

**The *Strategist* Sole Purpose  
SMSF Trustee Company**

**The Constitution of  
Wellspring Investments Pty  
Ltd  
A.C.N. 132 208 489**

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# What this Document is about

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

This document is in two parts. The first part is an information statement that talks about the role of the trustee of a SMSF and more importantly the role and responsibilities of a director of a trustee company. It also considers the powers of the trustee and what is required to be done at meetings. The information memorandum is educational and informational only.

The second part is the legal constitution of the trustee company. These are the rules that the directors of the trustee company and the shareholders agree to. They must be followed at all times.

## Part One Information Statement

### 1. Introduction to Trustee's Role

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

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

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

1. Read the constitution of the trustee company. If a director or potential director has any questions about their role as a director then in the first instance they should be directed to the chairman of the fund's trustee company and failing that to the adviser appointed to establish the trustee company;
2. The director of the trustee company must read and be aware of all of the material contained in the product disclosure statement ("PDS") and the governing rules of the SMSF. These documents provide the trustee with all the benefits available to a member of a fund, when those benefits may be paid and how they will be paid. They also cover how a member's benefits are taxed, the risks involved in being a trustee, the authorised investments of the fund, the powers of the trustee and what the trustee must or must not do when certain member and other actions take place involving the fund.
3. Read the ATO publication "Role and Responsibilities of Trustees." This publication is an essential guide for trustees on operational matters within a SMSF and the nature of their trustee responsibilities.

### 2. Trustee's Corporations Act 2001 Responsibilities

The trustee of a SMSF is not required to be licensed however they do have other important responsibilities. In that regard the *Corporations Act 2001* provides that where a person is provided with a financial product the trustee of a SMSF must issue them with a PDS. A PDS is a statement that contains information required by the *Corporations Act*

2001 to provide prospective members and members with sufficient information to make an informed decision about acquiring a financial product. Importantly the PDS is required to provide information about any significant benefits to which that person may become entitled as well as the circumstances, process and timeframe in which those benefits may be provided.

*Failure to do so may render the trustee and its directors liable to a \$22,000 fine and/or two years imprisonment.*

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

- the making of a contribution into a fund;
- the payment of a SMSF pension;
- taking a disability benefit;
- putting in place an investment strategy;
- establishing a transition to retirement income plan;
- paying out benefits in the event of a member's death;
- making an investment that is a financial product;
- withdrawal of a lump sum from the fund;
- creating an insurance plan for the members of the fund.

It is important to understand that it is the trustee's responsibility to provide members and prospective members with a PDS. This is the case even though the members of the fund may be directors of the trustee company. The trustee may use the Strategist PDS where the trustee is using the Strategist Trust Deed and Governing Rules.

### **3. The Purpose of the Fund**

The fund has been established as a SMSF with a *Strategist* SMSF Trust Deed and Governing Rules. The *Strategist* SMSF Governing Rules are unique and not universal to every SMSF.

The directors of the trustee company act in their capacity as trustee.

The sole and primary purpose of a SMSF is to provide retirement, death, or incapacity benefits to the members and their dependants. Benefits might be provided by way of lump sum or an income stream (that is a pension) or a combination of both. Further, members who have reached their preservation age – age 55 for those born before 1960, are entitled to a transition to retirement income stream (even though the member may still be working).

The trustee must ensure that it maintains the fund for the sole purpose of providing the above benefits to members. Failure to do so may render the fund a non-complying SMSF. The Commissioner of Taxation may replace trustees that have breached the *SIS Act* or their governing rules with his preferred trustee. Accordingly a trustee must ensure that they are conservative in their actions and take professional SMSF advice where necessary.

### **4. Trustee's General Responsibilities**

Under general trust law at all times a trustee is required to act honestly, prudently and in the best interests of members in relation to all matters concerning the Fund.

