;
 - (b) if the time is not specified, the same time; and
 - (c) if the place is not specified, the same place.
162. If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.
163. **Attendance of directors.** All directors are entitled to attend and speak at meetings of shareholders, even though they may not be shareholders.
164. **Chairing meetings of shareholders.** The directors may elect an individual to chair meetings of the shareholders.
165. The directors at a meeting of the shareholders must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).
166. The shareholders at a meeting of the shareholders must elect a shareholder present to chair the meeting

(or part of it) if:

- (a) a chair has not previously been elected by the directors to chair the meeting; or
- (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

167. The chair must adjourn a meeting of the shareholders if the shareholders present with a majority of votes at the meeting agree or direct that the chair must do so.
168. **Auditor's right to be heard at general meetings.** The company's auditor is entitled to attend any general meeting.
169. The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
170. The auditor is entitled to be heard even if:
- (a) the auditor retires at the meeting; or
 - (b) the meeting passes a resolution to remove the auditor from office.
171. The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.
172. **Adjourned meetings.** A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
173. **Business at adjourned meetings.** Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Proxies and Body Corporate Representatives

174. **Who can appoint a proxy?** A shareholder who is entitled to attend and cast a vote at a meeting of the shareholders may appoint an individual as the shareholder's proxy to attend and vote for the shareholder (if the shareholder is entitled to vote) at the meeting.
175. The appointment may specify the proportion or number of votes that the proxy may exercise.
176. **Each shareholder may appoint a proxy.** If the shareholder is entitled to cast two or more votes at the meeting, they may appoint two proxies. If the shareholder appoints two proxies and the appointment does not specify the proportion or number of the shareholder's votes each proxy may exercise, each proxy may exercise half of the votes.
177. Disregard any fractions of votes resulting from the application of clauses 175 or 176.
178. **Rights of proxies.** A proxy appointed to attend and vote for a shareholder has the same rights as the shareholder:
- (a) to speak at the meeting;
 - (b) to vote (but only to the extent allowed by the appointment); and
 - (c) to join in a demand for a poll.
179. **Effect of shareholder's presence on proxy's authority.** Unless the shareholder withdraws the proxy, the shareholder's presence at a meeting does not suspend the proxy's authority to speak and vote for the shareholder at the meeting.
180. **Company sending appointment forms or lists of proxies must send to all shareholders.** If the company sends a shareholder a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
- (a) if the shareholder requested the form or list, the company must send the form or list to all shareholders who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
 - (b) otherwise, the company must send the form or list to all its shareholders entitled to appoint a proxy to attend and vote at the meeting.
181. **Appointing a proxy.** An appointment of a proxy is valid if it is signed by the shareholder making the appointment and contains the following information:
- (a) the shareholder's name and address;
 - (b) the company's name;
 - (c) the proxy's name or the name of the office held by the proxy;
 - (d) the meetings at which the appointment may be used.
182. An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

PROXY FORM

(Name of Company)

I/we [names(s)] of [address], being a shareholder/shareholders of the company, hereby appoint [name] of [address] or, in his/her absence, [name] of [address], if no person is named, the chairman of the meeting, as my/our proxy to vote for me/us on my/our behalf at the *AGM *Extraordinary General Meeting *Special General Meeting of the company to be held on [date] and at any adjournment of that meeting.

If *I/we have appointed two persons as proxies, each is entitled to vote in respect of the following proportions of *my/our voting rights.

1. Proportion of voting rights (%) .
2. Proportion of voting rights (%) .

[If desired, specify here the manner in which the proxy is to vote in respect of one or more particular

resolutions]

If there is only one resolution, this form is to be used *in favour of *against the resolution [*strike out whichever is not desired*].

If there is more than one resolution, identify the resolution:

1. [*insert resolution*] For [] Against [] [*Place a mark in the appropriate box*]

2. [*insert resolution*] For [] Against [] [*Place a mark in the appropriate box*]

[*Should the shareholder not wish to direct the proxy how to vote, the proxy may vote or abstain from voting as the proxy thinks fit*]

Dated: [*date*] Signed: [*signature*]*Strike out whichever is not desired. To be inserted if desired.

