

Australian Securities & Investments Commission

A Company Limited by Shares

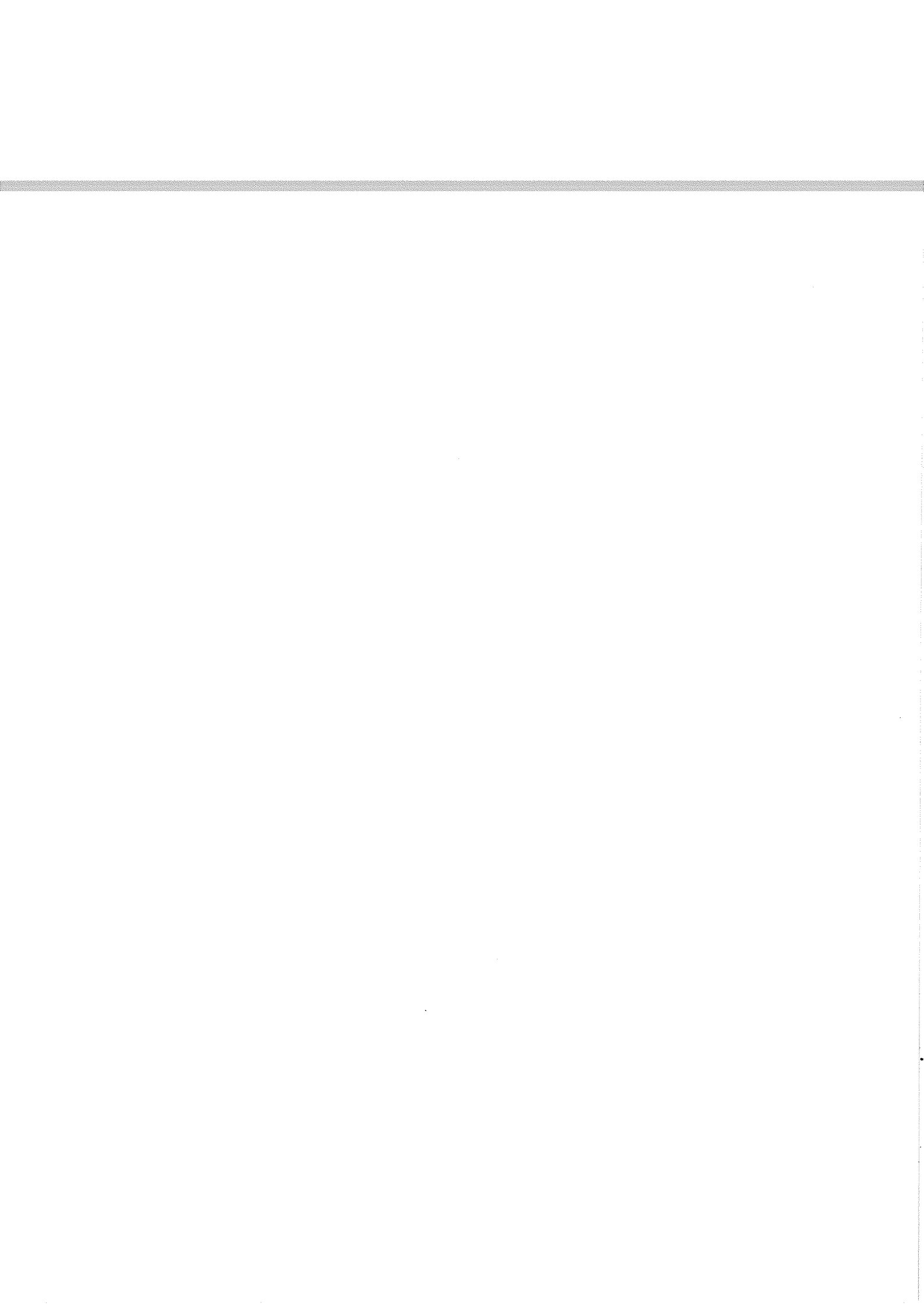
**Constitution**

**of**

**MANTRI PROPERTY PTY LTD**

**Rendall Kelly Chartered Accountant  
Level 1, Suite 4  
76 Phillip Street  
Parramatta NSW 2150**

**Ph: 02 96871899**



# Certificate of Registration of a Company

This is to certify that

**MANTRI PROPERTY PTY LTD**

**Australian Company Number 162 404 819**

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.**

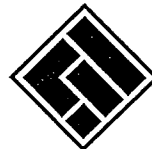
The company is a **proprietary** company.