Directors and potential directors reviewing this constitution should be aware that both civil and criminal penalties can be imposed under the superannuation laws for any breach of these and other trustee responsibilities including breaking the Fund's governing rules. Prior to accepting an appointment as a director, it is important that a person consider the risks associated with such an appointment. The excuse that the director was not aware

of the superannuation laws or the governing rules is not valid at law. If a person is unwilling to take on the responsibilities as director of a trustee company yet retain the benefits generally available in a SMSF then it may be advisable to appoint an approved trustee. In this instance the fund becomes what is known as a small APRA fund or SAF.

Some of the more important responsibilities for a trustee of a SMSF include but are not limited to:

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

## **5. Trustee Meetings and Decision Making**

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

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

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

## 6. Trustee's Powers

In the administration of a fund and in the exercise of the powers, authorities and discretions conferred by the trust deed, governing rules or by law the trustee shall have the following powers:

- i. *Generally deal with Fund assets:* to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the Fund;
- ii. *Real property:* to acquire, dispose of, exchange, mortgage, sub-mortgage, lease, sub-lease, grant, release or vary any right or easement or otherwise deal with any interest in real property;
- iii. *Personal property:* to acquire, dispose of, exchange, hire, lease, mortgage or otherwise deal with any interest in personal property;
- iv. *Lease:* to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases, tenancies or rights of any nature to any interest in real estate, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other personal property of any description;
- v. *To let:* to lease and let property owned by the Fund or held by the Trustee pursuant to the provisions of these Rules upon terms and conditions as the Trustee may decide, to accept surrenders from, and to make arrangements with a lessee or tenant as the Trustee may consider appropriate;
- vi. *Engage specialists:* to employ or engage agents or professionals in the execution of the Self Managed Superannuation Fund and powers and instead of acting personally from time to time to employ or engage and pay out of the trust fund such managers, agents, self managed superannuation fund advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business or to do any act required to be done in connection with the administration of the trusts declared in this deed, and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;
- vii. *To lend:* subject to these Rules and the Act to lend and advance moneys;
- viii. *Bank accounts:* to open in the name of the Fund or in the name of any person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the Trustee decides, with full power to operate or close any such account;
- ix. *Management expenses:* to pay out of the assets, Reserves or the income of the Fund all costs charges and expenses incidental to the management of the Fund or to the exercise of any power, authority or discretion contained in the Rules or the Deed;
- x. *Pay general expenses:* to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the Fund from the assets, Reserves or the income of the Fund and to manage such property and effect repairs as the Trustee may consider necessary or advisable;
- xi. *Corporate securities:* with respect to any company in which the Trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned ("securities") to exercise the following powers in addition to powers conferred by law:
  - to pay calls on securities or to permit securities to be forfeited and sold;
  - to purchase securities and to take up securities of a new issue;

- to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
  - to sell securities at such price and upon such terms with or without security as the Trustee decides;
  - to agree to any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the Fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and generally to manage and deal with any securities as if the Trustee owned them beneficially; and
  - to agree in respect of a winding up with the liquidator of the company or any member of such company or any other person, in all things as the Trustee shall decide, for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the Trustee in the company with power to pay any moneys by way of equality of division or partition;
- xii. *Unit trust interests:* to acquire units or sub-units of any fixed or flexible unit trust either by way of application, purchase or by way of settlement by the Trustee in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustee of such unit trust;
- xiii. *Franchises:* to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature;
- xiv. *Subdivision of property:* to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay moneys by way of equality or partition;
- xv. *Maintain property:* to maintain and preserve in good condition any real or personal property of the Fund or otherwise held by the Trustee according to the Rules and to pay or defray those costs;
- xvi. *Power to set aside:* to set aside out of the income or capital of the Fund from time to time such money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing;
- xvii. *Future contracts and options:* to engage brokers and commission agents and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in any part of the world buy sell, open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option, and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange provided the Trustee maintains a risk management strategy;
- xviii. *Trustee's power to deal with itself:* notwithstanding any rule or law or equity to the contrary, to acquire as property of the Fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the Trustee PROVIDED THAT any property so acquired is acquired for a consideration being not greater than the current Market Value of the property and upon which such



acquisition the beneficial interest in and to the property shall be held by the Trustee according to the Rules;