183. An appointment may be a standing one.
184. An appointment is valid even if it contains only some of the information required by clause 181.
185. An undated appointment is taken to have been dated on the day it is given to the company.
186. An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
- the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
 - if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
 - 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.
187. If a proxy is also a shareholder, the preceding clause does not affect the way that the person can cast any votes they hold as a shareholder.
188. An appointment does not have to be witnessed.
189. A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.
190. **Documents to be received by company before meeting.** For an appointment of a proxy for a meeting of the shareholders to be effective, the following documents must be received by the company at least 48 hours before the meeting (or such lesser period as the directors decide):
- the proxy's appointment;
 - if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
191. **Documents received following adjournment of meeting.** If a meeting of the shareholders has been adjourned, an appointment and any authority received by the company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
192. **Receipt of documents.** The company receives an appointment authority when it is received at any of the following:
- the company's registered office;
 - a fax number at the company's registered office;
 - a place, fax number or e-mail address specified for the purpose in the notice of meeting.
193. **Validity of proxy vote.** A proxy who is not entitled to vote on a resolution as a shareholder may vote as a proxy for another shareholder who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.
194. **Proxy vote valid even if shareholder dies, revokes appointment etc.** Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
- the appointing shareholder dies;
 - the shareholder is mentally incapacitated;
 - the shareholder revokes the proxy's appointment;
 - the shareholder revokes the authority under which the proxy was appointed by a third party; or
 - the shareholder transfers the share in respect of which the proxy was given.
195. **Body corporate representative.** A body corporate, for example, a Public Trustee or trustee company which is the personal representative of a shareholder under a disability, may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:
- at meetings of the shareholders;
 - relating to resolutions to be passed without meetings.
196. The appointment may be a standing one.
197. The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
198. A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.
199. Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

Voting at Meetings of Shareholders

200. **How many votes a shareholder has.** Subject to any rights or restrictions attached to any class of

shares, at a meeting of shareholders:

- (a) on a show of hands, each shareholder has one vote; and
 - (b) on a poll, each shareholder has one vote for each share they hold.
201. **Chair's casting vote.** The chair has a casting vote, and also, if they are a shareholder, any vote they have in their capacity as a shareholder.
202. **Jointly held shares.** If a share is held jointly and more than one shareholder votes in respect of that share, only the vote of the shareholder whose name appears first in the register of shareholders counts.
203. **Objections to right to vote.** A challenge to a right to vote at a meeting of the shareholders:
- (a) may only be made at the meeting; and
 - (b) must be determined by the chair, whose decision is final.
204. **Votes need not all be cast in the same way.** On a poll a person voting who is entitled to two or more votes:
- (a) need not cast all their votes; and
 - (b) may cast their votes in different ways.
205. **How voting is carried out.** A resolution put to the vote at a meeting of the shareholders must be decided on a show of hands unless a poll is demanded.
206. Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
207. On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
208. The shareholders present may demand a poll.
209. **Matters on which a poll may be demanded.** A poll may be demanded on any resolution.
210. A poll cannot be demanded on any resolution concerning:
- (a) the election of the chair of a meeting; or
 - (b) the adjournment of a meeting.
211. A demand for a poll may be withdrawn.
212. **When a poll is effectively demanded.** At a meeting of the shareholders, a poll may be demanded by:
- (a) at least two shareholders entitled to vote on the resolution;
 - (b) shareholders with at least 25% of the votes that may be cast on the resolution on a poll; or
 - (c) the chair.
- A proxy may join in the demand for a poll.
213. The poll may be demanded:
- (a) before a vote is taken;
 - (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.
214. The percentage of votes that shareholders have is to be worked out as at the midnight before the poll is demanded.
215. **When and how polls must be taken.** A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
216. A poll on the election of a chair or on the question of an adjournment must be taken immediately.

SHARES

Issuing Shares

217. **Power to issue shares.** The company may issue:
- (a) ordinary shares in the following classes: "A" class shares, "B" class shares, or shares in any existing class issued by the company or in any new or special class;
 - (d) partly-paid shares (whether or not on the same terms for the amount of calls to be paid or the time for paying calls).
218. **Terms of issue.** Subject to the Act, the company may determine:
- (a) the terms on which its shares are issued; and
 - (b) the rights and restrictions attaching to the shares.
219. **"A" class shares.** Until or unless the company decides otherwise, "A" class shares are shares issued by the company at \$1.00 each, one only to each shareholder, which confer on the holder the right to one vote for each such share at all meetings of the company on a show of hands or on every poll.
220. **"B" class shares.** Until or unless the company decides otherwise, "B" class shares are shares issued by the company at 1 cent each for every \$10,000 which the shareholder has on 1 July each year standing to their credit in their member's accounts in the Fund, which confer on the holder the right to one vote for each such share at all meetings of the company on a show of hands or on every poll.
221. **Pre-emption for existing shareholders on issue of shares in company.** Before issuing shares of a particular class, the directors must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.
222. To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:
- (a) the number of shares offered; and

- (b) the period for which it will remain open.
- 223. The directors may issue any shares not taken up under the offer under clause 221 as they see fit.
- 224. Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the shares to be issued cannot be offered in accordance with clause 221, the directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the company.
- 225. The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with clause 221.

