

THE LEADING MEMBER
CONSTITUTION OF
C GATES PTY LTD
ACN 638 901 327

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RULES OF THE COMPANY

Rule 1. Replacement of Replaceable Rules

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.

“Clause” means a clause of this Constitution.

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

“Complying Self Managed Superannuation Fund” means a complying self managed superannuation fund as defined by section 42A of the SIS Act 1993.

“Constitution” means this constitution.

“Corporations Act” means the Corporations Act 2001 (Cth) as amended, or modified from time to time on 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 superannuation fund of which the Company is a trustee;

“Governing Rules” means those rules as defined in section 10(1) of the SIS Act 1993 governing the operation of the Fund which the Company is the Trustee;

“Leading Member” is the initial person who is provided with the power to appoint and remove a Member or Trustee and is appointed as the Leading Member of the Fund for which this company acts as 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.

“Lineage” of a Leading or defined member of a Leading Member SMSF is the Leading Member’s children or other lineal descendants such as grandchildren and great-grandchildren. It does not mean all heirs, but only the direct lineage. This can extend to limiting members only in the fund as well as the payment of any death benefits being paid to lineal dependents, directly or through the legal estate, only. The Leading Member has discretion to deem or include a non-lineage Member where desired.

“Lump Sum” is a benefit paid as a lump sum under the Governing Rules of the Fund to which the Company is the Trustee;

“Member” means a member of the Fund.

“Member’s Account” means an account kept by the Company as trustee of a Fund that records a Member’s interests in the Fund and includes a Member’s Pension Account and a Member’s Accumulation Account;

“Member’s Accumulation Account” means a Member’s Account established by the Trustee, the balance of which can be paid to the benefit of a Member, their Dependant or Legal Personal Representative as a Lump Sum Benefit, a Pension, an income stream or any other superannuation or non-superannuation benefit;

“Member’s Pension Account” means a Member’s Account established by the Trustee, the balance of which is determined by the Trustee as equal to such amount, as is required by an actuary, to fund any Pension paid to the benefit of a Member, their Dependant or Legal Personal Representative as a Pension Benefit;

“Notice” means a notice given to a Member or Shareholder.

“Pension” means a pension, income stream or any other benefit that is like an annuity that may be paid under the Governing Rules of the Fund to which the Company is the Trustee;

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

“Regulator” means the Commissioner of Taxation or 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.

“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.

“SIS Act” means the Superannuation Industry (Supervision) Act 1993.

“Shares” means shares in the Company.

“Shareholder” means a person owning Shares.

“SMSF” means a self managed superannuation fund as defined in section 17A of the SIS Act 1993.

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 have the same meaning in this Constitution;
- (c) Any explanations accompanying a Rule are for information and interpretation purposes only and may be taken into account in interpreting a Rule:

- (c.1) in considering the purpose or object underlying a Rule; or
 - (c.2) to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text taking into account the purpose or object underlying the Rule; or
 - (c.3) in determining a Rule's meaning if the Rule is ambiguous or obscure; or
 - (c.4) in determining a Rule's meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or unreasonable;
- (d) A reference to any person or body shall include a reference to a company, references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators.

Rule 3. Company a trustee of a superannuation Fund

- 3.1 The Company will be incorporated for the sole purpose of being the trustee of a 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 The Company may be a trustee of the Fund but must not be the trustee of any other superannuation fund or engage in any other business or any other activity.
- 3.3 The Company, apart from acting as the trustee of a Fund is to also ensure that as trustee, it operates for the benefit of lineage of the Leading Member or such other persons in accordance with the Leading Member's wishes.

Rule 4. Company a Proprietary Limited Company

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

Rule 5. Directors

- 5.1 Who may be a Director:
- 5.1.1 Subject to Clause 5.1.2 and Clause 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. If the Member is a child and does not have a Legal Personal Representative then either a parent or guardian is to be appointed as

Director in lieu of that child Member. The current Directors should accede to any appointment and failure to do so may result in the company losing its status as trustee of the Fund.

5.2 Who may not be a Director

A person including a person who is the Legal Personal Representative of a Member cannot be a Director if that person has been disqualified under the SIS Act.

5.3 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 subject to the consent of the Leading Member.

5.4 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 Complying SMSF. At any time the Leading Member of the Fund may remove a Director where the continuing appointment may result in the Fund no longer being for the benefit of members of the same lineage as the Leading Member.

Rule 6. Powers of Directors

6.1 The business of the Company is to be managed by or 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 The Leading Member of the Fund who is a Director of the Company should act as the Chairman of the Company and has an absolute right of veto over all Director's decisions prior to a resolution being finalised.

Rule 7. Meetings of Directors

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 each 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 Directors who are present at that meeting and the Leading Member of the Fund as Chairman of the Company does not use their veto power.
- 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. Director's Records

- 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:
- (a) in attending Director's Meetings or any committees of the Directors;
 - (b) in attending general meetings of the Company; and
 - (c) in connection with the Company's business.

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

If there is only one Shareholder who is also a director of the Company this Constitution is to be 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. Entitlement to Own Shares – Leading Member Only

Only a Leading Member of the Fund may be a Shareholder in the Company.

Rule 13. Joint Owners

Shares in the Company cannot be held jointly.