- xix. *Policies:* to effect or acquire policies of life assurance of any kind on the life of any Member or in respect of sickness, disability or accident to any Member; to pay premiums transfer, surrender, change the situs of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons; to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
- xx. *Agency and licences:* to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business which the Trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- xxi. *Choses-in-action:* to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the Trustee may see fit;
- xxii. *Receive gifts or distributions:* to receive property by gift inter vivos or by distribution under a will or under the provisions of any other trust or otherwise from any person as an addition to the trust fund, whether subject to liabilities or not and to hold these gifts according to the Rules and to administer such additions under these provisions;
- xxiii. *Legal proceedings:* to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the Trustee may decide;
- xxiv. *Intellectual property:* to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trade marks, designs, formulas, licenses, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licenses in respect of or otherwise turn to account the property rights or information so acquired;
- xxv. *Release of powers:* by irrevocable deed to renounce and release any power conferred on the Trustee under the Rules in respect of the whole or any part of the Trustee or the income or any part thereof. Upon such renunciation and release any power or powers shall be deemed to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;
- xxvi. *Incidental powers:* to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the Trustee.

However in exercising any of its powers including the powers of investments the trustee must ensure that at all time the fund remains a Complying SMSF. If an action is taken that may render the fund a non-complying SMSF then the trustee is not authorised to take that action.

## **7. Authorised Investments**

The trustee may invest the assets of the fund in any investment the trustee believes appropriate provided they comply with all relevant laws and the governing rules of the fund. The investments may be both within and outside Australia. In particular, the trustee should have the power to invest any either alone or in partnership or co-ownership with other people. Some of these investment activities include:

- i. *Authorised investments:* in any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust moneys;

- ii. *Real and personal property:* in the acquisition of real or personal property or any interest therein and without limiting the generality thereof of any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country and although the acquisition is not made primarily for the production of income;
- iii. *Property development:* in developing and turning to account any real or personal property or any interest therein, or any property right or interest which is or may be subject to these trusts and without limiting such generality by constructing, reconstructing, maintaining or improving any buildings or by laying out and preparing land for subdivision, conversion to strata or similar title and for buildings;
- iv. *Shares:* in the acquisition of fully or partly paid shares including; redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
- v. *Option and rights:* in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (d) of this sub-clause;
- vi. *Deposit:* on fixed deposit or at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business;
- vii. *Insurance:* in the acquisition of any policy of assurance or insurance of any kind whatsoever and wherever made;
- viii. *Loans:* in making loans to any person or company except to Members of the Fund or their Relatives;
- ix. *Precious objects:* in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
- x. *Commodity contracts:* in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
- xi. *Permanent building society:* in the lodgement of moneys with a permanent building society wherever situated by taking up shares therein or depositing funds therewith;
- xii. *Deferred property:* in the acquisition of any reversionary or deferred property or rights of any description.

## **8. Trustee must not borrow**

Normally the Trustee is not allowed to borrow nor mortgage or charge the assets of the Fund. A borrowing includes an overdraft or a margin account. An acquisition of an instalment warrant unless specially allowed by the SIS Act might be a borrowing. These are prohibitions imposed by the SIS Act. The Strategist rules reflect those prohibitions. As such these prohibitions may prevent the trustee from acquiring a particular investment. If the trustee wishes to borrow they should first obtain advice from a specialist or the auditor.

## **9. Trustee must prepare accounts**

The trustee is required under the rules and the law to prepare a set of accounts for the fund each year and to have these accounts audited. The accounts must show the profit and loss on the fund's investments, tax, the value of the fund's assets and liabilities and any other things as required by the law. These accounts must be audited on an annual basis.

The trustee is also required to issue to each member a report of their superannuation benefits at the end of a financial year including the return on their benefits and any costs associated with maintaining the fund that have been allocated against their benefits.

