

# Certificate of Registration of a Company

This is to certify that

**A & A JAMES SUPER FUND PTY LTD**

**Australian Company Number 636 884 467**

is a registered company under the Corporations Act 2001 and  
is taken to be registered in New South Wales.

The company **is limited by shares.**

The company is a **proprietary** company.

The day of commencement of registration is  
**the seventeenth day of October 2019.**



**ASIC**

Australian Securities & Investments Commission

CERTIFICATE

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

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

James Shipton  
Chair

---

Corporations Act 2001  
A Company Limited by Shares

---

# Constitution of

A & A James Super Fund Pty Ltd

A.C.N. 636 884 467

Capitaleyes Business Advice Financial Vision PtyL  
Shop 3  
471-473 Marrickville Road  
Dulwich Hill NSW 2203

---

## Copyright © Smartcorp

Copyright in this document belongs to Smartcorp. No part of this document may be copied or reproduced without the express written authority of Smartcorp.

Use of this document is governed by the Terms and Conditions agreed by you or your agent as a client of Smartcorp.

Document version 07112017

### Disclaimer

No advice has been given on the appropriateness of this document and all parties named in it and the person or entity ordering must rely on their own advisers. Neither DGF Morgan & Associates Pty Ltd who drafted the pro-forma document on which this document is based nor Smartcorp who provided this document subject to its Terms and Conditions make any representation as to the suitability of this document for any purpose.

#### Smartcorp

Office 4  
4 Gladstone Road  
Castle Hill NSW 2154  
Tel: 1300 856 972

#### DGF Morgan & Associates Pty Ltd

Solicitors and Attorneys  
Suites 215-216, Level 2  
111 Harrington Street  
Sydney NSW 2000  
Tel: 02 9262 2077  
Fax: 02 9262 2144  
Email: [info@dgfmorgan.com.au](mailto:info@dgfmorgan.com.au)

Liability limited by a scheme approved under Professional Standards Legislation. Legal practitioners employed by DGF Morgan & Associates Pty Ltd and its director(s) are members of the scheme.

# TABLE OF CONTENTS

<b>PART 1 PRELIMINARY</b>	<b>1</b>
1. What is this?	1
2. Definitions	1
<b>PART 2 SMSF TRUSTEE COMPANY</b>	<b>1</b>
3. Objects	1
4. Directors	2
5. Distribution To Members Prohibited	2
<b>PART 3 OFFICERS</b>	<b>2</b>
6. Management of business	2
7. Company may appoint a director	2
8. Directors may appoint other directors	2
9. Remuneration of directors	3
10. Director may resign by giving written notice	3
11. Removal by members	3
12. Directors may appoint managing director	3
13. Powers of managing director	3
14. Termination of appointment of managing director	4
15. Terms and conditions of office for secretary	4
16. Alternate directors	4
17. Execution of documents	4
18. Negotiable instruments	4
19. Wholly Owned Subsidiary	5
20. Contracts or arrangements involving director	5
21. Indemnity and insurance	5
22. Company or directors may allow member to inspect books	6
<b>PART 4 MEETINGS OF DIRECTORS</b>	<b>6</b>
23. Calling directors' meetings	6
24. Chairing directors' meetings	6
25. Quorum at directors' meetings	6
26. Passing of directors' resolutions	6
27. Circulating resolutions of directors	7
<b>PART 5 MEETINGS OF MEMBERS</b>	<b>7</b>
28. Calling of meetings of members by a director	7
29. Notice of meetings of members to members and directors	7
30. Chairing meetings of members	7
31. Quorum at members' meeting	8
32. Notice of adjourned meeting	8
33. Adjourned meeting	8
34. Who can appoint a proxy?	9
35. Validity of proxy vote	9
36. How voting is carried out	9
37. When and how polls must be taken	10
38. Number of votes	10
39. Jointly held shares	10
40. Objections to right to vote	10
41. Circulating Resolution of Members	10

**PART 6 SHARES**

	<b>11</b>
42. Share offer to existing shareholders	11
43. Dividends	11
44. Calls on shares	11
45. Pre-call payment of unpaid amount	12
46. Interest on unpaid call	12
47. Forfeiture of shares on failure to pay call	12
48. Transmission of shares on death	14
49. Transmission of shares on bankruptcy	14
50. Transmission of shares on mental incapacity	15
51. Registration of transfers	15
52. Additional general discretion for directors to refuse to register transfers	15

