

**Alleycat Superannuation
Pty Ltd**

ACN 153 512 791

Incorporation Date: 30th September 2011

Strategist Sole Purpose SMSF
Trustee Company

Prepared for

BDO (QLD) Pty Ltd

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A Living Super Deed

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What this document is about?

This document explains the rights, obligations and responsibilities of those involved with this special purpose SMSF Trustee Company. It is expected that this company be used for the sole or primary purpose of acting as the trustee of a SMSF.

This document is in two parts.

- The first part is an information statement that talks about the role of the trustee of a SMSF and more importantly the role and responsibilities of a director of a trustee company. It also considers the powers of the trustee and what is required to be done at meetings. The information memorandum is educational and informational only.
- The second part is the legal constitution of the trustee company. These are the rules that the directors of the trustee company and the shareholders agree to. They must be followed at all times.

Part one: Information statement

1. INTRODUCTION TO TRUSTEE'S ROLE

Self managed super funds or SMSFs as they are commonly known are increasingly popular. However there are a number of statutes and laws that govern the trustees of a SMSF. So too are there various regulators such as the Australian Taxation Office ("ATO") and the Australian Securities and Investment Commission ("ASIC"). To be a director of a company is a big responsibility and one not to be taken lightly. A member of a SMSF with a corporate trustee is required to become a director of the trustee company under the *Superannuation (Industry) Supervision Act 1993* ("SIS Act").

From 1 July 2007 a person becoming a trustee or a director of a trustee company of a SMSF must sign a declaration that they understand their duties attached to this role.

Where the directors of the trustee company breach any of the rules of the fund or the *SIS Act*, *Income Tax Assessment Act 1997* ("Tax Act") or the *Corporations Act 2001* they may be liable to a fine and in some cases imprisonment. For these reasons it is vital that a director of a trustee company of a SMSF do the following things:

- (a) Read the constitution of the trustee company. If a director or potential director has any questions about their role as a director they should seek professional advice;
- (b) Read and understand the constitution of the SMSF. If a trustee company causes a SMSF to become a non-complying superannuation fund (and as a consequence be subject to adverse tax consequences) the directors of the company might personally be liable for damages or even criminal prosecution.
- (c) Read the ATO publication "Role and Responsibilities of Trustees."

2. TRUSTEE'S CORPORATIONS ACT 2001 RESPONSIBILITIES

The trustee of a SMSF is not required to be licensed however has under the *Corporations Act 2001* where a person is provided with a financial product the trustee of the SMSF must issue them with a Product Disclosure Statement (a PDS), which contains information required by the *Corporations Act 2001* to provide prospective members and members with sufficient information to make an informed decision about acquiring a financial product. Importantly the PDS is required to provide information about any significant benefits to which that person may become entitled as well as the circumstances, process and timeframe in which those benefits may be provided. *Failure to do so may render the trustee and its directors liable to a \$22,000 fine and/or two years imprisonment.*

In relation to a SMSF, the *Corporations Act 2001* includes the following as financial products:

- the making of a contribution into a fund;
- the payment of a SMSF pension;
- taking a disability benefit;
- putting in place an investment strategy;

- keep the money and assets of the fund separate from the trustee's personal assets and money or those of another person including other trusts, companies and businesses that the member or trustee may have an interest in;
- formulate and implement an investment strategy for the fund. This strategy must follow the fund's investment objective and should be detailed and in writing;
- abide by the governing rules of the fund at all times;
- ensure that the trustee does not breach any of the superannuation laws;
- ensure proper accounting including the maintenance of member accounts;
- appoint an auditor and other specialists;
- meet all regulatory obligations.