Rule 14. Transfers of Shares

- 14.1 The Leading Member may not transfer their shares under any circumstances.

Rule 15. Transmission of Shares on Death

- 15.1 If the Leading Member dies the Company is to immediately cancel the former Leading Members shares.
- 15.2 At the same time the Company is to issue 100 shares or all of the Company's newly issued share capital to the successor Leading Member of the Fund and should there be no immediate successor Leading Member, that member the Trustee of the Fund so chooses as the new Leading Member of the Fund.
- 15.3 The Company must register the cancellation of any shares in the former Leading Member's name and the issue of new shares to the successor Leading Member.

Rule 16. Transmission of Shares on Bankruptcy

- 16.1 If a Leading Member of the Fund and holder of the shares of the Company becomes bankrupt, the Company is to immediately cancel the former Leading Members shares.
- 16.2 At the same time the Company is to issue 100 shares or all of the Company's newly issued share capital to the successor Leading Member of the Fund and should there be no immediate successor Leading Member, that member the Trustee of the Fund so chooses as the new Leading Member of the Fund.
- 16.3 The Company must register the cancellation of any shares in the former Leading Member's name and the issue of new shares to the successor Leading Member.

Rule 17. Transmission of Shares on Mental Incapacity

- 17.1 If a Shareholder becomes mentally incapacitated and receives notification from a legally qualified medical expert to that effect, the Company is to immediately cancel the former Leading Members shares.
- 17.2 At the same time the Company is to issue 100 shares or all of the Company's newly issued share capital to the successor Leading Member of the Fund and should there be no immediate successor Leading Member, that member the Trustee of the Fund so chooses as the new Leading Member of the Fund.
- 17.3 The Company must register the cancellation of any shares in the former Leading Member's name and the issue of new shares to the successor Leading Member.

Rule 18. Transmission of Shares if not a Member

- 18.1 If a Shareholder ceases to be a member of the Fund the Company is to immediately cancel the former Leading Members shares.
- 18.2 At the same time the Company is to issue 100 shares or all of the Company's newly issued share capital to the successor Leading Member of the Fund and should there be no immediate successor Leading Member, that member the Trustee of the Fund so chooses as the new Leading Member of the Fund.
- 18.3 The Company must register the cancellation of any shares in the former Leading Member's name and the issue of new shares to the successor Leading Member.

Rule 19. Meetings of Shareholders

19.1 Calling of meetings

As there is generally only one Shareholder, that Shareholder can call a meeting at any time for that business which needs Shareholder ratification.

19.2 Notice

No notice is required for a Shareholder meeting.

19.3 Chairman

At a meeting of the Shareholders, the Leading Member of the Fund will be automatically appointed as chairman of the meeting.

19.4 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. If there is any Shareholders above and beyond the Leading Member, the Leading Member holds a right to veto any proposed resolution.

19.8 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.

19.9 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 20. Proxies

There is no right by any Shareholder to appoint a proxy.

Rule 21. Inspection of Books

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

Rule 22. Company Accounts

22.1 The Company must keep such accounting records as correctly record and explain the transactions of the Company. Although as the Company acts in its sole capacity as the Trustee of the Fund, transactions should be limited.

22.2 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.

22.3 The Company must as soon as practical after the end of each Financial Year:

- (a) prepare a balance sheet recording the assets and liabilities of the company as at the end of that preceding Financial Year;

- (b) prepare a profit and loss account recording the profit derived or loss incurred by the Company for that preceding Financial Year (or part year if the Company was not in existence for a full year);
- (c) arrange for the Company's balance sheet, profit and loss account and accounting records to be audited by an auditor;
- (d) arrange for all tax returns and other statements required to be lodged by the Company to be lodged as and when required.

22.4 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 23. Common Seal

The Company may have a seal but intends to apply the provisions of section 127 of the Corporations Act 2001 such that no seal is required.

Rule 24. Dividends

24.1 The Company cannot make a distribution of its income or property to its Shareholders. On winding up of the Company all income and property of the Company will be distributed to such charities as the Shareholders agree in a general meeting.

Rule 25. Loans to Members, Shareholders and Directors

The Company must not:

- (a) lend money of the Company to:
 - (a.1) a Member, Shareholder or Director;
 - (a.2) a relative of a Member, Shareholder or Director; or
- (b) give any other financial assistance to:
 - (b.1) a Member, Shareholder or Director;
 - (b.1) a relative of a Member, Shareholder or Director.

Rule 26. Notices

A notice may be given by the Company to a Shareholder or Member:

- (a) by leaving it at the Shareholder's or Member's registered address; or
- (b) by sending it by prepaid post or facsimile transmission to the Shareholder's or Member's Registered Address;
- (c) by sending it by any other electronic means to the Shareholder's or Member'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 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, wilful wrongdoing, or fraud.
- 27.2 The Company may insure any person against any liability incurred by that person as a consequence of that person being or having been a Director.

SHAREHOLDER DECLARATION

I, being the person specified in the application, dated 5 February 2020, for the registration of C GATES PTY LTD pursuant to Section 117 of the Corporations Act 2001, as having given my consent to become a Shareholder, HEREBY AGREE to the terms of this Constitution as set out below.

Members:


.....

Christine Margaret Gates
Member


.....

Date