# Corporations Act 2001 A Proprietary Company

---

## Constitution

### Part 1: Preliminary

---

#### 1. What is this?

This is the constitution of

A & A James Super Fund Pty Ltd

#### 2. Definitions

(1) In this constitution:

- (a) **Corporations Act** means the *Corporations Act 2001* (Cth.) or any Act that replaces it, as in force from time to time.
- (b) **SIS Act** means the Superannuation Industry (Supervision Act) 1993 (Cth) or any Act that replaces it, as in force from time to time
- (c) Unless the contrary intention appears, words in the singular number include the plural and words in the plural number include the singular.

(2) Expressions used in this constitution that are defined by the Corporations Act have the same meanings as in that Act.

(3) Each "Note" in italics is for guidance only and is not to be interpreted as being part of this Constitution.

(4) The replaceable rules contained in the Corporations Act are displaced by this Constitution.

### Part 2: SMSF Trustee Company

---

#### 3. Objects

The objects for which the Company is established are:

- (a) to act solely as Trustee of any regulated superannuation fund within the meaning of section 19 of the SIS Act and to do all such acts, matters or things incidental or conducive to this object.
- (b) to the extent to which it is incidental or conducive to the object referred to in (a) and subject to that subclause, to undertake, and execute as trustee the trusts of any regulated superannuation fund and for such purposes to take and acquire any real or personal property and to hold and administer and otherwise deal with the same upon such trusts and to exercise carry out and perform all or any of the powers authorities and discretions thereby conferred or implied.
- (c) to the extent to which it is incidental or conducive to the objects referred to in (a) and subject to that subclause, to carry out and perform all or any of the powers, authorities and discretions given to or conferred upon the trustee by any Act, of any Parliament in Australia, for the time being in force.

#### **4. Directors**

- (1) A person must not be appointed as a director and a person must not continue in office as a director unless that person's position as a director would be or would remain consistent with requirements of the SIS Act in relation to directors, including the provisions of section 17A (which sets out conditions to be satisfied by a self managed superannuation fund).
- (2) No director may be remunerated if doing so is inconsistent with the requirements of section 17A of the SIS Act.

#### **5. Distribution to Members Prohibited**

- (1) Despite anything contained in this Constitution and in the Corporations Act 2001 the income and property of the company is prohibited from being distributed among members of the company.
- (2) Despite anything contained in the Constitution and in the Corporations Act 2001 if upon winding-up or dissolution of the company there remains, after satisfaction of all its debts and liabilities, any property, the same shall not be paid to or distributed among the members of the company but shall be given or transferred to some other company or institution having objects similar to the objects of the company and whose constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the company by virtue of this Constitution, such company or institution to be determined by the members of the company at or before the time of the dissolution and in default of this by application to the appropriate Court for determination.

### **Part 3: Officers**

---

#### **6. Management of Business**

- (1) The business of the company is to be managed by, or under the direction of, the directors.
- (2) The directors may exercise all the powers of the company except any powers that the Corporations Act or this constitution requires the company to exercise at a general meeting.

#### **7. Company May Appoint a Director**

Subject to the clauses contained in Part 2 of this Constitution, the company may appoint a person as a director by a resolution passed at a general meeting.

#### **8. Directors May Appoint Other Directors**

- (1) This clause is subject to the clauses contained in Part 2 of this Constitution.
- (2) The directors may appoint a person as a director.
- (3) A person can be appointed as a director at any time in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum at that time.
- (4) A person appointed under this clause as a director ceases to be a director if the appointment is not confirmed by the company by resolution within 2 months after the appointment is made.

- (5) While the same person is both the company's sole director and sole shareholder, that person may appoint another director by recording the appointment and signing the record in accordance with section 201F(1) of the Corporations Act.
- (6) If a person who is the only director and the only shareholder dies or cannot manage the company because of the person's mental incapacity, and a personal representative is appointed to administer the person's estate or property, then that personal representative or trustee may appoint a person as the director of the company in accordance with section 201F(2) of the Corporations Act.
- (7) If a person who is the only director and the only shareholder dies ("Deceased Shareholder") and at that time the company is the trustee of a self managed superannuation fund of which the Deceased Shareholder was the sole member, then the person named in the Deceased Shareholder's Will as executor is appointed as director of the company with effect from the date of death of the Deceased Shareholder, or the date that the person consents in writing to act as director, whichever is the later.