Converting Shares

- 226. **Resolution to convert shares into larger or smaller number.** The company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.
- 227. The conversion takes effect on:
 - (a) the day the resolution is passed; or
 - (b) a later date specified in the resolution.
- 228. Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

Variation of Class Rights

- 229. **Varying and cancelling class rights.** The rights attached to shares in a class of shares may be varied or cancelled only:
 - (a) by special resolution passed at a meeting of the class of shareholders holding shares in the class; or
 - (b) with the written consent of shareholders with at least 75% of the votes in the class.
- 230. The company must give written notice of the variation or cancellation to the shareholders of the class within 7 days after the variation or cancellation is made.
- 231. The provisions of this Constitution relating to general meetings apply so far as they are capable of application and mutatis mutandis to every such separate meeting except that:
 - (a) where the company has only a sole shareholder, a quorum is constituted by that shareholder but otherwise shall be constituted by two persons who, between them, hold or represent by proxy one-third of the issued shares of the class; and
 - (b) any holder of shares of the class, present in person or by proxy, may demand a poll.
- 232. **Certain actions taken to vary rights etc.** If the shares in a class of shares in the company are divided into further classes, and after the division the rights attached to all of those shares are not the same, then:
 - (a) the division is taken to vary the rights attached to every share that was in the class existing before the division; and
 - (b) shareholders who hold shares to which the same rights are attached after the division form a separate class.
- 233. If the rights attached to some of the shares in a class of shares in the company are varied, then:
 - (a) the variation is taken to vary the rights attached to every other share that was in the class existing before the variation; and
 - (b) shareholders who hold shares to which the same rights are attached after the variation form a separate class.
- 234. **Company with one class of shares issuing new class of shares.** If the company has only one class of shares and issues new shares, then the issue is taken to vary the rights attached to shares already issued if:
 - (a) the rights attaching to the new shares are not the same as the rights attached to shares already issued; and
 - (b) those rights are not provided for in this Constitution.
- 235. If the company issues new preference shares that rank equally with existing preference shares, then the issue is taken to vary the rights attached to the existing preference shares unless the issue is authorised by:
 - (a) the terms of issue of the existing preference shares; or
 - (b) this Constitution as in force when the existing preference shares were issued.
- 236. **Variation, cancellation or modification with unanimous support of class.** If the shareholders in a class all agree (whether by resolution or written consent) to the variation, cancellation or modification, it takes effect:
 - (a) if no later date is specified in the resolution or consent, on the date of the resolution or consent; or
 - (b) on a later date specified in the resolution or consent.

PARTLY-PAID SHARES Calls on Shares

- 237. **Liability on partly-paid shares.** If shares in the company are only partly-paid, the shareholders are liable to pay calls on the shares in accordance with the terms on which the shares are on issue.
- 238. The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

239. The directors may make calls upon the shareholders in respect of any money unpaid on the shares of the shareholders.
240. A shareholder is required, within 14 days of receiving notice for payment, to pay the amount to the company on the date and place specified in the notice.
241. The directors may revoke or postpone a call.
242. The non-receipt of a notice of a call by or the accidental omission to give notice of a call to a shareholder does not invalidate the call.
243. A call is deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.
244. If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is liable for interest on the sum from the day appointed for payment until the date of payment at the rate fixed by the directors under clause 328, unless they waive payment of such interest.
245. Any sum that, by the terms of issue of a share, becomes payable on issue of shares or at any fixed date, whether by instalment or otherwise and whether on account of the nominal value of the share or by way of premium, shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, the provisions of this Constitution dealing with the payment of interest and expenses, forfeiture, etc, apply as if the sum had become payable by virtue of a call duly made and notified.
246. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
247. The directors may accept from a shareholder the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
248. The directors may authorise payment by the company of interest upon the whole or any part of an amount so accepted until the amount becomes payable, at a rate from time to time fixed pursuant to clause 328 by the directors.
249. **Proof of debt in legal proceeding.** In a proceeding for the recovery of any money due for any call, proof that:
- (a) the name of the shareholder sued is entered in the register of shareholders as the holder or one of the holders of the shares in respect of which the debt accrued;
 - (b) the resolution making the call is duly recorded in the minutes; and
 - (c) notice of the call was duly given to the shareholder in accordance with this Constitution —
- is conclusive evidence of the debt, and it shall not be necessary to prove the appointment of the directors who made such call or any other matters whatsoever.
250. **Calls may be limited to when company is externally-administered.** The shareholders may provide by special resolution that the whole or a part of its unpaid share capital may be called up only if the company becomes an externally-administered body corporate.