The day of commencement of registration is  
**the fifteenth day of February 2013.**

Issued by the  
Australian Securities and Investments Commission  
on this fifteenth day of February, 2013.

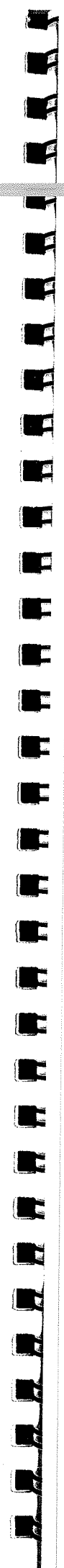


Greg Medcraft  
Chairman



CERTIFICATE





**Corporations Act 2001**  
**A Company Limited by Shares**

**MANTRI PROPERTY PTY LTD**

1. This is the Constitution of the company.

**Interpretation**

2. (a) "the Act" or "the Corporations Act" means the Corporations Act 2001 or any Act that amends or replaces it.
- (b) The rules in this Constitution apply to the company and to the extent that the replaceable rules from time to time contained in the Corporations Act apply to the company, the replaceable rules are modified as expressly provided in this Constitution.
- (c) Except in so far as 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.

**Director Interested in Contract with Company**

3. The replaceable rule in section 194 is deleted and the following rule is substituted, subject to section 191 of the Corporations Act:-
- (a) No director shall be disqualified by his or her office from holding any office or place of profit under the company or under any company in which this company shall be a shareholder or otherwise interested or from contracting with the company either as vendor, purchaser or otherwise.
- (b) No such contract or any contract or arrangement entered into by or on behalf of the company in which any director shall be in any way interested shall be avoided nor shall any director be liable to account to the company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such director holding that office or of the fiduciary relations thereby established.
- (c) A director may vote in respect of any contract or arrangement in which he or she is interested. A director may sign a document even though he or she is interested in the contract or arrangement to which the document relates.

**Director's Discretion to Refuse to Register Transfers**

4. The replaceable rule in section 1072G is deleted and the following rule is substituted:

The directors of the company may refuse to register a transfer of shares in the company for any reason and without assigning any reason for that refusal.

**Calls on Shares**

5. (a) The directors may make calls upon the members in respect of any money unpaid on the shares of the members and not by the terms of issue of those shares made payable at fixed times, except that no call shall exceed one quarter of the issue price of the shares or be payable earlier than one month from the date fixed for the payment of the last preceding call.

(b) Each member shall, upon receiving at least 14 days' notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called on their shares.

(d) A call shall be 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.

(e) The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

(f) 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 due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding 8% per annum as the directors determine, but the directors may waive payment of that interest wholly or in part.

(g) Any sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date 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, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

(h) 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.

(i) 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.

(j) 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 such rate, not exceeding the prescribed rate, as is agreed upon between the directors and the member paying the sum. The prescribed rate of interest is:

- i. if the company has, by resolution, fixed a rate - the rate so fixed; and
- ii. in any other case - 8% per annum.

#### **Forfeiture of Shares**

6. (a) If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors may, at any time after that day during such time as any part of the call or instalment remains unpaid, 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.

(b) The notice shall name 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 shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

(c) If the requirements of a notice served under this rule are not complied with, any share in respect of which the notice has been given may after service of the notice and before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

- (d) Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- ~~(e) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.~~
- (f) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but 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 (including interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but their liability ceases if and when the company receives payment in full of all the money (including interest) so payable in respect of the shares.
- (g) A statement in writing declaring that the person making the statement is a director or secretary of the company, and that a share in the company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.
- (h) The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (i) Upon the execution of the transfer, the transferee shall be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (j) 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.
- (k) The provisions of these rules as to forfeiture 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.

#### **Indemnity and Insurance**

- 7. (a) Except to the extent prohibited by law and unless otherwise unlawful, every officer of the company must be indemnified out of the property of the company against any liability (including legal costs) to another person (other than the company or a related Body Corporate).
- (b) Except to the extent prohibited by law and unless otherwise unlawful, 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 for costs and expenses incurred by such person in defending proceedings, whether civil or criminal and whatever their outcome.
- (c) Except to the extent prohibited by law and unless otherwise unlawful, 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 incurred by the person as such an officer.

#### **Wholly Owned Subsidiary**

- 8. Subject to the Corporations Act 2001, if the Company is a wholly owned subsidiary of another body corporate, a director is authorised to act in the best interests of the other body corporate provided that the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.



