

CONSTITUTION

Kunning Pty Ltd
ACN 622 605 878

History of Document

Adopted by special resolution (if relevant) on:

or

Signed by original members (if relevant) on:

Amended (if relevant) on:

Date

6/11/2017

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CONSTITUTION OF KUNNING PTY LTD

ACN 622 605 878

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

Act means the *Corporations Act 2001* (Cth).

Alternate means an alternate Director appointed under rule 4.1.

Appointor in relation to an Alternate, means the Director who appointed the Alternate.

Board means:

- (a) if the Company is a Single Director Company, the sole Director exercising powers under the Act and this document; or
- (b) in any other case, the Directors acting collectively under this document.

Called Amount in respect of share means:

- (a) the amount of a call on that share that is due and unpaid; and
- (b) any amount the Board requires a member to pay under rule 23.6.

Company means the company named at the beginning of this document whatever its name is for the time being.

Director means a person who is, for the time being, a director of the Company including, where appropriate, an Alternate.

Executive Director means a Director who is an employee of the Company or acts in an executive capacity for the Company under a contract for services and includes a Managing Director.

Interest Rate means, in respect of each rule in which that term is used:

- (a) the rate for the time being prescribed by the Board in respect of that rule; or
- (b) if no rate is prescribed, 15% each year.

Managing Director means a managing director appointed under rule 6.1.

Member means a person who is a member of the Company under section 231.

Ordinary Resolution means a resolution passed at a meeting of Members by a majority of the votes cast by Members entitled to vote on the resolution.

Register means the register of Members kept as required by sections 168 and 169.

Secretary means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

Single Director Company has the meaning given in rule 1.3.

Special Resolution has the meaning given to “special resolution” by section 9.

Voting Member in relation to a general meeting, or meeting of a class of Members, means a Member who has the right to be present and to vote on at least 1 item of business to be considered at that meeting.

1.2 Interpretation of this Document

This rule 1.2 specifies the rules for interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) The headings are for convenience only and do not affect the interpretation of this document.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document), or a provision of a document (including a provision of this document), is to that document or provision as amended or replaced;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (iv) anything (including a right, obligation or concept) includes each part of it; or
 - (v) a rule is to a rule in this document.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes any other gender.
- (e) If a word is defined, another part of speech of that word has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) The word “agreement” includes an undertaking or other binding arrangement or understanding whether or not in writing (unless the context specifies that it must be in writing).
- (h) A reference to something being “written” or “in writing” includes that thing being represented or reproduced in any mode in a visible form.
- (i) A word (other than a word defined in rule 1.1) which is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.
- (j) A reference to a dividend included a bonus.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

1.3 Single Director Company

The Company is a Single Director Company if:

- (a) at the time of its registration as an Australian company, only one person had consented to be a Director; or
- (b) the Company has passed an Ordinary Resolution that it be a Single Director Company,

and the Company has not, since registration or the passing of that resolution (as the case requires), passed a resolution that it cease to be a Single Director Company and, at the relevant time, there is only one Director.

2. PROPRIETARY COMPANY

2.1 Proprietary Company

The Company is a proprietary company and must comply with section 113.

2.2 Replaceable Rules

The replaceable rules referred to in section 141 do not apply to the Company and are replaced by the rules set out in this document.

2.3 Special Purpose Company

Despite other provisions of this document, the Members require that the Company be a 'special purpose company' and consistent with the definition of a 'special purpose company' in regulation 3 of the *Corporations (Review Rules) Regulations 2003* (Cth):

- (a) the Company is prohibited from distributing the Company's income or property to its Members; and
- (b) the sole purpose of the Company is to act as the trustee of a regulated superannuation fund within the meaning of section 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth).

3. DIRECTORS

3.1 Number of Directors

The Company must have at least:

- (a) if the Company is a Single Director Company, one; or
- (b) otherwise, two,

Directors (not counting Alternates) and, until otherwise decided by Ordinary Resolution, not more than six Directors (not counting Alternates).

3.2 Appointment of Directors

Subject to the maximum number of Directors for the time being fixed under rule 3.1 not being exceeded:

- (a) the Company by Ordinary Resolution; or

- (b) Members holding a majority of the issued shares of the Company conferring the right to vote, by writing delivered to the Company; or
- (c) the Board (except during a general meeting),

may appoint a person to be a Director either to fill a casual vacancy or as an addition to the Board.

3.3 No Share Qualification

A Director need not be a Member.

3.4 Cessation of Director's Appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings (either personally or by Alternate) for a continuous period of 6 months without leave of absence from the Board;
- (e) resigns by notice in writing to the Company; or
- (f) is removed from office under rule 3.5,

or if the person was appointed to the office for a specified period and that period expires.