## **9. Remuneration of Directors**

- (1) This clause is subject to the clauses contained in Part 2 of this Constitution.
- (2) The directors may be paid the remuneration that the company determines by resolution.
- (3) The company may also pay the directors' travelling and other expenses that they properly incur:
  - (a) In attending directors' meetings or any meetings of committees of directors; or
  - (b) in attending any general meetings of the company; or
  - (c) in connection with the company's business.

## **10. Director May Resign by Giving Written Notice**

A director may resign as a director by giving a written notice of resignation to the company at its registered office.

## **11. Removal by Members**

The company:

- (a) may, by resolution, remove a director from office; and
- (b) may, by resolution, appoint another person as a director instead.

## **12. Directors May Appoint Managing Director**

The directors may appoint 1 or more of themselves to the office of managing director for the period, and on the terms (including as to remuneration), that the directors consider appropriate.

## **13. Powers of Managing Director**

- (1) The directors may confer on a managing director any of the powers that the directors can exercise.
- (2) The directors may revoke or vary a conferral of powers on the managing director.



#### **14. Termination of Appointment of Managing Director**

- (1) A person ceases to be managing director if they cease to be a director.
- (2) The directors may revoke or vary an appointment of a managing director.

#### **15. Terms and Conditions of Office for Secretary**

A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

#### **16. Alternate Directors**

- (1) This clause is subject to the clauses contained in Part 2 of this Constitution.
- (2) With the approval of the other directors, if any, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.
- (3) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.
- (4) An exercise of the director's powers by an alternate is as effective as if exercised by the director.
- (5) The appointing director may terminate the alternate's appointment at any time.
- (6) An appointment or its termination must be in writing.  
*Note: ASIC must be given notice of the appointment and termination of appointment of an alternate (see subsections 205B(2) and (5) of the Corporations Act).*
- (7) The appointing director must give to the company a copy of an appointment or its termination.

#### **17. Execution of Documents**

- (1) If the company has a sole director and does not have a secretary, the sole director may:
  - (a) execute a document (including a deed) without fixing a common seal to it; or
  - (b) execute a document (including a deed) by fixing a common seal to it and witnessing the fixing.
- (2) This clause does not limit the ways in which the company may execute a document.

#### **18. Negotiable Instruments**

- (1) Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (2) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.
- (3) If the company has a sole director, that director may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

- (4) 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.

## 19. Wholly Owned Subsidiary

Subject to the Corporations Act, a director is authorised to act in the best interests of any company of which this company is a wholly owned subsidiary if:

- (a) this company is not insolvent at the time the director acts; and
- (b) this company does not become insolvent because of the director's act.

## 20. Contracts or Arrangements Involving Director

- (1) A director is not, because of being a director, disqualified from:
- (a) holding any office or place of profit under:
    - (i) this company; or
    - (ii) any company of which this company is a shareholder or in which this company is otherwise interested; or
  - (b) contracting with this company either as a vendor or purchaser or in any other capacity.
- (2) This company cannot avoid a contract mentioned in subclause (1)(b) merely because it is entered into by a director.
- (3) This company cannot avoid a contract or arrangement entered into by it, or on its behalf, merely because a director has an interest in it.
- (4) A director is not, only because of being a director or of owing any duty to this company as a director, liable to account to this company for any profit:
- (a) arising from an office or place of profit mentioned in subclause (1)(a); or
  - (b) realised by a contract mentioned in subclause (1)(b) or a contract or arrangement mentioned in subclause (3).
- (5) A director may vote on matters that relate to a contract or arrangement in which the director has a material personal interest.
- (6) A director may, on behalf of this company, sign a document relating to a contract or arrangement in which the director has a material personal interest.

## 21. Indemnity and Insurance

- (1) Each officer of the company is indemnified out of the property of the company against any liability (including legal costs) to another person (other than this company or a related body corporate).
- (2) The company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an officer of the company against any liability:
- (a) for costs and expenses incurred by the person in defending proceedings, whether civil or criminal and whatever their outcome; or
  - (b) incurred by the person as an officer of the company.
- (3) This clause applies to the extent that it may lawfully do so.