## Share Capital

9. Without limiting any power to issue shares, issued shares may include:-  
**ordinary shares**  
**"A", "A1", "A2" Class shares**  
**"B", "B1", "B2" Class shares**  
**"C", "C1", "C2" Class shares**  
**"D", "D1", "D2" Class shares**  
**"E", "E1", "E2" Class shares**  
**"F", "F1", "F2" Class shares**  
**"G", "G1", "G2" Class shares**  
**"H" Class Redeemable Preference shares**  
**"I" Class Redeemable Preference shares**  
**"J" Class Redeemable Preference shares**
10. A member being the holder of an **"A", "A1" or "A2" Class share** holds that share subject to the following rights, privileges and conditions:-
- (a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held.
  - (b) the right to participate in the dividends (if any) determined by the directors to be paid on that share;
  - (c) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
11. A member being the holder of a **"B", "B1" or "B2" Class share** holds that share subject to the following rights, privileges and conditions:-
- (a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held;
  - (b) the right to participate in the dividends (if any) determined by the directors to be paid on that share;
  - (c) in a winding up of the company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the company.
12. A member being the holder of a **"C", "C1" or "C2" Class share** holds that share subject to the following rights, privileges and conditions:-
- (a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held;
  - (b) no right to participate in any dividends;
  - (c) in a winding up of the company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the company.
13. A member being the holder of a **"D", "D1" or "D2" Class share** holds that share subject to the following rights, privileges and conditions:-
- (a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held;
  - (b) no right to participate in any dividends;

- (c) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
14. A member being the holder of an "E", "E1" or "E2" Class share holds that share subject to the following rights, privileges and conditions:-
- (a) no right to attend and vote at any meeting of the company;
  - (b) the right to participate in the dividends (if any) determined by the directors to be paid on that share;
  - (c) in a winding up of the company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the company.
15. A member being the holder of a "F", "F1" or "F2" Class share holds that share subject to the following rights, privileges and conditions:-
- (a) no right to attend and vote at any meeting of the company;
  - (b) the right to participate in the dividends (if any) determined by the directors to be paid on that share;
  - (c) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
16. A member being the holder of a "G", "G1" or "G2" Class share holds that share subject to the following rights, privileges and conditions:-
- (a) no right whatsoever to vote at any meeting of the company;
  - (b) no right to participate in any dividends;
  - (c) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
17. A member being the holder of a "H" Class Redeemable Preference share holds that share subject to the following rights, privileges and conditions:-
- (a) no right whatsoever to vote at any meeting of the company;
  - (b) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered holder of any Redeemable Preference Share together with the amount paid up in respect of the shares to be redeemed, the company may at any time redeem all or from time to time redeem any one or more of the said Redeemable Preference Shares and such redemption shall take place immediately upon the expiry of seven days from the delivery or posting of the said notice of redemption and payment;
  - (c) in a winding up of the company to repayment of the issue price of such share in priority to all other shares in the company but no right to participate in the division of any surplus assets or profits of the company;
  - (d) the right to receive from the profits of the company as a first charge a non-cumulative preferential dividend at the rate of five percent (5%) per annum on the paid issue price of the "H" Class Redeemable Preference shares held.

18. A member being the holder of an "I" Class Redeemable Preference share holds that share subject to the following rights, privileges and conditions:-

- (a) no right whatsoever to vote at any meeting of the company;
- (b) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered holder of any Redeemable Preference Share together with the amount paid up in respect of the shares to be redeemed, the company may at any time redeem all or from time to time redeem any one or more of the said Redeemable Preference Shares and such redemption shall take place immediately upon the expiry of seven days from the delivery or posting of the said notice of redemption and payment;
- (c) in a winding up of the company to repayment of the issue price of such share in priority to all other shares in the company except the "H" Class Redeemable Preference shares but no right to participate in the division of any surplus assets or profits of the company;
- (d) the right to participate in the dividends (if any) determined by the directors to be paid on that share.

19. A member being the holder of a "J" Class Redeemable Preference share holds that share subject to the following rights, privileges and conditions:-

- (a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held;
- (b) upon giving seven days notice in writing of its intention so to do, delivered or posted to the last known address of the registered holder of any Redeemable Preference Share together with the amount paid up in respect of the shares to be redeemed, the company may at any time redeem all or from time to time redeem any one or more of the said Redeemable Preference Shares and such redemption shall take place immediately upon the expiry of seven days from the delivery or posting of the said notice of redemption and payment;
- (c) in a winding up of the company to repayment of the issue price of such share in priority to all other shares in the company except the "H" Class Redeemable Preference shares but no right to participate in the division of any surplus assets or profits of the company;
- (d) the right to participate in the dividends (if any) determined by the directors to be paid on that share.