Forfeiture of Shares

251. If a shareholder fails to pay a call or instalment on the day appointed for payment of the call or instalment, the directors may serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all expenses that may have been incurred by the company by reason of such non-payment.
252. The notice must:
- (a) name a place of payment and a further day (not earlier than the expiration 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; and
 - (b) state that, in the event of non-payment at or before the date appointed, the shares in respect of which the call was made will be liable to be forfeited.
253. If the shareholder fails to comply with the notice, then any shares in respect of which the notice has been given may, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
254. A statement in writing declaring that the person making the statement is a director or the company secretary, and that a share in the company has been duly forfeited on a date stated in the statement, is evidence of the facts stated in the statement as against all persons claiming to be entitled to the share, unless the contrary is proved.
255. All interest in and claims or demands against the company relating to such shares and any rights incidental thereto shall be extinguished by such forfeiture.
256. The company may, by resolution passed at a general meeting, cancel shares that have been forfeited under the terms on which the shares are on issue.
257. Alternatively, the company may sell the forfeited share.
258. If a forfeited share is sold within 12 months of the date of forfeiture, then any residue remaining from the proceeds of sale after satisfaction of all money due in respect of the share, together with interest and expenses, shall, if demanded in writing, be paid to the person entitled to such share at the time of forfeiture or their legal personal representatives or assigns, or as they may direct.
259. A person whose shares have been cancelled or forfeited ceases to be a shareholder in respect of the

- cancelled or forfeited shares, but remains liable to pay to the company any amount that, at the date of cancellation or forfeiture, was payable by the shareholder to the company in respect of the shares (including interest at a rate fixed by the directors under clause 328 from the date of forfeiture on the money for the time being unpaid and any expenses incurred by the company by reason of such non-payment if the directors think fit to enforce payment of such interest and expenses).
260. The company may receive the consideration (if any) given for a forfeited share on any sale or other disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or otherwise disposed of.
261. Upon the execution of the transfer, the transferee is entitled to be registered as the holder of the share.
262. The title of the transferee is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
263. Clauses 251 to 262 apply in the case of non-payment of any sum that, 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.

COMPANY'S LIEN AND OTHER RIGHTS

264. The company has a first and paramount lien on:
- (a) every share for all money (whether presently payable or not) called or payable at a fixed time in respect of that share; and
 - (b) all shares registered in the name of a shareholder (whether solely or jointly with others) for all money presently payable by him or her legal personal representative or its liquidator either alone or jointly with any other person, to the company —
- together with interest at a rate fixed by the directors under clause 328 and all expenses incurred by the company by reason of any non-payment.
265. The directors may at any time exempt a share wholly or in part from the provisions of clause 264.
266. Subject to the next clause, the company may sell, in such manner as the directors think fit, any shares on which the company has a lien.
267. A share on which the company has a lien is not to be sold unless:
- (a) a sum in respect of which the lien exists is presently payable; and
 - (b) the company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of the death or bankruptcy or liquidation of the registered holder a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.
268. The company is to register the purchaser 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.
269. The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
270. The proceeds of a sale mentioned in clause 266 are to be applied by the company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the balance (if any) shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.
271. **Lien for taxes.** Where by reason of the death of a shareholder or the non-payment of any income tax, other tax, estate, probate, succession, death, stamp or other duty or other operation of any law the company is or may be liable to make payment to any government or taxing authority in respect of shares held either jointly or separately by any shareholder or shareholders:
- (a) the company shall be fully indemnified as to such liability by the shareholder, their legal personal representative or the liquidator of the shareholder;
 - (c) the company has and may exercise the lien provided in clause 264 for all moneys paid or payable by the company in respect of such shares, together with interest at a rate fixed by the directors under clause 328;
 - (d) the company may recover as a debt due by the shareholder or his or her legal personal representative or its liquidator to the company all moneys paid or payable in respect of any such liability together with interest at a rate fixed by the directors under clause 328 from the time of the payment of such moneys until the time of repayment;
 - (e) the company may pursue all other legal remedies available to it for the recovery of any moneys due together with the rights provided in this clause; and
 - (f) every shareholder agrees to bind that shareholder, his or her legal personal representative or its liquidator and to submit to the legislative power and jurisdiction imposing that liability upon the company.
272. Nothing in the preceding clauses affects any other right or remedy which the company may possess.

