

Australian Securities & Investments Commission
A Company Limited by Shares

Constitution
of

STONE COLD PTY LTD

Corporations Law
A Company Limited by Shares
Constitution of
STONE COLD PTY LTD

1. This is the Constitution of the company.

Interpretation

2. (a) The rules in this Constitution apply to the company and to the extent that the Replaceable rules from time to time contained in the Corporations Law apply to the company, the Replaceable rules are modified as expressly provided in this Constitution.
- (b) Division 10 of Part 1.2 of the Corporations Law applies to this Constitution as if this Constitution was an instrument made under the Law as in force on the day when this Constitution became binding.

Director interested in contract with Company

3. The Replaceable rule in section 231(1A) is deleted and the following rule is substituted:-
 - (a) No Director shall be disqualified by his or her office from holding any office or place of profit under the company or under any company in which this company shall be a shareholder or otherwise interested or from contracting with the company either as vendor purchaser or otherwise.
 - (b) No such contract or any contract or arrangement entered into by or on behalf of the company in which any Director shall be in any way interested shall be avoided nor shall any Director be liable to account to the company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relations thereby established.
 - (c) A director may vote in respect of any contract or arrangement in which he or she is interested. A director may sign a document even though he or she is interested in the contract or arrangement to which the document relates.

Director's discretion to refuse to register transfers

4. The Replaceable rule in section 1091E is deleted and the following rule is substituted:

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

Calls on Shares

5. (a) The Directors may make calls upon the members in respect of any money unpaid on the shares of the members and not by the terms of issue of those shares made payable at fixed times, except that no call shall exceed one quarter of the issue price of the shares or be payable earlier than one month from the date fixed for the payment of the last preceding call.
- (b) Each member shall, upon receiving at least 14 days' notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called on their shares.

- (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.
- (d) Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- (e) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.
- (f) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the company all money that, at the date of forfeiture, was payable by the member to the company in respect of the shares (including interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but their liability ceases if and when the company receives payment in full of all the money (including interest) so payable in respect of the shares.

- (g) A statement in writing declaring that the person making the statement is a director or secretary of the company, and that a share in the company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.
- (h) The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (i) Upon the execution of the transfer, the transferee shall be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (j) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- (k) The provisions of these rules as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

Indemnity and Insurance

- 7. (a) Subject to the Law, every officer, auditor or agent of the company shall be indemnified out of the property of the company against any liability to another person (other than the company or a related Body Corporate) unless the liability arises out of conduct involving a lack of good faith.
- (b) Subject to the Law, nothing in rule (a) shall permit the company to indemnify a person who is or has been an officer or auditor of the company against a liability incurred by the person as such an officer or auditor or exempt such a person from such a liability, however, this does not prevent a person from being indemnified against a liability for costs and expenses incurred by the person;
 - (i) in defending proceedings, whether criminal or civil, in which judgment is given in favour of the person or in which the person is acquitted; or
 - (ii) in connection with an application, relating to such proceedings, in which the Court grants relief to the person under the Law.
- (c) Subject to the Law, the company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer or auditor or agent of the company against a liability for costs and expenses incurred by such person in defending proceedings, whether civil or criminal and whatever their outcome.
- (d) Subject to the Law nothing in (c) shall permit a company to pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer or auditor of the company against a liability;
 - (i) incurred by the person as such an officer or auditor; and
 - (ii) arising out of conduct involving a wilful breach of duty in relation to the company or a contravention of sub-section 232(5) or (6) of the Law.

Share capital

8. Without limiting any power to issue shares, issued shares may include:-
- ordinary shares
 - "A" Class shares
 - "B" Class shares
 - "C" Class shares
 - "D" Class shares
 - "E" Class shares
 - "F" Class shares
 - "G" Class shares
 - "H" Class shares
 - "I" Class shares
 - "J" Class Redeemable Preference shares
 - "K" Class Redeemable Preference shares
9. A member being the holder of an "A" 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) declared on that share;
 - (c) in a winding up of the company to participate in accordance with paragraph 20.
10. A member being the holder of a "B" 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) declared on that share;
 - (c) in a winding up of the company to participate in accordance with paragraph 20.
11. A member being the holder of a "C" 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 any dividends;
 - (c) in a winding up of the company to participate in accordance with paragraph 20.
12. A member being the holder of a "D" 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) declared on that share;
 - (c) in a winding up of the company to participate in accordance with paragraph 20.