#### **Execution**

20. Where the Company has a sole Director and no company Secretary, the sole Director may:

- (a) execute any document or instrument or authority without using a common seal; or
- (b) if the company has a common seal, execute any document or instrument or authority by fixing a common seal to a document if the sole Director witnesses the fixing; and
- (c) execute a document as a deed under paragraph (a) or (b) above.

This clause 20 does not limit the ways in which a company may execute a document (including a Deed).

### **Loan Clause**

21. (a) Every Loan made by the Company to a member is deemed to be a Loan made in accordance with the Loan Agreement in Schedule 1 of this Constitution.

### **SCHEDULE 1**

#### **Loan Agreement referred to in clause 21 of this Constitution**

This is the Loan Agreement referred to in clause 21 of the above Constitution ("Agreement"). This Agreement sets out the rate of interest payable, maximum term and terms and conditions of every Loan made by the Company to any Member.

**THE PARTIES** to this Agreement are the Company whose Constitution this Agreement forms a part (the "Company")

**AND** each Member of the Company, being a person whose name is entered in the register of Members under section 169 of the Corporations Act, 2001 (the "Member").

#### **RECITALS:**

- i. The Company has agreed to lend money without security to the Member.
- ii. The Company and the Member have agreed to enter into this Agreement to set out the terms and conditions of every Loan by the Company to the Member.
- iii. Unless agreed otherwise, the Company and the Member desire that all Loans meet the criteria set out in section 109N of Division 7A of the Income Tax Assessment Act 1936 and are therefore not taken to be dividends.

#### **THE PARTIES AGREE:-**

##### **1. Definitions and interpretation**

###### **(a) Definitions**

In this Agreement, unless inconsistent with the context or subject matter, the following terms have the following meanings:

"Amalgamated Loan" has the same meaning as in section 109E of Division 7A of the ITAA 1936 being the sum of the Constituent Loans made by the Company to the Member and not repaid before the Lodgement Day for the year of income in which the Loan was made.

"Constituent Loan" means any Loan forming part of an Amalgamated Loan.

"Corporations Act" means the Corporations Act 2001 (Commonwealth) and, where applicable, the corresponding legislation of any State or Territory of Australia and Regulations.

"Current Year" means the first Year of Income the Loan was made to the Member.

"Division 7A" means Division 7A of the Income Tax Assessment Act 1936.

"Drawdown Date" means the date the Loan is paid to the Member or paid as directed by the Member in writing.

"Income Year" or "Year of Income" means the period of 1 July to 30 June or, an accounting period adopted in lieu of by the Company;

"ITAA 1936" means the Income Tax Assessment Act, 1936 (Cth) and related legislation including Regulations made under that Act from time to time.

"Loan" has the same meaning as appears in section 109D of the ITAA 1936 and includes:-

- (a) an advance of money; and
- (b) a provision of credit or any other form of financial accommodation; and
- (c) a payment of an amount for, on account of, or on behalf of or at the request of, an entity, if there is an express or implied obligation to repay the amount; and
- (d) a transaction (whatever its terms or form) which in substance effects a Loan of money.

"Lodgement Day" has the same meaning as appears in section 109D(6) of the ITAA 1936.

"Minimum Yearly Repayment" means the minimum yearly repayment to be made by the Member in accordance with section 109E of the ITAA 1936.

"Repayment Date" means, in respect to each Loan made pursuant to this Agreement, a maximum of seven (7) years from the Drawdown Date.

**(b) Interpretation**

Unless the context otherwise requires, in the interpretation of this Agreement;

- i. Words importing the singular number include the plural and vice versa.
- ii. Any gender includes the other genders.
- iii. Any reference to a person includes a reference to a corporation, firm, authority, government or governmental agency.
- iv. Any reference to a party to this Agreement includes their permitted successors and assigns of that person.
- v. A reference to legislation or to a legislative provision includes all regulations, orders, proclamations, notices or other requirements under that legislation or legislative provision. It also includes any amendments modifications or re-enactments of that legislation or legislative provision and any legislation or legislative provision substituted for, and any statutory instrument issued under that legislation or legislative provision.
- vi. The clause headings in this Agreement are for reference purposes only and do not in any way influence or affect the meaning of this Agreement.
- vii. This Agreement includes the recitals of and any schedules to this Agreement and where amended means this Agreement as so amended.