TITLE TO, AND TRANSFER OF, SHARES

Generally

273. **Share certificates.** A person whose name is entered as a shareholder in the register of shareholders is entitled without payment to receive a certificate in respect of the share, but, in respect of a share or shares held jointly by several persons, the company is not bound to issue more than one certificate.

274. Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.
275. **Loss or destruction of certificate.** If a share certificate or other document of title to shares, debentures or prescribed interests is defaced, lost or destroyed, then the company will issue a duplicate certificate or document to the registered holder if the registered holder complies with:
- (a) the requirements of the Act; and
 - (b) any requirements made by the directors.

Transfer of Shares

276. Subject to this Constitution, a shareholder may transfer all or any shares by instrument in writing in any usual or common form or in any other proper written form that the directors approve.
277. The instrument of transfer must be executed by or on behalf of both the transferor and the transferee.
278. No shareholder is entitled to transfer any shares except in accordance with the procedure described in clauses 279 to 292.
279. A shareholder wishing to sell any shares (“**the selling shareholder**”) must give a notice (“**the notice of transfer**”) to the company secretary containing an irrevocable offer to sell, and stating the number and class of shares which the shareholder wishes to sell and the price which the shareholder is willing to accept for them.
280. Every notice of transfer shall constitute the company as the agent of the selling shareholder for the sale of such shares to the remaining shareholders at a fair price.
281. A notice of transfer is not revocable except with the sanction of the directors unless the fair price is determined as hereinafter provided at a price lower than the price nominated by the selling shareholder, in which case the selling shareholder may revoke the notice of transfer by notice in writing to the company within 7 days after the selling shareholder receives notice of the determination of the fair price.
282. The company secretary must send a copy of the notice of transfer to each of the other shareholders, specifying a date (being 10 days after the receipt of the notice of transfer) on or before which offers to purchase the shares will be received.
283. If on or before that date a shareholder is willing to purchase all or any of the shares referred to in the notice of transfer at:
- (a) the price nominated by the selling shareholder; or
 - (b) the fair price —
- then upon payment of such price the selling shareholder shall be bound to transfer the share or shares to the purchasing shareholder.
284. If more than one shareholder expresses interest in purchasing the shares, then the directors must apportion the shares in proportion to the number of shares already held by the purchasing shareholders.
285. If the fair price is determined at a price higher than the price nominated by the selling shareholder any shareholder who has given notice of their willingness to purchase may elect not to continue with the purchase by notice in writing to the selling shareholder within 7 days after they receive notice of the determination of the fair price.
286. If the selling shareholder defaults in executing the form of transfer of such shares as offered after the nominated or the fair price has been offered by a purchasing shareholder, the company shall receive such price and execute a valid transfer for and on behalf of the selling shareholder and register such transfer whilst holding the purchase money in trust for the selling shareholder.
287. Upon entry of the purchasing shareholder’s name in the register:
- (a) the validity of the title of the purchaser shall not be challenged; and
 - (b) the moneys received and held by the company shall be a full and final discharge to the purchaser.
288. The selling shareholder shall on transfer be bound to deliver up the certificate for the those shares and on such delivery shall be entitled to receive the purchase money without interest.
289. If after the expiration of that 10 day period the company:
- (a) does not find a purchasing shareholder; or
 - (b) fails to give notice to the selling shareholder of such purchasing shareholder —
- then the selling shareholder may within 90 days of the service of the notice of transfer sell such of the shares as are then unsold and execute a transfer of the unsold shares to any person at any price not less than the higher of the price nominated by the selling shareholder or any fair price previously determined.
290. The company must retain every instrument of transfer after its registration.
291. **What is a “fair price”?** Should a dispute arise as to a “fair price” between:
- (a) the company and the selling shareholder; or
 - (b) the selling shareholder and any purchaser —
- then the fair price is to be calculated by:
- (i) a chartered accountant acceptable to both parties; or
 - (ii) failing agreement as to an acceptable chartered accountant, by a chartered accountant selected by the auditors (if any) of the company —
- on the statement of assets and liabilities of the company as set forth in the last preceding balance sheet.
292. If there are no such auditors, then the fair price is to be determined by the nominee of the President for the time being of the Institute of Chartered Accountants in Australia. In so acting, the chartered accountant or auditors are deemed to be acting as experts and not as arbitrators.