3.5 Removal from Office

Whether or not a Director's appointment was expressed to be for a specified period:

- (a) the Company by Ordinary Resolution; or
- (b) Members holding a majority of the issued shares of the Company conferring the right to vote, by writing delivered to the Company,

may remove a Director from office.

3.6 Too Few Directors

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of Members; and
- (c) in emergencies.

3.7 Vacation of Office by Sole Director

Sections 201F(2) to (5) apply if a person who is the only Director and only Member dies or ceases to be a Director as a result of mental incapacity or bankruptcy.

4. ALTERNATES

4.1 Appointment of Alternate

A Director (other than an Alternate) may appoint a person who is (except in the case of a Single Director Company) approved by the Board to act as an Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as Director.

4.2 Alternate Directors

- (a) An Alternate is entitled to notice of meetings of the Directors and, if the Appointor is not present at such meeting, is entitled to attend and vote in his or her stead.
- (b) An Alternate may exercise any powers that the Appointor may exercise and the exercise of any such power by the Alternate is deemed to be the exercise of the power by the Appointor.
- (c) An Alternate is not, in his or her capacity as an Alternate, entitled to receive notice of, or attend and vote at, a meeting of members.
- (d) An Alternate is not required to hold any shares in the Company.
- (e) The appointment of an Alternate may be terminated at any time by the Appointor even if the period of the appointment of the Alternate has not expired, and terminates in any event if the Appointor vacates office as a Director.
- (f) An appointment, or the termination of an appointment, of an Alternate is effected by a notice in writing signed by the Appointor and served on the Company.

5. POWERS OF THE BOARD

5.1 Powers Generally

Except as otherwise required by the Act, any other applicable law, or this document, the Board:

- (a) has the power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

5.2 Exercise of Powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 11; or
- (b) in accordance with a delegation of the power under rule 6 or 7.

5.3 Executing Negotiable Instruments

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner for the time being decided by the Board.

6. MANAGING DIRECTOR

6.1 Appointment and Power of Managing Director

The Board may appoint one or more Directors to be a Managing Director either for a specified term or without specifying a term.

The Board may delegate any of the powers of the Board to a Managing Director:

- (a) on the terms and subject to any restrictions the Board decides; and
 - (b) so as to be concurrent with, or to the exclusion of, the powers of the Board,
- and may revoke the delegation at any time.

This rule does not limit rule 7.

6.2 Termination of Appointment of Managing Director

The appointment of a Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board removes the Managing Director from the office of Managing Director (which, without affecting the rights of the Managing Director under any contract between the Company and the Managing Director, the Board has the power to do),

whether or not the appointment was expressed to be for a specified term.

6.3 Remuneration

A Managing Director, subject to the terms of any agreement entered into in a particular case, is to receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Board determines.

7. DELEGATION OF BOARD POWERS

7.1 Power to Delegate

The Board may delegate any of its own powers as permitted by section 198D.

7.2 Power to Revoke Delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

7.3 Terms of Delegation

A delegation of powers under rule 7.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

7.4 Proceedings of Committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

8. DIRECTORS' DUTIES AND INTERESTS

8.1 Compliance with Duties under the Act

Each Director must comply with the sections 180 to 183 (inclusive).

8.2 Director Not Disqualified from Holding Other Offices Etc

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office or place of profit or employment other than that of the Company's auditor;
- (b) being a Member or creditor of any corporation (including the Company) or partnership other than the auditor; or
- (c) entering into any agreement with the Company.

8.3 Disclosure of Interests

Each Director must comply with section 191.

8.4 Director Interested in a Matter

If a Director has an interest in a matter that relates to the affairs of the Company and either the Director discloses the interest under section 191 or it is not required to be disclosed under section 191:

- (a) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter that relates to the interest;
- (b) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may retain benefits under the transaction even though the Director has the interest; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191, rule 8.4(c) applies only if it is disclosed before the transaction is entered into.

9. REMUNERATION OF DIRECTORS

9.1 Remuneration of Executive Directors

Subject to any contract with the Company (and if the Company is a subsidiary of a listed corporation, to the listing rules), the Board may fix the remuneration of each Executive Director. That remuneration may consist of salary, bonuses, commission on profits or dividends, participation in profits or any other elements.

9.2 Accrual of Remuneration

Remuneration is deemed to accrue from day to day.

9.3 Expenses

The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committees of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.

10. OFFICERS' INDEMNITY AND INSURANCE

10.1 Indemnity

Subject to the Act:

- (a) the Company, to the extent the person is not otherwise indemnified:
 - (i) must indemnify every officer of the Company and every officer of the Company's wholly owned subsidiaries; and
 - (ii) may indemnify the Company's auditor,

against a Liability incurred as such an officer or auditor (other than to the Company or a related body corporate of the Company), including a Liability incurred as a result of the Company or a wholly owned subsidiary of the Company appointing or nominating the officer as trustee or officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or auditor in defending an action for a Liability incurred as such an officer or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In relation to this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

10.2 Insurance

Subject to the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

10.3 Former Officers

The indemnity in favour of officers under rule 10.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

10.4 Deeds

Subject to the Act, without limiting a person's rights under this rule 10, the Company may enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 10 on any terms and conditions that the Board thinks fit.