**2. Loans to the Member**

Where the Company makes a Loan to a Member during the Current Year and the Loan is not fully repaid before the Lodgement Day for the Current Year then:-

- (a) The Member must pay interest, calculated on the daily balance of the unpaid Loan, for each Year of Income after the year in which the Loan was made for the term of the Loan; and
- (b) The rate of interest for an Income Year is equal to the benchmark interest rate for that Income Year as defined in section 109N of the ITAA 1936; and
- (c) The Member must where required by Section 109E, make Minimum Yearly Repayments to the Company, and in accordance with section 109E of the ITAA 1936, for the term of the Loan and paid on or before the last day of each Year of Income; and

(d) The Member must repay and finally discharge the Loan, including any interest accrued and unpaid on the Loan and all other amounts payable under this Agreement and unpaid to the Company, on or before the Repayment Date.

(e) The term of each Loan is a maximum of seven (7) years from the Drawdown Date.

**3. Application and Payment of Monies Received**

Any payment made by the Member to the Company in relation to a Constituent Loan will, in accordance with section 109E(4) of the ITAA 1936 be deemed a payment in relation to the Amalgamated Loan of which the Constituent Loan is a part.

**4. Notices**

A Notice must be in writing and served personally on the Member or sent by prepaid mail (airmail if overseas) or by facsimile to the address or facsimile number of the Member as recorded in the Company Register.

**5. General**

(a) The Member must provide the Company with such information as the Company may at any time require.

(b) A statement in writing by the Company setting out the Member's debt or any component parts shall be prima facie evidence of those amounts.

(c) The Member agrees that time is of the essence in relation to the performance of its obligations under this Agreement.

(d) Each provision of this Agreement shall be deemed to be separate and severable from the others of them. If any provisions of this Agreement are determined to be invalid or unenforceable in any jurisdiction, such determination and the consequential severance (if any) shall not invalidate the rest of the Agreement which shall remain in full force and effect as if such provision had not been made a part thereof, nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

(e) This Agreement is governed by the laws from time to time in force in the State or Territory in which the Company is incorporated.

(f) The Parties shall execute such other agreements and do all such acts, matters and things as shall be necessary or desirable in order to implement and give full effect to the provisions and purposes of this Agreement.

**6. Sole Agreement**

This Agreement states exclusively the terms and conditions for each Loan the Company makes to the Member however the Company and the Member may agree in writing to vary this Agreement. Unless the context otherwise so requires, a reference to this Agreement shall include a reference to this Agreement as amended or varied from time to time by the parties in writing.

**7. Joint and Several Liability**

Any agreement, warranty, representation or obligation which binds or benefits two or more persons under this Agreement, whether expressed or implied, binds or benefits those persons jointly and severally.

**8. Inconsistency**

If there is any inconsistency between the provisions of Division 7A of the ITAA 1936 and this Agreement then this Agreement shall be deemed varied to the extent necessary to ensure that any Loan is not treated as a dividend.