293. The rules in clauses 279 to 292 may be varied by special resolution and various classes of shareholders may, subject to the Act, be given preferential rights as to the purchase of such shares.
294. A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of shareholders in respect of the shares.
295. **Transfers to spouses, children or grandchildren.** Notwithstanding clauses 279 to 292, the directors may permit a shareholder to transfer any shares to that shareholder's spouse, domestic partner, child or grandchild and, subject to this Constitution, the company is bound to register the transfer upon proof that the proposed transferee is, in fact, the shareholder's spouse, domestic partner, child or grandchild.

Transmission of Shares

296. **Transmission of shares on death where shares not held jointly.** If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
297. If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:
- (1) the personal representative may:
 - (a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the company, transfer the shares to another person; and
 - (2) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.
298. On receiving an election under clause 297(1)(a), the company must register the personal representative as the holder of the shares.
299. A transfer under clause 297(1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
300. The estate of the deceased shareholder is not released from any liability in respect of the shares.
301. **Transmission of shares on death where shares held jointly.** If a shareholder who owns shares jointly dies, then the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares.
302. The estate of the deceased shareholder is not released from any liability in respect of the shares.
303. **Transmission of shares on bankruptcy.** If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
- (a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the company, transfer the shares to another person.
304. On receiving an election under clause 303(a), the company must register the person as the holder of the shares.
305. A transfer under clause 303(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
306. This has effect subject to the *Bankruptcy Act 1966*.
307. **Transmission of shares on mental incapacity.** If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:
- (1) the person may:
 - (a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the company, transfer the shares to another person; and
 - (2) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.
308. On receiving an election under clause 307(1)(a), the company must register the person as the holder of the shares.
309. A transfer under clause 307(1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

Refusal etc to Register Transfers or Transmissions

310. **Refusal to register transfer or transmission.** The directors are not required to register a transfer or transmission of shares in the company unless:
- (a) the transfer and any share certificate have been lodged at the company's registered office;
 - (b) any fee payable on registration of the transfer has been paid;
 - (c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

311. The directors may refuse to register a transfer of shares in the company if:
- (a) the shares are not fully-paid; or
 - (b) the company has a lien on the shares.
312. The directors may also refuse to register a transfer of shares in the company for any reason.
313. If the company refuses to register a transfer of any shares in, debentures of, or interests made available by, the company, it shall, within two months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.
314. **Suspension of registration.** The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any one calendar year.

EXECUTION OF DOCUMENTS

315. **Execution of documents without a seal.** The company may execute a document without using a common seal if the document is signed by:
- (a) 2 directors;
 - (b) a director and the company secretary; or
 - (c) for the company that has a sole director who is also the sole company secretary, that director.
316. **Execution under seal.** If the company has a seal and/or a share seal:
- (a) the directors shall provide for its safe custody;
 - (b) it may only be used only with the authority of the directors or the managing director, or of a committee of the directors authorised by the directors to authorise the use of the seal.
317. The company also may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
- (a) 2 directors;
 - (b) a director and the company secretary; or
 - (c) if the director has a sole director who is also the sole company secretary, that director.
318. The company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with clauses 315 to or 317, but this does not limit the ways in which the company may execute a document (including a deed).
319. A director may sign an instrument to which the seal of the company is affixed even though the director is interested in the contract or arrangement to which the instrument relates.
320. **Signing company documents.** The company's power to sign, discharge and otherwise deal with contracts can be exercised by a person acting with the company's authority and on its behalf.

FINANCIAL RECORDS AND PROPERTY

321. **Application of income and property.** The company is prohibited from distributing its income or property to its shareholders and none of it may be paid or transferred, directly or indirectly, to shareholders, either by dividend, bonus or otherwise.
322. **Dividend rights.** The directors may not pay dividends.
323. **Remuneration and expenses of directors.** No director is to be paid for their duties or services as a director of the company, nor any salary or fees or receive any remuneration or other benefit in money or money's worth from the company.
324. The preceding clause does not prevent the directors in good faith authorising the reimbursement of any director or any officer for out-of-pocket expenses properly incurred:
- (a) in attending directors' meetings or any meetings of committees of directors;
 - (b) in attending any general meetings; or
 - (c) in connection with the company's business.
325. All payments to directors must be approved at a meeting of the directors.
326. Subject to the *Superannuation Industry (Supervision) Act 1993*, if the director is:
- (a) an accountant, solicitor, financial planner or other person engaged in a profession, then they are entitled to charge and be paid all usual professional charges for business transacted, or time expended by them or any of their employees or partners for services other than as a director; or
 - (b) a partner of a firm or a director or shareholder of a company, that firm or company may charge professional fees and disbursements when providing professional services to the Fund —
- as long as:
- (1) the terms and conditions of the retainer are in writing; and
 - (2) the remuneration is charged on an arm's length basis.
327. **Obligation to keep financial records.** The company must keep written financial records which:
- (a) correctly record and explain its transactions and financial position and performance;
 - (b) would enable true and fair financial statements to be prepared and audited; and
 - (c) comply with the requirements of the Act.
328. **Interest chargeable by company.** Subject to:
- (a) the provisions of the Act; or
 - (b) a contrary resolution by the company in general meeting —
- wherever in this Constitution a reference is made to the charging or payment of interest, the rate is 2% per annum more than the maximum overdraft rate per cent per annum from time to time chargeable by the