11. BOARD MEETINGS

11.1 Convening Board Meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

11.2 Notice of Board Meeting

The convenor of each Board meeting:

(a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director and each Alternate; and

(b) may give notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

11.3 Use of Technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D.

A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located at 2 or more places, at the place where the chair of the meeting is located.

11.4 Chairing of Board Meetings

The Board may elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no chair of Directors or the chair is not present at the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

11.5 Quorum

Unless the Board decides otherwise or the Company is a Single Director Company, the quorum for a Board meeting is two Directors and a quorum must be present for the whole meeting. An Alternate who is also a Director or a person who is an Alternate for more than one Appointor may only be counted once toward a quorum. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

11.6 Majority Decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The chair of a Board meeting does not have a second or casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

11.7 Written Resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution

set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

11.8 Valid Proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

11.9 Single Director Company

If the Company is a Single Director Company:

- (a) a written record of a decision to a particular effect made by the sole Director counts as the passing by the Director of a resolution to that effect and has effect as minutes of that resolution and rules 11.1 to 11.8 do not apply; and
- (b) the sole Director is competent to exercise all the powers and discretions for the time being vested in or exercisable by the Board.

12. MEETINGS OF MEMBERS

12.1 Calling Meetings of Members

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or by order made under section 249G.

12.2 Notice of Meetings of Members

Subject to rules 12.3 and 12.6, at least 21 days' written notice of a meeting of Members must be given individually to each Member entitled to vote at the meeting, to each Director (other than an Alternate) and to the auditor (if any). The notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

12.3 Short Notice

Subject to section 249H(4):

- (a) if the Company has elected to convene a meeting of Members as the annual general meeting, and all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

12.4 Postponement or Cancellation

Subject to section 249D(5), the Board may postpone or cancel a meeting of Members by written notice given individually to each person entitled to be given notice of the meeting.

12.5 Fresh Notice

If a meeting of Members is postponed or adjourned for one month or more, the Company must give a new notice of the resumed meeting.

12.6 Notice to Joint Holders of Shares

If a share is held jointly, the Company need only give notice of a meeting of Members (or of its cancellation or postponement) to the joint holder who is named first in the Register.

12.7 Technology

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

12.8 Accidental Omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

12.9 Class Meetings

Rules 12 to 16 apply to a separate meeting of a class of Members as far as they are capable of application and modified as necessary.

13. PROCEEDINGS AT MEETINGS OF MEMBERS**13.1 Member Present at Meeting**

If a Member has appointed a proxy or attorney or (in the case of a Member which is a body corporate) a representative to act at a meeting of Members, that Member is taken to be present at a meeting at which the proxy, attorney or representative is present.

13.2 Quorum

Subject to section 249B, the quorum for a meeting of Members is two Voting Members. Each individual present may only be counted once toward a quorum. If a Member has appointed more than one proxy or representative only one of them may be counted toward a quorum.

13.3 Quorum Not Present

If a quorum is not present within 15 minutes after the time for which a meeting of Members is called:

- (a) if called as a result of a request of Members under section 249D, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified, to the same time on the same day in the next week at the same place; and

- (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

13.4 Chairing Meetings of Members

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of Members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of Members is called or is not willing to chair the meeting,

the Voting Members present must elect a Member or Director present to chair the meeting.

13.5 Members Rights Suspended While Call Unpaid

If a call on a share is due and unpaid, the holding of that share does not entitle the Member to be present, speak, or vote at, or be counted in the quorum for, a meeting of Members.

13.6 Adjournments

Subject to rule 12.5, the chair of a meeting of Members at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by Ordinary Resolution of the meeting,

adjourn it to another time and place.

13.7 Business at Adjourned Meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

14. PROXIES, ATTORNEYS AND REPRESENTATIVES

14.1 Appointment of Proxies

A Member may appoint not more than two proxies to attend and act for the Member at a meeting of Members. An appointment of proxy must be made by written notice to the Company that complies with section 250A(1) or in any other form and mode that is signed or acknowledged by the Member in a manner satisfactory to the Board. If a Member appoints two 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 those votes.

14.2 Member's Attorney

A Member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of Members. If the appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

14.3 Manner in Which Proxy Is to Vote

An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

14.4 Authority of Proxy

An instrument appointing a proxy is deemed to confer authority to speak on behalf of the appointor to the extent permitted by law and demand, or join in demanding, a poll.