**Agreement**

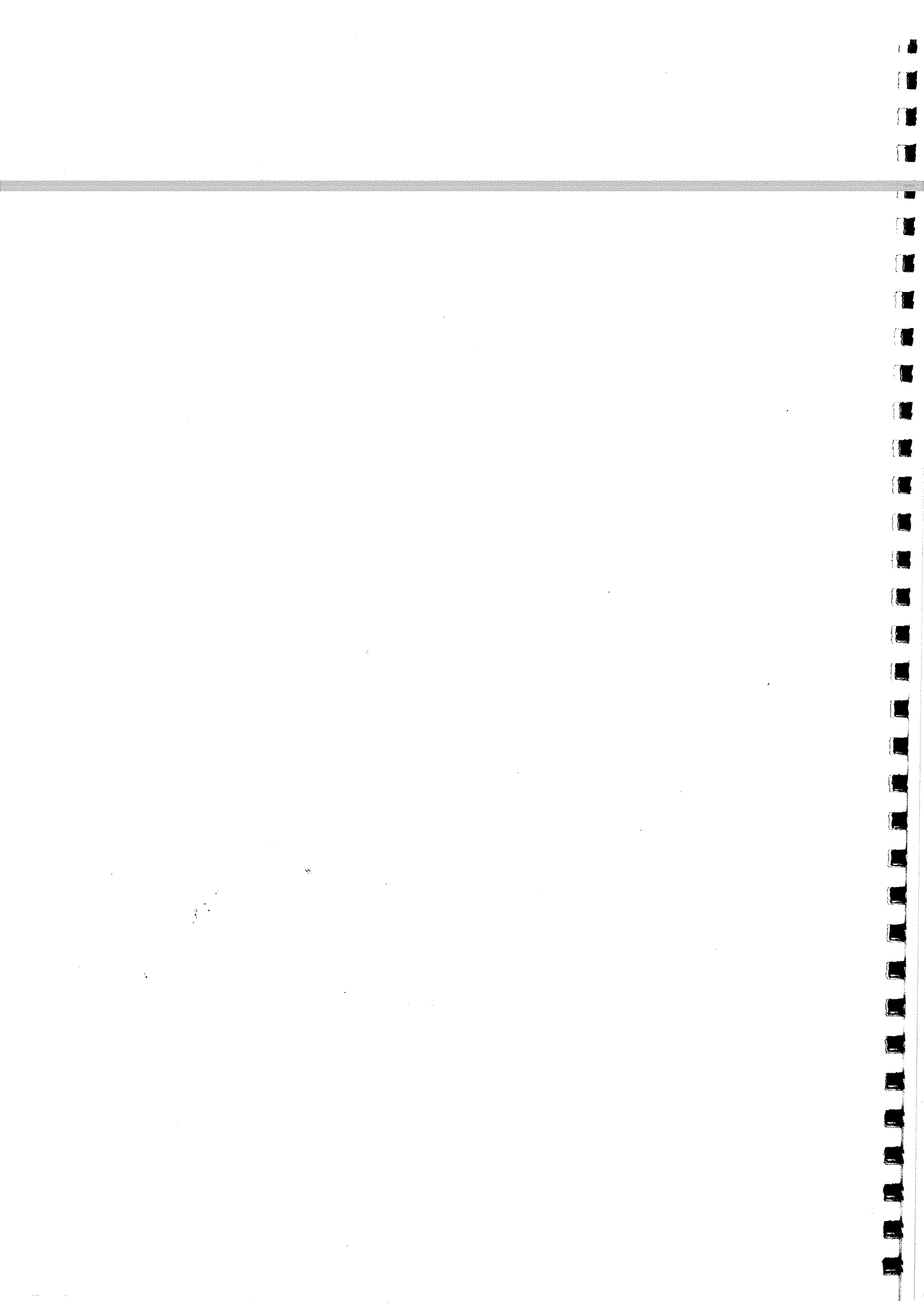
I/We, the undersigned, agree to this Constitution.

Signed by all members on: 14/02/2013

Signed: X Harish Mantri  
MANTRI, HARISH

Signed: X Kamna Mantri  
MANTRI, KAMNA





# Replaceable Rules

## Extract of Replaceable Rules

These rules do not form part of the Constitution however, subject to the Constitution these Rules apply. See the *Corporations Act 2001* (Cth). Italicised text is for guidance and is not contained in the *Corporations Act 2001* (Cth).

### Appointment of Directors

1. **201G Company may appoint a director (replaceable rule - see section 135).**

A company may appoint a person as a director by resolution passed in general meeting.

2. **201H Directors may appoint other directors (replaceable rule - see section 135).**

### Appointment by other directors

- (1) The directors of a company may appoint a person as a director. A person can be appointed as a director 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.

#### Proprietary company - confirmation by meeting within 2 months

- (2) If a person is appointed under this section as a director of a proprietary company, the company must confirm the appointment by resolution within 2 months after the appointment is made. If the appointment is not confirmed, the person ceases to be a director of the company at the end of those 2 months.

#### Public company - confirmation by next AGM

- (3) If a person is appointed by the other directors as a director of a public company, the company must confirm the appointment by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a director of the company at the end of the AGM.

3. **201J Appointment of managing directors (replaceable rule - see section 135)**

The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.

4. **201K Alternate directors (replaceable rule - see section 135)**

### *Appointment*

- (1) 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.

### *Notice of meetings*

- (2) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.

### *Exercise of Powers*

- (3) When an alternate exercises the director's powers, the exercise of the powers is just as effective as if the powers were exercised by the director.

### *Termination of appointment*

- (4) The appointing director may terminate the alternate's appointment at any time.

### *Requirement of writing*

- (5) An appointment or its termination must be in writing. A copy must be given to the company.

Note: ASIC must be given notice of the appointment and termination of appointment of an alternate (see subsections 205B(2) and (5)).

## **5. 198A Powers of directors (replaceable rule - see section 135)**

### *Management of business*

- (1) The business of a company is to be managed by or under the direction of the directors.

Note: See section 198E for special rules about the powers of directors who are the single director/shareholder of proprietary companies.

### *Exception*

- (2) The directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting.

Note: For example, the directors may issue shares, borrow money and issue debentures.