5. TRUSTEE MEETINGS AND DECISION MAKING

The directors of the trustee company need to meet regularly to decide issues and approve transactions that arise within the fund. Some of these issues include the:

- appointment of professional advisers including auditor and SMSF specialist adviser,
- appointment of the fund administrator;
- establishment of a bank account,
- setting the investment objective and investment strategy for the fund,
- admission of members to the fund and issue of a PDS;
- acquisition and disposal of investments pursuant to the investment strategy,
- approval of the payment of benefits to a member,
- payment of a death benefit to a dependant or legal personal representative of a deceased member,
- payment of a disability benefit to a member or their legal personal representative,
- acceptance of a binding death benefit nomination from a member,
- review of audit reports,
- creation of any Reserves.

In making any decision, the directors of the trustee company may vote according to the balance of the member accounts of those members that they represent. The trustee may, at any stage lay down a specific voting procedure to apply in the event of a corporate transaction or some thing happening to a member. Directors need to be aware of the number of votes that they may bring to a meeting and ensure that any requirements to vote must be exercised according to their responsibilities as director of the trustee company.

Part two: Rules of the company

RULE 1 REPLACEMENT OF REPLACABLE RULES

Explanation

The Corporations Act contains rules that are deemed to be adopted by a company if a company does not have its own constitution. However those rules are "replaceable rules" – they do not have to be adopted by the members of the company. Since this Company has been formed for the sole purpose of acting as a trustee of a Self Managed Superannuation Fund not all of those "replaceable rules" are presently relevant.

Further the law has specific requirements as to what should be contained with the constitution of a company that is the trustee of a superannuation fund. Accordingly this Constitution states that the "replaceable rules" do not apply and adopts rules that are more appropriate to a company that is the trustee of a Self Managed Superannuation Fund.

In particular this Constitution has been so drafted that any company adopting it is particularly suited to be a trustee of a superannuation fund that adopts fund rules the copyright of which is vested in Reckon Docs Pty Ltd.

Rule

The replaceable rules set out in the *Corporations Act* do not apply to this Company.

RULE 2 DEFINITIONS AND INTERPRETATIONS

2.1 Definitions

In the interpretation of this Constitution unless the subject matter or context otherwise requires:

"Board" means the Directors acting in meeting.

"Company" means the company the shareholders of which have adopted this Constitution.

"Complying Superannuation Fund" means a complying superannuation fund within the meaning of section 45 of the *SIS Act*.

"Constitution" means this constitution.

"Corporations Act" means the *Corporations Act 2001 (Cth)* as amended or modified from time to time or any replacement to that act.

"Director" means a person appointed as a director of the Company.

"Employee" means a person who is an employee for the purposes of section 17A of the *SIS Act*.

"Financial Year" means a year ended on 30 June or on such other date as determined by the Directors.

- (2) to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text taking into account the purpose or object underlying the Rule; or
 - (3) in determining a Rule's meaning if the Rule is ambiguous or obscure; or
 - (4) in determining a Rule's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or unreasonable;
- (d) A reference to any person or body shall include a reference to a company, references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators.

RULE 3 COMPANY A TRUSTEE OF A SELF MANAGED SUPERANNUATION FUND

- 3.1 The sole purpose of the Company is that of being the trustee of a Self Managed Superannuation Fund and if any provision of this Constitution is in conflict with a provision of the *SIS Act* or a regulation made pursuant to that Act that provision or that regulation prevails.
- 3.2 If the Company is the trustee of the Fund the Company must not be the trustee of any other superannuation fund or trust or engage in any business.

RULE 4 COMPANY A PROPRIETARY LIMITED COMPANY

The Company is a proprietary company limited by shares and must not be changed to any other type of company unless required by the *Corporations Act* or the *SIS Act*.

RULE 5 DIRECTORS

Explanation

A superannuation fund must have a trustee. The Company has been formed to be the trustee of a superannuation fund that is a Self Managed Superannuation Fund.

Section 17A of the SIS Act 1993 states that if a company is the trustee of a Self Managed Superannuation Fund each member (or Legal Personal Representative of the Member) must be a director of that company. However a person cannot be director of a Self Managed Superannuation Fund if that person is a "disqualified person". A person will be a "disqualified person" if (broadly speaking) that person has contravened a provision of the SIS Act or has been convicted of dishonest conduct.