## **22. Company or Directors May Allow Member to Inspect Books**

The directors, or the company by a resolution passed at a general meeting, may authorise a member to inspect books of the company.

## **Part 4: Meetings of Directors**

---

### **23. Calling Director's Meetings**

A directors' meeting may be called by a director giving reasonable notice individually to each other director.

### **24. Chairing Director's Meetings**

- (1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chairperson.
- (2) 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 chairperson is not available or declines to act, for the meeting or the part of the meeting.

### **25. Quorum at Director's Meetings**

Unless the directors determine otherwise:

- (a) the quorum for a directors' meeting is 2 directors; and
- (b) the quorum must be present at all times during the meeting.

*Note: For resolutions of 1 director companies without meetings, see subclause 27(4).*

### **26. Passing of Directors' Resolutions**

- (1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- (2) The chairperson has a casting vote if necessary in addition to any vote they have in their capacity as a director.

*Note: The chairperson may be precluded from voting, for example, by a conflict of interest.*

## **27. Circulating Resolutions of Directors**

- (1) 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.
- (2) Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- (3) The resolution is passed when the last director signs.

### **Resolution if 1 Director**

- (4) If the company has only 1 director, then that director may pass a resolution by recording it and signing the record in accordance with section 248B of the Corporations Act.

*Note: Passage of a resolution or the making of a declaration under this clause must be recorded in the company's minute books.*

## **Part 5: Meetings of Members**

---

### **28. Calling of Meetings of Members by a Director**

A director may call a meeting of the company's members.

### **29. Notice of Meetings of Members to Members and Directors**

- (1) Notice to joint members must be given to the joint member named first in the register of members.
- (2) A notice of meeting sent by post is taken to be given 3 days after it is posted.
- (3) A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.
- (4) A notice of meeting given to a member under subsection 249J(3A) of the Corporations Act (where a member nominates electronic means of notification or access) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

### **30. Chairing Meetings of Members**

- (1) The directors may elect an individual to chair meetings of members.
- (2) The directors at a meeting of members must elect an individual present to chair the meeting (or part of it) if:
  - (a) an individual has not already been elected by the directors to chair it; or
  - (b) an individual so elected is not available to chair it, or declines to act, for the meeting (or part of the meeting).
- (3) The members at a meeting of members must elect a member present to chair the meeting (or part of it) if:

- (a) a chairperson has not previously been elected by the directors to chair the meeting; or
  - (b) a previously elected chairperson is not available, or declines to act, for the meeting (or part of the meeting).
- (4) The chairperson must adjourn a meeting of members if the members present with a majority of votes at the meeting agree or direct that the chairperson must do so.

### **31. Quorum at Members' Meeting**

- (1) The quorum for a meeting of the company's members is 2 members.
- (2) The quorum must be present at all times during the meeting.

*Note: For single member companies, see subclause 41(2).*

- (3) The following applies when determining whether a quorum is present:
- (a) count individuals attending as proxies or body corporate representatives;
  - (b) if a member has appointed more than 1 proxy or representative, count only 1 of them;
  - (c) if an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

*Note: For rights to appoint proxies, see section 249X of the Corporations Act.*

*Note: For body corporate representatives, see section 250D of the Corporations Act.*

- (4) A meeting of members 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.
- (5) If the directors do not specify 1 or more of the things mentioned in subclause (4), the meeting is adjourned to:
- (a) if the date is not specified—the same day in the next week; and
  - (b) if the time is not specified—the same time; and
  - (c) if the place is not specified—the same place.
- (6) If a quorum is not present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

### **32. Notice of Adjourned Meeting**

If a meeting is adjourned for 1 month or more, a new notice of the resumed meeting must be given.

### **33. Adjourned Meeting**

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### 34. Who can Appoint a Proxy?

- (1) A member who is entitled to attend and cast a vote at a meeting of members may appoint a person as their proxy to attend and vote for them at the meeting.
- (2) The person appointed as proxy may be an individual or a body corporate.