## **10. Appointment of Specialists**

The various laws as they apply to SMSFs are complicated. As noted above breaches of these laws and governing rules may render a fund to be a non-complying superannuation fund, which is taxed on its income at a rate of 45% with the trustee subject to financial and criminal penalties.

Although all actions undertaken in the fund are the trustee's responsibility the rules allow a trustee to appoint managers, advisers, and to engage other specialists to assist them in the on-going management of the fund. It is highly recommended that the trustee appoint an experienced SMSF auditor and SMSF adviser to advise on compliance and other issues relating to the fund.

## Part 2 Rules of the Company

### Rule 1 Replacement of Replaceable Rules

#### Explanation

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

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

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

#### Rule

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

### Rule 2 Definitions and Interpretations

#### 2.1 Definitions

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

**"Board"** means the Directors acting in meeting.

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

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

**"Constitution"** means this constitution.

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

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

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

**"Fund"** means the Self Managed Superannuation Fund of which the Company is currently the trustee.

**"Legal Personal Representative"** means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person who is under a legal liability or a person who holds an enduring power of attorney granted by a person.

**"Member"** means a member of the Fund.

**"Member's Account"** means an account kept by the Company as trustee of the Fund that records a Member's interests in the Fund.

**"Notice"** means a notice given to a Member or Shareholder.

**"Regulated Superannuation Fund"** means a regulated superannuation fund as defined by section 10(1) of the *SIS Act*.

**"Regulator"** means the Commissioner of Taxation of such other person or body as defined by section 10(1) of the *SIS Act*.

**"Registered Address"** means that address as notified by a Director or Shareholder to the Secretary as that address being either a physical or electronic address to which Notices can be sent to the Director or Shareholder.

**"Relative"** means a relative as defined by section 65 of the *SIS Act*.

**"Represents"** means if a Director is also a Member that that Director represents himself or if the Director is a Legal Personal Representative of a Member that the Director represents that Member.

**"Rule"** means a rule of this Constitution.

**"Secretary"** means the secretary of the Company.

**"Self Managed Superannuation Fund"** is a superannuation fund that is a self managed superannuation fund as defined by the *SIS Act*.

**"SIS Act"** means the *Superannuation Industry (Supervision) Act 1993*.

**"Shares"** means shares in the Company.

**"Shareholder"** means a person owning Shares.

## **2.2 Interpretation**

- (a) Headings are for convenience only and do not affect interpretation;
- (b) Except where the context requires words and phrases given a meaning by the *Corporations Act* or the *SIS Act* have the same meaning in this Constitution;
- (c) Explanations accompanying a Rule are for information and interpretation purposes only and may be taken into account in interpreting a Rule:
  - i. in considering the purpose or object underlying a Rule; or
  - ii. to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text taking into account the purpose or object underlying the Rule; or
  - iii. in determining a Rule's meaning if the Rule is ambiguous or obscure; or
  - iv. in determining a Rule's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or unreasonable;
- (d) A reference to any person or body shall include a reference to a company, references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators.

## **Rule 3 Company a Trustee of a Self Managed Superannuation Fund**

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

## **Rule 4 Company a Proprietary Limited Company**

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

## **Rule 5 Directors**

### **Explanation**

*A superannuation fund must have a trustee.*

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

*Section 17A of the SIS Act 1993 states that if a company is the trustee of a Self Managed Superannuation Fund each member (or Legal Personal Representative of the Member) must be a director of that company.*

*However a person cannot be director of a Self Managed Superannuation Fund if that person is a "disqualified person". A person will be a "disqualified person" if (broadly speaking) that person has contravened a provision of the SIS Act or has been convicted of dishonest conduct.*

### **Rule**

#### **5.1 Entitlement to be a Director**

- 5.1.1 Subject to Rule 5.1.2 and Rule 5.1.3 a person may only be a Director if that person is a Member of the Fund.
- 5.1.2 A person may not be appointed as a Director if that person is under a legal disability.
- 5.1.3 If a Member is under a legal disability then the Legal Personal Representative of the Member may be appointed a Director in lieu of that Member who is under the legal liability.
- 5.1.4 A person including a person who is the Legal Personal Representative of a Member cannot be a Director if that person has been disqualified by the Regulator (pursuant to section 120A of the SIS Act).