Rule

5.1 Entitlement to be a Director

- (a) (1) Subject to Rule 5.1(b), Rule 5.1(c) and Rule 5.1(e) a person may only be a Director if that person is a Member of the Fund, unless there is only one Member of the Fund in which case that member and if the Member so elects a relative of that Member as defined by section 17A (9) of the *SIS Act* may be Directors of the Fund.

- 6.4 If the Company has only one Director that Director may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 6.5 Whilst the Company is the trustee of the Fund the Directors may exercise all the powers of the trustee of the Fund.
- 6.6 Whilst the Company is the trustee of the Fund the Directors must ensure that the Fund is a Complying Superannuation Fund.

RULE 7 MEETINGS OF DIRECTORS

Explanation

If there is more than one Director, the Directors should meet to decide matters such as the:

- *appointment of various professional advisers to the Fund including an auditor;*
- *establishment of the Fund's cash account;*
- *setting of an investment objective and investment strategy for the Fund;*
- *admission of Members to the Fund;*
- *acquisition and disposal of investments pursuant to an investment strategy;*
- *approval of the payment of benefits to a Member;*
- *payments of death benefits;*
- *acceptance of a binding death benefit nominations;*
- *review of audit reports;*
- *creation of any reserves.*

The Directors should also attend to the day-to-day administration of the Fund (attending to such things as the making and maintenance of investments) although the Directors may appoint a manager or accountant to assist them.

Rule

- 7.1 If there is more than one Director the Secretary may serve a Notice on the Directors requiring the Directors to meet and to conduct business on behalf of the Company.
- 7.2 The Secretary must give reasonable notice of any such meeting to each of the Directors (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by the Director). Such written notice 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); and
 - (b) state the general nature of the business of the meeting.
- 7.3 Notwithstanding Rule 7.2 above, the Directors can unanimously agree a meeting be held on some earlier date than that date referred to at clause 7.2(a) above.

RULE 11 SOLE SHARHOLDER COMPANIES

Explanation

The Company might only have one Shareholder and one Director. This Rule is designed to:

- *reiterate those provisions of the Corporations Act which allow the Director of a proprietary company who is its only director and shareholder to exercise all the powers of the company;*
- *ensure that where there is only one shareholder and director of a Company that the provisions of the Constitution are to be read as if there was only one Shareholder and Director of the Company.*

Rule

If there is only one Shareholder who is the only Director of the Company this Constitution is to be read and interpreted as if any reference in this Constitution to more than one Shareholder and Director was a reference to that one Shareholder and Director.

RULE 12 JOINT OWNERS

Explanation

Where a Share is held jointly and one of the co owners dies that co owner's interest in the Share is automatically transferred to the other or other joint owners.

Rules

Shares may be held jointly with another person.

RULE 13 TRANSFERS OF SHARES

- 13.1** A Shareholder may only transfer Shares held by him to another person as allowed by this Constitution.
- 13.2** 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 Company's register of Shareholders as holder of the Shares.
- 13.3** The Directors must refuse to register a transfer of Shares unless:
- (a) a properly completed form of transfer and any certificate of registration of those Shares have been left at the Company's registered office; and
 - (b) the Directors have been given such information as they reasonably require to establish the right of the person to whom the Shares have been transferred to hold those Shares.

RULE 17 MEETINGS OF SHAREHOLDERS

17.1 Calling of meetings

A Director may call a meeting of Shareholders for the purpose of considering that business which that Director requires to be considered by the Shareholder.

17.2 Notice

Notice of any meeting of the Shareholders shall be given as detailed at Rule 26.

17.3 Adjourned meetings

The Secretary must give reasonable notice of any such meeting to each of the Shareholders (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by the Shareholders). Such written notice 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); and
- (b) state the general nature of the business of the meeting.