*Note: A body corporate may appoint a representative to exercise the powers that the body corporate may exercise as the member's proxy, see section 250D of the Corporations Act.*

- (3) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (4) Each member may appoint a proxy.
- (5) If a member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies.
- (6) If a member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (7) Disregard any fractions of votes resulting from the application of subclause (3) or (6).

### 35. Validity of Proxy Vote

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 member:

- (a) dies; or
- (b) becomes mentally incapacitated; or
- (c) revokes the proxy's appointment; or
- (d) revokes the authority under which the proxy was appointed by a third party; or
- (e) transfers the share in respect of which the proxy was given.

*Note: A proxy's authority to vote is suspended while the member is present at the meeting (see subsection 249Y(3) of the Corporations Act).*

### 36. How Voting is Carried Out

- (1) A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded.
- (2) Before a vote is taken the chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (3) On a show of hands, a declaration by the chairperson is conclusive evidence of the result if it reflects the show of hands and the votes of the proxies received.
- (4) Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against.

*Note: Even though the chairperson's declaration is conclusive of the voting results, the members present may demand a poll (see paragraph 250L(3)(c) of the Corporations Act).*

### **37. When and How Polls Must be Taken**

- (1) A poll demanded on a matter other than the election of a chairperson or the question of an adjournment must be taken when, and in the manner, the chairperson directs.
- (2) A poll on the election of a chairperson or on the question of an adjournment must be taken immediately.

### **38. Number of Votes**

- (1) Subject to any rights or restrictions attached to any class of shares, at a meeting of members:
  - (a) on a show of hands, each member has 1 vote; and
  - (b) on a poll, each member has 1 vote for each share they hold.

*Note: Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).*

- (2) The chairperson has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.

*Note: The chairperson may be precluded from voting, for example, by a conflict of interest.*

*Note: For rights to appoint proxies, see section 249X of the Corporations Act.*

### **39. Jointly Held Shares**

If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.

### **40. Objections to Right to Vote**

A challenge to a right to vote at a meeting of members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairperson, whose decision is final.

### **41. Circulating Resolution of Members**

- (1) The company may pass a resolution without a general meeting being held if all the members 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 in accordance with section 249A of the Corporations Act.

#### **Resolution if 1 Member**

- (2) If the company has only 1 member, that member may pass a resolution by the member recording it and signing the record in accordance with section 249B of the Corporations Act.

*Note: Passage of a resolution or the making of a declaration under this clause must be recorded in the company's minute books.*

## Part 6: Shares

---

### 42. Share Offer to Existing Shareholders

- (1) This clause does not apply:-
  - (a) while the same person is both the company's sole director and sole shareholder, and otherwise
  - (b) unless the company, in general meeting, by special resolution, resolves that it applies. The special resolution may specify a date or event from which this clause applies.
- (2) Before issuing shares of a particular class, the directors must offer them to the existing holders of shares of that class.
- (3) 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.
- (4) 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 the offer will remain open.
- (5) The directors may issue any shares not taken up under the offer under subclause (2) as they consider appropriate.
- (6) The company may, by a resolution passed at a general meeting, authorise the directors to issue any shares without complying with subclause (2).

### 43. Dividends

- (1) This clause is subject to the clauses contained in Part 2 of this Constitution.
- (2) Subject to the terms of issue of shares, the directors may pay dividends as they consider appropriate.
- (3) The directors may determine that a dividend is payable and fix:
  - (a) the amount; and
  - (b) the time for payment; and
  - (c) the method of payment.
- (4) The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.
- (5) Interest is not payable on a dividend.

### 44. Calls on Shares

- (1) The directors may make calls on the members in respect of any money unpaid on the shares of the members that, by the terms of issue of those shares, is not payable at fixed times.
- (2) A call must be taken to have been made at the time the resolution of the directors authorising it was passed.



- (3) A call must not:
  - (a) exceed 25% of the issue price of the shares; or
  - (b) be payable earlier than one month after the date fixed for the payment of the last preceding call.
- (4) 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.
- (5) Each member must, on receiving at least 14 days' notice specifying the time or times and place of payment, pay the amount called as specified in the notice.
- (6) A call may be required to be paid by instalments.
- (7) The directors may revoke or postpone a call.
- (8) The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.
- (9) Any sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date must, for this constitution, be taken to be a call duly made and payable on the date on which by those terms it becomes payable.