#### **5.2 Resignation of a Director**

A Director who is the Personal Legal Representative of a Member may resign as a Director and subject to the provisions of the Constitution the Member or some other Personal Legal Representative of the Member shall be appointed in place of that person.

#### **5.3 Removal of a Director**

A person who is a Director is forthwith removed as a Director if the continued appointment of that person as a Director will cause the Fund not to be a Self Managed Superannuation Fund.

## **Rule 6 Powers of Directors**

- 6.1 The Company is to be managed by or be under the direction of the Directors.
- 6.2 The Directors may exercise all powers of the Company except all powers that by law or by this Constitution must be exercised at a general meeting.
- 6.3 If the Company has two or more Directors any two of the Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

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

## **Rule 7 Meetings of Directors**

### **Explanation**

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

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

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

### **Rule**

- 7.1 If there is more than one Director the Secretary may serve a Notice on the Directors requiring the Directors to meet and to conduct business on behalf of the Company.
- 7.2 The Secretary must give reasonable notice of any such meeting to each of the Directors (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by the Director) unless the Directors unanimously agree that the meeting may be held on some earlier date. Such written notice must:
  - (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
  - (b) state the general nature of the business of the meeting.
- 7.3 Where, through a link established by means of any system of telephone, audio or audio-visual communication approved by the Directors for the purpose of any meeting of the Directors, the Directors will be taken to be assembled together at a meeting and all proceedings of the Directors conducted with the aid of the link, will be as valid and effectual as if conducted at a meeting at which all Directors were physically present.
- 7.4 At any meeting of the Directors a quorum is equal to that number of Directors or proxies who Represent Members the balance of whose Member's Accounts aggregate at least 50% of the balance of all Member's Accounts.

- 7.5 At any meeting of the Directors, unless the Directors unanimously agree otherwise, a Director shall be entitled to cast that number of votes as is equal to the nearest number of whole dollars of the balance of the Member's Account of that Member whom that Director Represents.
- 7.6 A resolution shall not be passed at any meeting of the Directors unless it is passed by the casting of a majority of the votes entitled to be cast by all Directors who are present and voting at that meeting.
- 7.7 A Director may appoint a person to act as that Director's proxy at any meeting of the Director.
- 7.8 If a circulating minute, containing a statement that the Directors are in favour of a resolution in the terms set out in that document has been signed by all Directors a resolution in those terms will be taken to have been passed at a meeting of the Directors held on the day and at the time at which the document was last signed by a Director. Two or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be taken to constitute one document for the purposes of this Rule.

## **Rule 8 Directors' Records**

### **Explanation**

*A written record must be kept of all decisions made by the Directors. Those records must be held for ten years.*

### **Rule**

- 8.1 If there is only one Director that Director must make a written record of all decisions made by the Director. If there is more than one Director the Directors must keep minutes of every meeting held by the Directors.
- 8.2 Records and minutes required by this Rule must be kept for at least ten years from the date the decision was made or the date of the meeting.

## **Rule 9 Remuneration of Directors**

- 9.1 A Director will not be paid any remuneration as a consequence of being a Director.
- 9.2 The Company may pay travelling and other expenses properly incurred by a Director:
- i. in attending Director's Meetings or any committees of the Directors; and
  - ii. in attending general meetings of the Company; and

## **Rule 10 Secretaries**

The Board may appoint one or more persons as Secretary or Secretaries of the Company. A Secretary holds office on the terms and conditions as determined by the Board.



## **Rule 11 Sole Shareholder Companies**

### **Explanation**

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

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

### **Rule**

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

## **Rule 12 Joint Owners**

### **Explanation**

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

### **Rule**

Shares may be held jointly with another person.