## **6. 198B Negotiable instruments (replaceable rule - see section 135)**

### *Number of directors for execution*

- (1) Any 2 directors of a company that has 2 or more directors, or the director of a proprietary company that has only 1 director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

### *Variation of method of execution*

- (2) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

## **7. 198C Managing director (replaceable rule - see section 135)**

### *Conferral of powers*

- (1) The directors of a company may confer on a managing director any of the powers that the directors can exercise.

*Revocation or variation*

- (2) The directors may revoke or vary a conferral of powers on the managing director.

8. **203B Termination or appointment of managing director (replaceable rule - see section 135)**

*Ceasing to be a director*

- (1) A person ceases to be managing director if they cease to be a director.

*Revocation or variation of appointment*

- (2) The directors may revoke or vary an appointment of a managing director.

9. **203C Removal by members - proprietary companies (replaceable rule - see section 135)**

**A proprietary company**

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

10. **203A Director may resign by giving written notice to company (replaceable rule - see section 135)**

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

11. **194 Voting and completion of transactions - directors of proprietary companies (replaceable rule - see section 135)**

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

- (a) under section 191 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 section 191;

then:

- (c) the director may vote on matters that relate to the interest; and  
(d) any transactions that relate to the interest may proceed; and  
(e) the director may retain benefits under the transaction even though the director has the interest; and  
(f) the company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under section 191, paragraphs (e) and (f) apply only if the disclosure is made before the transaction is entered into.

Note: A director may need to give notice to the other directors if the director has a material personal interest in a matter relating to the affairs of the company (see section 191).

**12. 202A Remuneration of directors (replaceable rule - see section 135)**

***Determined by resolution***

- (1) The directors of a company are to be paid the remuneration that the company determines by resolution.

Note. Chapter 2E makes special provision for the payment of remuneration to the directors of public companies.

***Travelling and other expenses***

- (2) 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; and
  - (b) in attending any general meetings of the company; and
  - (c) in connection with the company's business.

**Resolutions and declarations without meetings**

**13. 248A Circulating resolutions of companies with more than 1 director (replaceable rule - see section 135)**

**Resolutions**

- (1) The directors of a company 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.

**Copies**

- (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.

**When the resolution is passed**

- (3) The resolution is passed when the last director signs.

Note. Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

**Directors' meetings**

**14. 248C Calling directors' meetings (replaceable rule see section 135)**

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

Note. A director who has appointed an alternate director may ask for the notice to be sent to the alternate director (see subsection 201K(2)).

**15. 248E Chairing directors' meetings (replaceable rule see section 135)**

*Director may be elected to chair meetings for specified period*

- (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 chair.

*Election of director present at meeting*

- (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 chair is not available or declines to act, for the meeting or the part of the meeting.

**16. 248F Quorum at directors' meetings (replaceable rule see section 135)**

Unless the directors determine otherwise, the quorum for a directors' meeting is 2 directors and the quorum must be present at all times during the meeting.

Note 1: For special quorum rules for public companies, see section 195.

Note 2. For resolutions of 1 director proprietary companies without meetings, see section 248B.

**17. 248G Passing of directors' resolutions (replaceable rule see section 135)**

*Majority of votes*

- (1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

*Chair to have casting vote*

- (2) The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

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

Who may call meetings of members

**18. 249C Calling of meetings of members by a director (replaceable rule - see section 135)**

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

**19. 249J(2) Notice to joint members (replaceable rule - see section 135)**

Notice to joint members must be given to the joint member named first in the register of members.

20. **249J(4) When notice by post or fax is given (replaceable rule - see section 135)**

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, or other electronic means, is taken to be given on the business day after

21. **249J(5) When notice under paragraph (3)(cb) of Section 249J(3) is given (replaceable rule—see section 135)**

A notice of meeting given to a member under paragraph (3)(cb) 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.

22. **249M Notice of adjourned meetings (replaceable rule - see section 135)**

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

23. **249T Quorum (replaceable rule - see section 135)**

*Two members*

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

Note: For single member companies, see section 249B.

*Determination of existence of quorum*

- (2) In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than 1 proxy or representative, count only 1 of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

Note 1: For rights to appoint proxies, see section 249X.

Note 2: For body corporate representatives, see section 250D.

*Meeting to be adjourned if no quorum present within 30 minutes*

- (3) A meeting of the company's 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. If the directors do not specify 1 or more of those things, 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.

*Where no quorum present at resumed meeting*

- (4) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

24. **249U Chairing meetings of members (replaceable rule - see section 135)**

*Directors may elect individual*

- (1) The directors may elect an individual to chair meetings of the company's members.

*Where chair has not previously been elected or unavailable*

- (2) The directors at a meeting of the company's members 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).