#### **45. Pre-call Payment of Unpaid Amount**

- (1) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- (2) The directors may authorise payment by the company of interest, at a rate agreed between the directors and the member, on the whole or any part of an amount accepted as mentioned in subclause (1) until the amount becomes payable.
- (3) However, the rate of interest payable under subclause (2) must not exceed:
  - (a) if the company has, by resolution, fixed a rate - the rate so fixed; and
  - (b) in any other case - 8% per year.

#### **46. Interest on Unpaid Call**

- (1) This clause applies if a sum called in respect of a share is not paid on or before the day appointed for payment.
- (2) The person liable to pay the sum must pay interest on it from the day appointed for payment to the time of actual payment at the rate, not exceeding 8% per year, that the directors determine.
- (3) The directors may waive payment of interest wholly or in part.

#### **47. Forfeiture of Shares on Failure to Pay Call**

- (1) This clause applies if a member fails to pay a call or instalment of a call on the day appointed for payment.

- (2) The directors may, at any time after the day appointed for payment until the call or instalment is paid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.
- (3) The notice must:
  - (a) name a further day (not earlier than the end of 14 days after 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, if payment is not made as mentioned in subclause (a), the shares in respect of which the call was made will be liable to be forfeited.
- (4) The company may, by resolution, if payment is not made as mentioned in subclause (3)(a), declare any share in respect of which the call was made to have been forfeited.
- (5) Forfeiture under subclause (4) includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- (6) A forfeited share may be sold or otherwise disposed of on any terms and in any manner that the directors consider appropriate.
- (7) The company may:
  - (a) receive the consideration (if any) given for a forfeited share on any sale or disposition of the share; and
  - (b) execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (8) On the execution of the transfer, the transferee:
  - (a) must be registered as the holder of the share; and
  - (b) is not bound to see to the application of any money paid as consideration.
- (9) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- (10) At any time before a sale or disposition mentioned in subclause (6), the forfeiture may be cancelled on any terms that the directors consider appropriate.
- (11) A person whose shares are forfeited:
  - (a) ceases to be a member in respect of the forfeited shares; but
  - (b) remains liable to pay to the company all money that, at the date of forfeiture, was payable by the member to the company in respect of the shares.
- (12) A liability under subclause (11)(b) includes, if the directors so demand, liability to pay interest on the money for the time being unpaid, at the rate of 8% per year from the date of forfeiture.
- (13) A statement in writing declaring that the person making the statement is a director or a secretary of the company, 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.
- (14) This clause applies 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.

#### 48. Transmission of Shares on Death

- (1) 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.
- (2) 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:
  - (a) the personal representative may:
    - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
    - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
  - (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.
- (3) On receiving an election under subclause (2)(a)(i), the company must register the personal representative as the holder of the shares.
- (4) A transfer under subclause (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- (5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares.
- (6) The estate of the deceased shareholder is not released from any liability in respect of the shares.

#### 49. Transmission of Shares on Bankruptcy

- (1) This clause applies 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.
- (2) 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.
- (3) On receiving an election under subclause (2)(a), the company must register the person as the holder of the shares.
- (4) A transfer under subclause (2)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- (5) This clause is subject to the *Bankruptcy Act 1966* (Cth.).

## **50. Transmission of Shares on Mental Incapacity**

- (1) This clause applies 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.
- (2) 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.
- (3) The person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.
- (4) On receiving an election under subclause (2)(a), the company must register the person as the holder of the shares.
- (5) A transfer under subclause (2)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

## **51. Registration of Transfers**

- (1) A person transferring shares remains the holder of the shares until:
  - (a) the transfer is registered; and
  - (b) the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.
- (2) The directors are not required to register a transfer of shares in the company unless:
  - (a) the transfer and any share certificate have been lodged at the company's registered office; and
  - (b) any fee payable on registration of the transfer has been paid; and
  - (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.
- (3) 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.
- (4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine.
- (5) Periods of suspension under subclause (4) must not exceed 30 days in any one calendar year.

## **52. Additional General Discretion for Directors to Refuse to Register Transfers**

Despite clause 51, the directors may refuse to register a transfer of shares for any reason and without giving any reason for the refusal.