- 13. A member being the holder of an "E" 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) declared on that share;
 - (c) in a winding up of the company to participate in accordance with paragraph 20.
- 14. A member being the holder of an "F" 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 participate in accordance with paragraph 20.
- 15. A member being the holder of a "G" Class share holds that share subject to the following rights, privileges and conditions:-
 - (a) no right whatsoever to vote at any meeting of the company;
 - (b) the right to participate in the dividends (if any) declared on that share;
 - (c) in a winding up of the company to participate in accordance with paragraph 20.
- 16. A member being the holder of an "H" Class share holds that share subject to the following rights, privileges and conditions:-
 - (a) no right whatsoever to vote at any meeting of the company;
 - (b) the right to participate in the dividends (if any) declared on that share;
 - (c) in a winding up of the company to participate in accordance with paragraph 20.
- 17. A member being the holder of an "I" Class share holds that share subject to the following rights, privileges and conditions:-
 - (a) no right whatsoever to vote at any meeting of the company;
 - (b) the right to participate in the dividends (if any) declared on that share;
 - (c) in a winding up of the company to participate in accordance with paragraph 20.
- 18. A member being the holder of a "J" 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 participate in accordance with paragraph 20.
 - (d) the right to receive from the profits of the company as a first charge a non-cumulative preferential dividend at the rate of five per cent (5%) per annum on the paid issue price of the "J" Redeemable Preference shares held.

a 19. A member being the holder of a "K" 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 participate in accordance with paragraph 20.
- (d) the right to participate in the dividends (if any) declared on that share.

20. In a winding up of the company:-

- (i) The holders of ordinary shares shall be entitled to participate equally with each other and to the exclusion of all other shares in the division of all surplus assets or profits of the company.
- (ii) As to the rights of the other holders of shares to participate in the division of surplus assets or profits of the company ("available funds") the following applies if there are no holders of ordinary shares:-
 - (a) If available funds do not exceed \$5,000 ("the first \$5,000") the holders of "A" Class shares participate equally with each other and in priority to and to the exclusion of all other shares in the first \$5,000.
 - (b) If available funds are between \$5,000 and \$10,000 ("the second \$5,000") the holders of "B" Class shares participate equally with each other and to the exclusion of all other shares in the second \$5,000.
 - (c) The holders of "C" Class shares participate in accordance with sub-paragraph (l) below.
 - (d) The holders of "D" Class shares participate in accordance with sub-paragraph (l) below.
 - (e) The holders of "E" Class shares participate in accordance with sub-paragraph (l) below.
 - (f) If available funds are between \$10,000 and \$15,000 ("the third \$5,000") the holders of "F" Class shares participate equally and in priority to and to the exclusion of all other shares in the third \$5,000.
 - (g) If available funds are between \$15,000 and \$20,000 ("the fourth \$5,000") the holders of "G" Class shares participate equally and in priority to and to the exclusion of all other shares in the fourth \$5,000.
 - (h) The holders of "H" Class shares participate in accordance with sub-paragraph (l) below.
 - (i) The holders of "I" Class shares participate in accordance with sub-paragraph (l) below.
 - (j) If the available funds are between \$20,000 and \$25,000 ("the fifth \$5,000") the holders of "J" Class shares participate equally and in priority to and to the exclusion of all other shares in the fifth \$5,000.
 - (k) If the available funds are between \$25,000 and \$30,000 ("the sixth \$5,000") the holders of "K" Class shares participate equally and in priority to and to the exclusion of all other shares in the sixth \$5,000.

- (l) As to the remainder, if any, of available funds after all payments referred to above, all shares participate equally with each other.

Agreement:

I/We, the undersigned, agree to this Constitution signed by all members on:

Signed:

Replaceable Rules

Directors

1. 224C Company may appoint directors (replaceable rule - see section 135).

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

2. 224D Directors may appoint other directors (replaceable rule - see section 135).

Appointment by other directors

- (1) The directors of a company may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum.

Proprietary company - confirmation by meeting within 2 months

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

Public company - confirmation by next AGM

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

3. 225A Alternate directors (replaceable rule - see section 135).

- (1) With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.
- (2) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.
- (3) When an alternate exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.
- (4) The appointing director may terminate the alternate's appointment at any time.
- (5) An appointment or its termination must be in writing. A copy must be given to the company.

Note: The ASC must be given notice of the appointment and termination of appointment of an alternate (see section 242).

4. 226A Powers of directors (replaceable rule - see section 135).

- (1) The business of a company is to be managed by or under the direction of the directors.
- (2) The directors may exercise all the powers of the company except any powers that this Law 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.

5. 226B Negotiable instruments (replaceable rule - see section 135).

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

6. **226C Managing director** (replaceable rule - see section 135).

- (1) The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.
- (2) A person ceases to be managing director if they cease to be a director.
- (3) The directors may confer on a managing director any of the powers that the directors can exercise.
- (4) The directors may revoke or vary:
 - (a) an appointment; or
 - (b) any of the powers conferred on the managing director.

7. **226D Delegation to committees** (replaceable rule - see section 135).

- (1) The directors may delegate any of their powers to a committee of directors.
- (2) A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.

Note: The delegation must be recorded in the company's minute book (see section 251A).

8. **226E Removal by members - proprietary companies** (replaceable rule - see section 135).

A proprietary company:

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

9. **227A Director may resign by giving written notice to company** (replaceable rule - see section 135).

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

10. **231(1A) Director interested in contract with proprietary company** (replaceable rule - see section 135).