company's bank (or principal bank, if more than one) on loans not exceeding \$100,000.00.

OFFICERS' INDEMNITIES AND INSURANCE

329. **Indemnity.** The company may, insofar as it is permitted by the Act, indemnify anyone who is, or has been, a director or company secretary or any of its subsidiaries against any liability arising directly or indirectly from the person serving or having served in that capacity:
- (a) to any person, except for:
 - (1) a liability owed to the company or a related body corporate;
 - (2) a liability for a pecuniary penalty or compensation order made under the Act; or
 - (3) a liability that is owed to someone (other than the company or a related body corporate) which did not arise out of conduct in good faith; and
 - (b) for legal costs incurred in defending a proceeding for liability incurred as a director or company secretary or any of its subsidiaries if the costs are not incurred:
 - (1) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 329(a);
 - (2) in defending or resisting criminal proceedings in which the person is found guilty;
 - (3) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (4) in connection with proceedings for relief to the person under the Act in which the court denies the relief.
330. Clause 329(b)(3) does not apply to costs incurred in responding to actions brought by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.
331. **Insurance.** The company may, insofar as it is permitted by the Act, procure and obtain professional indemnity insurance or cover, or pay or agree to pay a premium for such insurance, for a person who is, or has been, a director or company secretary against any liability:
- (a) arising directly or indirectly from the person serving or having served in that capacity including, but not limited to, a liability for negligence except where the liability arises out of:
 - (1) conduct involving a wilful breach of duty in relation to the company; or
 - (2) a contravention of sections 182 or 183 of the Act dealing with improper use of position or information; or
 - (b) for legal costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.
332. **Other officers.** Nothing in clauses 329 or 331 limits the powers of the company, to the extent permitted by the Act, to indemnify or insure other officers of the company.
333. **Document containing indemnity or insurance.** The directors meeting may authorise the company to, and the company may, enter into any document containing an indemnity in favour of, or insurance policy for the benefit of, a person who may be indemnified or insured by the company, on such terms as the directors approve and, in particular, that applies to acts or omissions before or after the time of entering into the indemnity or policy.
334. The benefit of a deed of indemnity or similar document containing an indemnity, continues according to the terms of the deed or document, even if the terms of the preceding clause are amended, repealed or modified, in respect of a liability arising out of acts or omissions occurring before the amendment, repeal or modification.

MINUTES

335. The company must keep minute books in which it records within one month:
- (a) proceedings and resolutions of meetings of the shareholders;
 - (b) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (c) resolutions passed by shareholders without a meeting;
 - (d) resolutions passed by directors without a meeting;
 - (e) if the company has only a sole director, the making of declarations by the director.
336. The directors must ensure that the minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
- (a) the chair of the meeting;
 - (b) the chair of the next meeting.
337. The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
338. If the company has only a sole director, the director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.
339. A minute that is so recorded and signed shall be evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

CONFIDENTIALITY

340. Officers, auditors, employees or agents of the company must, if required by the directors, sign a

declaration pledging themselves not to reveal any information or disclose any documents:

- (a) about the company's transactions with its customers or clients;
- (b) about the accounts of individuals with the company;
- (c) which they may acquire in the discharge of their duties —

except:

- (i) when required to do so by:
 - (1) the Act;
 - (2) the directors;
 - (3) any general meeting;
 - (4) a court of law; or
 - (5) the person to whom such matters relate; and
- (ii) so far as may be necessary in order to comply with any of the provisions of this Constitution.

341. Except as provided by this Constitution and the Act, no shareholder is entitled to any information, or to inspect any document containing any information:

- (a) about the company's trading;
- (b) about any secret process, trade secret or confidential business information belonging to the company;
- (c) which, in the opinion of the directors, would be contrary to the interests of the company to communicate to the public.