## **Rule 13 Transfers of Shares**

A Shareholder may only transfer Shares held by him to another person as allowed by this Constitution.

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

## **Rule 14 Transmission of Shares on Death**

- 14.1 If a Shareholder dies the Company will recognise only the Legal Personal Representative of the deceased Shareholder as being entitled to the deceased Shareholder's interest in a Share unless that interest is held jointly with another person. If the Legal Personal Representative gives the Directors the information they reasonably require to establish the Legal Personal Representative's entitlement to be registered as the holder of the Share the Legal Personal Representative may:
  - (a) by giving a written and signed notice to the Company, elect that until administration of the estate of that deceased Shareholder, that he be registered as the holder of the Share; or

(b) by giving a completed transfer form to the Company transfer the Share to another person being a Member.

14.2 On receiving a notice under Rule 14.1 the Company must register the personal representative or that other Member as the holder of the Share.

## **Rule 15 Transmission of Shares on Bankruptcy**

### **Explanation**

*A Shareholder may become bankrupt. This Rule is to protect the other Shareholders against a trustee in bankruptcy acquiring a Share and as consequence meddling in the affairs of the Company.*

### **Rule**

15.1 If a Shareholder becomes bankrupt the Company will recognise only the Legal Personal Representative of the Shareholder, not being a trustee in bankruptcy of the Shareholder, as being entitled to the bankrupt Shareholder's interest in a Share. If a Legal Personal Representative, not being a trustee in bankruptcy of the Shareholder, gives the Directors the information they reasonably require to establish the Legal Personal Representative's entitlement to be registered as the holder of a Share the Legal Personal Representative may, by giving a written and signed notice to the Company, elect to be registered as the holder of the Share.

On receiving that election the Company must register the Legal Personal Representative as the holder of the Share.

## **Rule 16 Transmission of Shares on Mental Incapacity**

16.1 If a Shareholder becomes mentally incapacitated the Company will recognise only the Legal Personal Representative of the Shareholder, not being a trustee in bankruptcy of the Shareholder, as being entitled to the Shareholder's interest in a Share. If a Legal Personal Representative, not being a trustee in bankruptcy of the Shareholder, gives the Directors the information they reasonably require to establish the Legal Personal Representative's entitlement to be registered as the holder of a Share the Legal Personal Representative may, by giving a written and signed notice to the Company, elect to be registered as the holder of the Share.

16.2 On receiving that election the Company must register the Legal Personal Representative as the holder of the Share.

## **Rule 17 Meetings of Shareholders**

### **17.1 Calling of meetings**

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

### **17.2 Notice**

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

### **17.3 Adjourned meetings**

When a meeting is adjourned new notice of the adjourned meeting must be given if the meeting is adjourned for one week or more.

### **17.4 Quorum**

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

### **17.5 Chairperson**

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

### **17.6 Voting**

Subject to any rights or restrictions attached to any Share at a meeting of the Company:

- (a) on a show of hands each Shareholder has one vote;
- (b) on a poll unless the Shareholders present unanimously agree otherwise a Shareholder shall be entitled to cast that number of votes as is equal to the nearest whole number of dollars of the balance of the Member's Account of that Member whom that Shareholder Represents. If no Shareholder Represents a Member each Shareholder shall be entitled to cast one vote for each Share that Shareholder owns.

### **17.7 Resolutions**

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

### **17.8 Circulating minutes**

If a circulating minute containing a statement that the Shareholders are in favour of a resolution in the terms set out in that document and that document has been signed by all Shareholders a resolution in those terms will be taken to have been passed at a meeting of the Shareholders held on the day and at the time at which the document was last signed by a Shareholder. Two or more separate documents containing statements in identical terms, each of which is signed by one or more Shareholder, will together be taken to constitute one document for the purposes of this Rule.

### **17.9 Attendance by auditors**

Any one Shareholder can invite any person who is or has audited the Company or the Fund to attend any meeting of the Shareholders and that auditor shall have the right to address that meeting.