If a director of a proprietary company has an interest in a contract or proposed contract with the company (other than as a member) and the director discloses the nature and extent of the interest at a meeting of the directors:

- (a) the director may vote on whether the company enters into the contract; and
- (b) the contract may be entered into; and
- (c) the director may vote on matters involving the contract; and
- (d) if the disclosure is made before the contract is entered into:
 - (i) the director may retain benefits under the contract even though the director has an interest in the contract; and
 - (ii) the company cannot avoid the contract merely because of the existence of the interest.

11. **236A Remuneration of directors** (replaceable rule - see section 135).

- (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.

- (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.

Director Resolutions

12. 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

13. 248C Calling directors' meetings (replaceable rule - see section 135).

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

Note: A director who has appointed an alternate director may ask for the notice to be sent to the alternate director (see section 225A).

14. 248E Chairing directors' meetings (replaceable rule - see section 135).

- (1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.
- (2) The directors must elect a director present to chair a meeting, or part of it, if:
 - (a) a director has not already been elected to chair the meeting; or
 - (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

15. 248F Quorum at directors' meetings (replaceable rule - see section 135).

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

Note 1: For special quorum rules for public companies, see sections 232A ad 232B.

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

16. 248G Passing of directors' resolutions (replaceable rule - see section 135).

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

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

Meetings of Members

- 17. 249C Calling of meetings of members by a director** (replaceable rule - see section 135).
A director may call a meeting of the company's members.
- 18. 249J Notice of joint members** (replaceable rule - see section 135).
(2) Notice to joint members must be given to the joint member named first in the register of members.
- 19. 249J When notice by post or fax is given** (replaceable rule - see section 135).
(4) 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.
- 20. 249M Notice to 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.
- 21. 249T Quorum** (replaceable rule - see section 135).
(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.
- (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.
- (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 date 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.
- (4) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.
- 22. 249U Chairing meetings of members** (replaceable rule - see section 135).
(1) The directors may elect an individual to chair meetings of the company's members.
- (2) The directors at a meeting of the company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).
- (3) The members at a meeting of the company's members must elect a member present to chair the meeting (or part of it) if:
- (a) a chair has not previously been elected by the directors to chair the meeting; or
 - (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).
- (4) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

23. **249W Adjourned meetings** (replaceable rule - see section 135).

Business at adjourned meetings

- (2) Only unfinished after an adjournment business is to be transacted at a meeting resumed after an adjournment.

24. **249X Who can appoint a proxy** (replaceable rule for proprietary companies and mandatory rule for public companies - see section 135).

- (1) A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
- (2) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (3) Each member may appoint a proxy. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (4) Disregard any fractions of votes resulting from the application of subsection (2) or (3).

25. **250C Proxy vote valid even if member dies, revokes appointment etc.** (replaceable rule - see section 135).

- (2) 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)).

26. **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.

27. 250F Jointly held shares (replaceable rule - see section 135).

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

28. 250G Objections to right to vote (replaceable rule - see section 135).

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

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

29. 250J How voting is carried out (replaceable rule - see section 135).

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

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

30. 250M When and how polls must be taken (replaceable rule - see section 135).

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

Company Secretary

31. 240(4) Terms of and conditions of office (replaceable rule - see section 135).

- (4A) A secretary holds office on the terms and conditions (including as remuneration) that the directors determine.

Inspection of books

32. 247D Company directors may allow member to inspect books (replaceable rule - see section 135).

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

Shares

33. 254D Pre-emption for existing shareholders on issue of shares in proprietary company (replaceable rule - see section 135).

- (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.
- (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.

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

34. 254U Other provisions about paying dividends (replaceable rule - see section 135).

- (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.

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

35. 254W Dividend rights for shares in proprietary companies (replaceable rule - see section 135).

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

Transfer of Shares

36. 1091AA Transmission of shares on death (replaceable rule - see section 135).

If shares not held jointly

- (1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
- (2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:
 - (a) the personal representative may:
 - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
 - (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.
- (3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.
- (4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

If shares held jointly

- (5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

37. 1091AB Transmission of shares on bankruptcy (replaceable rule - see section 135).

- (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.
- (2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.
- (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.
- (4) This section has effect subject to the Bankruptcy Act 1966.

38. 1091B Transmission of shares on mental incapacity (replaceable rule - see section 135).

- (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 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; or
 - (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.
- (2) On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.
- (3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

39. 1091D Registration of transfers (replaceable rule - see section 135).

- (1) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.
- (2) The directors are not required to register a transfer of shares in the company unless:
 - (a) the transfer and any share certificate have been lodged at the company's registered office; and
 - (b) any fee payable on registration of the transfer has been paid; and
 - (c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

- (3) The directors may refuse to register a transfer of shares in the company if:
 - (a) the shares are not fully-paid; or
 - (b) the company has a lien on the shares.
- (4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.

40. 1091E Additional general discretion for directors of proprietary companies to refuse to register transfers (replaceable rule - see section 135).

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