NOTICES

342. Notice of every general meeting shall be given to:

- (a) every shareholder;
- (b) every person entitled to a share in consequence of the death or bankruptcy or liquidation of a shareholder who, but for his or her death or bankruptcy or liquidation, would be entitled to receive notice of the meeting;
- (c) the auditor (if any) for the time being of the company; and
- (d) all the directors or their alternates.

343. No other person is entitled to receive notices of general meetings.

344. A defect in the notice given does not invalidate a meeting.

345. If a share is held jointly, notice need only be to the joint holder whose name appears first in the register. Service of a notice on any one of several joint holders is effective service on all joint holders.

346. A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy or liquidation of a shareholder by serving it on that person personally or by sending it by post addressed to that person by name, or by the title of representative of the deceased or assignee of the bankrupt or representative of the company in liquidation or by any like description, at the address (if any) supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy or liquidation had not occurred.

347. **How notice is given.** The company may give the notice of meeting to a shareholder:

- (a) personally;
- (b) by sending it by post to the address for the shareholder in the register of shareholders or the alternative address (if any) nominated by the shareholder;
- (c) by sending it to the fax number or e-mail address (if any) nominated by the shareholder.

348. **When notice given.** A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, e-mail or other electronic means is taken to be given on the business day after it is sent.

INSPECTION OF RECORDS AND ACCOUNTS

349. **Director access.** A director is entitled to inspect the records of the company at all reasonable times.

350. **Access by shareholders.** A shareholder other than a director does not have the right to inspect any company document except as provided by this Constitution, by law or authorised by the directors or by the company in general meeting.

351. **Company or directors may allow shareholder to inspect books.** The directors, or the company by a resolution passed at a general meeting, may authorise a shareholder to inspect the company's books.

352. If a person asks the company in writing to inspect a particular book of the company that the person has a right to inspect, the company must make it available within 7 days, for inspection by the person at the place where it is required to be kept.

353. **Shareholders' access to minutes.** The company must ensure that the minute books for the meetings of its shareholders and for resolutions of shareholders passed without meetings are open for inspection by shareholders free of charge.

354. A shareholder may ask the company in writing for a copy of:

- (a) any minutes of a meeting of the shareholders or an extract of the minutes; or
- (b) any minutes of a resolution passed by shareholders without a meeting.

355. If the company does not require the shareholder to pay for the copy, the company must send it within 14 days after the shareholder asks for it.

356. If the company requires payment for the copy, the company must send it within 14 days after the company receives the payment.

357. **Shareholder's copies of documents and resolutions.** A shareholder may ask the company in writing for a copy of a document or resolution lodged with the ASIC under section 246F of the Act. The company must send the copy to the shareholder.
358. If the company requires the shareholder to pay for the copy, the company must send it within 7 days after the company receives the payment.
359. If the company does not require payment for the copy, the company must send it within 7 days after the shareholder asks for it.

DISSOLUTION AND WINDING UP

360. If upon the dissolution or winding-up of the company there remains, after the satisfaction of all its debts and liabilities, any property whatever, the same shall not be paid to or distributed among the shareholders, but form part of the assets of the Fund to be distributed in accordance with the Trust Deed.

ADOPTION AND AMENDMENT OF CONSTITUTION

361. **Adoption of Constitution.** The company adopts this Constitution on registration if each person specified in the application for the company's registration as a person who consents to become a shareholder agrees in writing to the terms of this Constitution before the application is lodged.
362. **Amendment of Constitution.** The company may amend or repeal this Constitution, or a provision of this Constitution, by special resolution.
363. **Date of effect of adoption, amendment or repeal of Constitution.** A special resolution adopting, amending or repealing this Constitution takes effect:
- (a) if no later date is specified in the resolution, then on the date on which the resolution is passed; or
 - (b) on a later date specified in, or determined in accordance with, the resolution.
364. The preceding clause does not apply to the date of effect of a special resolution passed in connection with a change of name, change of type or a variation or cancellation of class rights.
365. **Company must send copy of Constitution to shareholder.** The company must send a copy of this Constitution to a shareholder within 7 days if the shareholder:
- (a) asks the company, in writing, for the copy; and
 - (b) pays any fee (up to the prescribed amount) required by the company.

TRANSITIONAL

366. **Initial shareholders.** The persons listed with their consent as shareholders in the application for registration of the company become shareholders on its registration.
367. **Initial directors.** The persons listed with their consent as director in the application for registration of the company become directors on its registration.
368. **Incorporation expenses.** The directors may pay all expenses incurred in promoting and registering the company from the assets of the company.