## **Rule 18 Proxies**

### **18.1 Right to appoint a proxy**

A Shareholder who is entitled to attend and cast a vote at a meeting of the Shareholders of the Company may appoint a person as that Shareholder's proxy to attend and vote for the Shareholder at that meeting.

### **18.2 A proxy may be an individual or body corporate**

The person appointed as the Shareholder's proxy may be an individual or a body corporate.

### **18.3 Number of votes**

The appointment must specify the proportion or number of votes that the proxy may exercise.

### **18.4 More than one proxy**

If the Shareholder is entitled to cast 2 or more votes at the meeting he may appoint 2 proxies. If the Shareholder appoints 2 proxies and the appointment does not specify the proportion or number of the votes each proxy may cast each proxy may exercise half of the votes which might be exercised by that Shareholder at that meeting.

The first part of the report deals with the general situation in the country and the progress of the work of the various departments.

General Situation

The general situation in the country is satisfactory. The work of the various departments is progressing well.

The work of the various departments is progressing well. The general situation in the country is satisfactory.

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Department of Agriculture

The Department of Agriculture is working hard to improve the agricultural production of the country.

Department of Education

The Department of Education is working hard to improve the educational system of the country.

Department of Health

The Department of Health is working hard to improve the health of the people of the country.

The Department of Health is working hard to improve the health of the people of the country.

The Department of Health is working hard to improve the health of the people of the country.

Department of Finance

The Department of Finance is working hard to improve the financial situation of the country.

The Department of Finance is working hard to improve the financial situation of the country.

Department of Justice

The Department of Justice is working hard to improve the legal system of the country.

The Department of Justice is working hard to improve the legal system of the country.

The Department of Justice is working hard to improve the legal system of the country.

## 18.5 Validity of proxy

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

## 18.6 Form of proxy

An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the regulations to the *Corporations Act* by the Shareholder making the appointment and contains the following information:

- (a) the Shareholder's name and address;
- (b) the Company's name;
- (c) the proxy's name;
- (d) the meetings at which the appointment may be used.

## Rule 19 Inspection of Records

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

## Rule 20 Company Accounts

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

## Rule 21 Common Seal

### Explanation

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

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

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

any more than a word. When Congress has a bill, it is only by the  
action of the President.

### Article III

The judicial power shall extend to all cases of law and equity arising under this Constitution, the laws of the United States, and the treaties made, or which shall be made, under the authority of the United States. The Supreme Court shall be the supreme court of the United States. The Congress shall have the power to vest the supreme and inferior courts of the United States with such judges, and to determine the number, tenure, and salaries of the same.

The Supreme Court shall consist of a Chief Justice of the United States and such other Justices as the Congress may, from time to time, think proper to appoint. The Justices shall hold their offices during good behavior, and shall, at any time during their continuance in office, be removed by impeachment, conviction of bribery, or high crimes and misdemeanors.

The President shall nominate, and by and with the advice and consent of the Senate, shall appoint and remove the Justices of the Supreme Court, and the judges of the inferior courts which may be created by the Congress.

### Article IV

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each State against invasion; and on application of the Legislature of any State, against domestic violence.

Full Faith and Credit shall be given in every State to the public Acts, Records, and judicial Proceedings of every other State.

- (1) The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens of the several States.
- (2) A Person charged in any State with Treason, Felony, or Breach of the Peace and who shall flee from the State in which he is charged, and who is taken up in any other State, shall be delivered up to the State in which he is charged, to be there held to answer to the Charge of which he is accused, until he be discharged by the final Judgment of the Court of Justice of the State in which he is charged.
- (3) No State shall be deprived of Territory, without its Consent.

### Article V

Proposed Amendments to this Constitution shall be valid when ratified by three-fourths of the States.

### Article VI

This Constitution, the Laws of the United States, and the Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land.

