



Inspection of Books

34.	Company or directors may allow member to inspect books	247D	10
-----	--	------	----

Shares

35.	Pre-emption for existing shareholders on issue of shares in a proprietary company	254D	10
36.	Other provisions about paying dividends	254U	10
37.	Shares in proprietary companies	254W(2)	11

Transfer of Shares

38.	Transmission of shares on death	1072A	11
39.	Transmission of shares on bankruptcy	1072B	12
40.	Transmission of shares on mental incapacity	1072D	12
41.	Registration of transfers	1072F	13
42.	Additional general discretion for directors of proprietary companies to refuse to register transfers	1072G	13



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 directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
 - (a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the company, transfer the shares to another person.

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.

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.

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.

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 it is sent.

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.

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.

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.





"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

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).

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;

- (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.
- (c) The directors may revoke or postpone a call.
- (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.