17.4 Notwithstanding Rule 17.3 above, the Shareholders can unanimously agree a meeting be held on some earlier date than that date referred to at clause 17.3(a) above.

17.5 Quorum

At any meeting of Shareholders a quorum is equal to the number of Shareholders or proxies of Shareholders who represent Members the balance of whose Member's Accounts aggregate at least 50% of the balance of all Member's Accounts.

17.6 Chairperson

At a meeting the Shareholders will elect a chairperson of the meeting who will have a casting vote on a show of hands but no additional vote on a poll.

17.7 Voting

At a meeting of the Company, unless the Shareholders present unanimously agree otherwise, a Shareholder shall only be entitled to cast that number of votes as is equal to the nearest whole number of dollars of the balance of the Member's Account of that Member whom that Shareholder represents. If no Shareholder represents a Member, each Shareholder shall be entitled to cast one vote for each Share that the Shareholder owns.

17.8 Resolutions

A resolution shall not be passed at any meeting of the Shareholders unless it is passed by the casting of a majority of the votes entitled to be cast by Shareholders who are present at the meeting.

18.6 Form of proxy

An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the regulations to the Corporations Act 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;
- (d) the meetings at which the appointment may be used.

RULE 19 INSPECTION OF RECORDS

The Directors of the Company or the Company by a resolution passed at a general meeting may authorise a Shareholder to inspect the records of the Company.

RULE 20 COMPANY ACCOUNTS

- 20.1** The Company must keep such accounting records as correctly record and explain the transactions of the Company.
- 20.2** Such accounting records are to be kept in such form and supported by such documentation as to enable those accounting records to be properly audited if required.
- 20.3** The Company must retain the accounts and statements for a period of 10 years after the end of the Financial Year to which they relate.

RULE 21 COMMON SEAL

Explanation

The Company does not have to have a seal. *This is because section 127 of the Corporations Act states that a company may execute a document without using a common seal if the document is signed by:*

- *two directors of the company;*
- *a director and a company secretary of the company; or*
- *for a proprietary company that has a sole director who is also the sole company secretary – that director.*

However some persons transacting business with a company prefer that a company in executing a document affix a seal to that document. As a consequence this Rule authorises but does not require the Company to acquire a seal.

Rule

The Company may have a seal. If the Company has a seal it may only be used as authorised by the Directors.

RULE 25 WINDING UP

- 25.1** The Company shall not be wound up whilst it is still the Trustee of the Fund.
- 25.2** On the winding up of the Company all the income and property of the Company shall be distributed to such charities as the Shareholders agree at a meeting of the Company.

RULE 26 NOTICES

- 26.1** The Company may give a notice to a Shareholder:
- 26.2** by leaving it at the Shareholder's registered address;
- 26.3** or by sending it by prepaid post or facsimile transmission to the Shareholder's Registered Address; or
- 26.4** by sending it by any other electronic means to the Shareholder's Registered Address.

RULE 27 INDEMNIFICATION OF DIRECTORS

- 27.1** Subject to law the Company indemnifies each person who is or has been a Director out of the assets of the Company or Fund against any liability incurred by the person as a consequence of that person being or having been a Director except any liability incurred by that person's gross negligence, willful wrongdoing, or fraud.
- 27.2** The Company may insure any person against any liability incurred by that person as a consequence of that person being or having been a Director.

Shareholder declaration

me being the person specified in the application, dated **30th September 2011**, for the registration of **Alleycat Superannuation Pty Ltd** pursuant to Section 117 of the *Corporations Act 2001*, as having given my consent to become a Shareholder, hereby agree to the Rules of this Constitution as set out above.

DATED: 30 09 2011


.....
Brooke Rebecca Elizabeth Hepburn-Rogers

of 1705/128 Charlotte Street Brisbane
QLD 4000

in the presence of:

Simone Vergis
.....
Please Print Name of Witness


.....
Signature of Witness