*Where member may elect chair*

- (3) The members at a meeting of the company's members must elect a member 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).

*Adjournment of meeting*

- (4) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

25. **249W(2) Business at adjourned meetings (replaceable rule - see section 135)**

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

26. **249X Who can appoint a proxy (replaceable rule for proprietary companies and mandatory rule for public companies-see section 135)**

*Appointment*

- (1) A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.

*Proportion or number of votes may be specified*

- (2) The appointment may specify the proportion or number of votes that the proxy may exercise.

*Apportionment of votes between 1 or 2 proxies*

- (3) Each member may appoint a proxy. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the 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.



*Fractions of votes to be disregarded*

- (4) Disregard any fractions of votes resulting from the application of subsection (2) or (3).

**27. 250C(2) Proxy vote valid even if member dies, revokes appointment etc. (replaceable rule - see section 135)**

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:

- (a) the appointing member dies; or
- (b) the member is mentally incapacitated; or
- (c) the member revokes the proxy's appointment; or
- (d) the member revokes the authority under which the proxy was appointed by a third party; or
- (e) the member 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)).

**28. 250E How many votes a member has (replaceable rule - see section 135)**

**Company with share capital**

- (1) Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital:
  - (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).

**Company without share capital**

- (2) Each member of a company that does not have a share capital has 1 vote, both on a show of hands and a poll.

**Chair's casting vote**

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

Note 1: The chair may be precluded from voting, for example, by a conflict of interest.

Note 2: For rights to appoint proxies, see section 249X.

29. **250F Jointly held shares (replaceable rule - see section 135)**

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.

30. **250G Objections to right to vote (replaceable rule - see section 135)**

A challenge to a right to vote at a meeting of a company's members:

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

31. **250J How voting is carried out (replaceable rule - see section 135)**

*Show of hands*

- (1) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded.

*Proxy votes to be identified*

- (1A) 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.

*Declaration of chair conclusive evidence of result*

- (2) 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.

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

32. **250M When and how polls must be taken (replaceable rule - see section 135)**

*Polls other than on the election of chair*

- (1) 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.

*Election of chair*

- (2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

Appointment of secretaries

33. **204F Terms and conditions of office for secretaries (replaceable rule - see section 135)**

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

### Inspection of books

34. **247D Company or directors may allow member to inspect books (replaceable rule see section 135)**

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

### Issuing and converting shares

35. **254D Pre-emption for existing shareholders on issue of shares in proprietary company (replaceable rule - see section 135)**

#### *Shares of a particular class first to be offered to existing holders*

- (1) Before issuing shares of a particular class, the directors of a proprietary company 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.

#### *Statement setting out terms of the offer*

- (2) 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.

#### *Shares not taken up in offer under subs (1)*

- (3) The directors may issue any shares not taken up under the offer under subsection (1) as they see fit.

#### *Exemption to compliance with subs (1)*

- (4) The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with subsection (1).

36. **254U Other provisions about paying dividends (replaceable rule - see section 135)**

#### *Amount, time and method of payment*

- (1) 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.

The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

### *Interest*

- (2) Interest is not payable on a dividend.

Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends as they see fit.

### Special provisions for shares

38. **1072A Transmission of shares on death (replaceable rule - see section 135)**

#### **If shares not held jointly**

- (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.

#### *Personal representative's entitlements*

- (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.

#### *Registration of personal representative*

- (3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.

#### *Transfer rules apply*

- (4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

#### **If shares held jointly**

- (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. The estate of the deceased shareholder is not released from any liability in respect of the shares.

39. 1072B Transmission of shares on bankruptcy (replaceable rule see section 135)

*Holding and transferring shares*

- (1) If a person entitled to shares because of the bankruptcy of a shareholder gives the 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.

*Registration as holder*

- (2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.

*Transfer rules apply*

- (3) A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

*Effect subject to Bankruptcy Act 1966*

- (4) This section has effect subject to the Bankruptcy Act 1966.

40. 1072D Transmission of shares on mental incapacity (replaceable rule - see section 135)

*Registration and transfer*

- (1) 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:
  - (a) the person may:
    - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; and
    - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
  - (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.

*Company must register person*

- (2) On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.

*Transfer rules apply*

- (3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

**41. 1072F Registration of transfers (replaceable rule - see section 135)**

*Holder of shares*

- (1) 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 members in respect of the shares.

*Registration by directors*

- (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.

*Refusal to register*

- (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.

*Suspension of registration*

- (4) 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.

**42. 1072G Additional general discretion for directors of proprietary companies to refuse to register transfers (replaceable rule - see section 135)**

The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.



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