## **Rule**

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

## **Rule 22 Dividends**

### **Explanation**

*Annual fees payable to ASIC by a company that is a "special purpose company" are significantly less than those fees payable by most companies to the Commission. A company whose sole purpose is to act as the trustee of a Regulated Superannuation Fund will be a special purpose company if its constitution prohibits distribution of the company's income or property to its shareholders (Regulation 3 of the Corporations (Review Fees) Regulation 2003). This rule is designed to allow the Company to only have to pay the lower fees to ASIC. Assets of the Fund are not income or property of the Company.*

*Further it is appropriate that a company whose sole purpose is to be a trustee of a Self Managed Superannuation Fund should not be able to pay dividends or make a distribution of its income or capital to its members.*

## **Rule**

The Company cannot pay dividends or make a distribution of its income or property to its Shareholders.

## **Rule 23 Loans to Members, Shareholders and Directors**

### **Explanation**

*Section 65 of the SIS Act states that a trustee of a Regulated Superannuation Fund must not lend money of the fund to a member of the fund or to a relative of a member of the fund. The purpose of this Rule is to prohibit the Company from making loans to Members.*

## **Rule**

The Company must not:

- (a) lend money of the Company to:
  - (i) a Member, Shareholder or Director;
  - (ii) a Relative of a Member, Shareholder or Director; or
- (b) give any other financial assistance to:
  - (iii) a Member, Shareholder or Director;
  - (iv) a Relative of a Member, Shareholder or Director.

## **Rule 24 Alteration of Capital**

If at a meeting of the Shareholders the Shareholders agree, the Shares on issue can be converted into larger or smaller number of Shares on issue.

## **Rule 25 Winding Up**

25.1 The Company shall not be wound up whilst it is still the Trustee of the Fund.

On the basis of the information provided to me by the person named in the above captioned letter, I have concluded that the person named in the above captioned letter is the person named in the above captioned letter.

Very truly yours,  
[Signature]

Enclosed for the person named in the above captioned letter is a copy of the above captioned letter.

I have also enclosed for the person named in the above captioned letter a copy of the above captioned letter.

I have also enclosed for the person named in the above captioned letter a copy of the above captioned letter.

### Statement of [Name]

I, the undersigned, do hereby certify that the person named in the above captioned letter is the person named in the above captioned letter.

I have also enclosed for the person named in the above captioned letter a copy of the above captioned letter.



- 25.2 On the winding up of the Company all the income and property of the Company shall be distributed to such charities as the Shareholders agree at a meeting of the Company.

## **Rule 26 Notices**

The Company may give a notice to a Shareholder:

- (a) by leaving it at the Shareholder's registered address; or
- (b) by sending it by prepaid post or facsimile transmission to the Shareholder's Registered Address;
- (c) by sending it by any other electronic means to the Shareholder's Registered Address.

## **Rule 27 Indemnification of Directors**

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

Section 1031

Section 1031(a) provides that no gain or loss shall be recognized if property held by an individual is exchanged solely for property of like kind which is to be held by the same individual. The term "like kind" is defined in Section 1031(b) as property of the same nature or character, even though not of the same grade or quality.

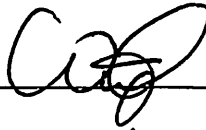
Section 1031(c) provides that if the property received in exchange is not of like kind, the gain or loss shall be recognized. Section 1031(d) provides that if the property received in exchange is of like kind, but the exchange is not completed within the time specified in Section 1031(b)(1), the gain or loss shall be recognized.

# Shareholder Declaration

I/We being the person specified in the application, dated 14th July 2008, for the registration of Wellspring Investments Pty Ltd pursuant to Section 117 of the *Corporations Act 2001*, as having given my consent to become a Shareholder, HEREBY AGREE to the Rules of this Constitution as set out above.

**DATED:**

**Signature:**



**Shareholder Name:**

Andre Francisco Ketels

**Address:**

26 Gilmour Street Chermside West QLD 4032

**Witness Signature:**

\_\_\_\_\_

**Witness Name:**

\_\_\_\_\_

Handwritten signature or initials.