14.5 Deposit of Proxy Forms and Powers of Attorney

An appointment of a proxy for a meeting of Members or for the taking of a poll is only effective if the following documents are received by the Company at least 48 hours before the meeting or the time appointed for taking the poll (as appropriate):

- (a) the proxy's appointment; and
- (b) if the appointment is signed by the appointor's attorney — the authority under which the appointment was signed or a certified copy of the authority.

15. ENTITLEMENT TO VOTE

15.1 Number of Votes

Subject to any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of Members, or classes of Members, each Member entitled to vote may vote in person or by proxy or attorney or (in the case of a Member which is a body corporate) by its representative;
- (b) on a show of hands every person present who is a Member or a proxy, attorney or representative of a Member has one vote except where a proxy has two or more appointments that specify different ways to vote on a resolution, in which case the proxy cannot vote; and
- (c) on a poll every Member present in person or by proxy, attorney or representative has one vote for each share they hold.

The chair of a meeting of Members does not have a second or casting vote and if an equal number of votes is cast for and against a resolution the matter is decided in the negative.

15.2 Votes of Joint Holders

In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy or attorney, is to be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority, is determined by the order in which the names stand in the register of Members.

15.3 Voting Restrictions

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the committee or trustee of the Member or such other person as properly has the management of the Member's estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.

16. HOW VOTING IS CARRIED OUT

16.1 Method of Voting

A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under rule 16.2 either before or on the declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chair's declaration of a decision on a show of hands is final.

16.2 Demand for a Poll

A poll may be demanded on any resolution (except a resolution concerning the election of the chair of a meeting) by:

- (a) at least five Members entitled to vote on the resolution; or
- (b) Members entitled to cast at least 5% of the votes that may be cast on the resolution on a poll (worked out as at the midnight before the poll is demanded); or
- (c) the chair.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

16.3 When and How Polls Must Be Taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 16.3(c), in the manner that the chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 16.3(c), in the manner that the chair of the meeting directs;
- (c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

17. RESOLUTIONS WITHOUT MEETINGS

17.1 Written Resolutions

Subject to section 249A(1), the Company may pass a resolution without a general meeting being called or held if the resolution is set out in a document:

- (a) if the Company has only 1 Member, signed in the manner set out in section 249B; or
- (b) if the Company has more than 1 Member, signed in the manner set out in section 249A.

17.2 Signature of Resolutions

The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a Member in a manner satisfactory to the Board as being signed by that Member.

18. SECRETARY**18.1 Appointment of Secretary**

The Board may appoint one or more individuals to be a Secretary either for a specified term or without specifying a term.

18.2 Terms and Conditions of Office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

18.3 Cessation of Secretary's Appointment

A person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a Secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or is physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 18.4.

18.4 Removal from Office

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specific term.

19. COMPANY SEALS**19.1 Common Seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

19.2 Use of Seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

19.3 Fixing Seals to Documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) if the Company is a Single Director Company and the sole Director is also the sole Secretary, by that person; or
- (b) otherwise, by two Directors or one Director and one Secretary; or
- (c) (in either case) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

20. FINANCIAL REPORTS AND AUDIT

The Directors may determine whether and to what extent, and at what time and place and under what conditions, the financial records and other books of the Company or any of them are to be open for the inspection by Members other than Directors, and a Member other than a Director does not have the right to inspect any book or record of the Company except as provided by law, as authorised by the Board or resolution of Members.

21. SHARES

21.1 Issue at Discretion of Board

Subject to section 259C, the Board may on behalf of the Company, issue, grant options over or otherwise dispose of unissued shares to any person on the terms, with the rights, and at times, that the Board decides.

21.2 Preference and Redeemable Preference Shares

The Company may issue preference shares (including preference shares that are liable to be redeemed). The rights attached to preference shares are the rights approved by Special Resolution of the Company as applicable to those shares.

21.3 Brokerage and Commissions

The Company may pay brokerage or commissions to a person in respect of that person or another person agreeing to take up shares in the Company.

21.4 Surrender of Shares

The Board may accept a surrender of shares:

- (a) to compromise a question as to whether those shares have been validly issued; or
- (b) if the surrender is otherwise within the Company's powers.

The Company may sell or re-issue surrendered shares in the same way as forfeited shares.

22. CERTIFICATES

22.1 Issue of Share Certificate

The Company must issue a certificate of title to shares that complies with section 1070C and deliver it to the holder of those shares in accordance with section 1071H.

22.2 Multiple Certificates and Joint Holders

If a Member requests the Company to issue several certificates each for a part of the shares registered in the Member's name, the Company must do so. For this purpose, joint holders of shares are a single member. The Company may issue only one certificate that relates to each share registered in the names of two or more joint holders and may deliver the certificate to any of those joint holders.

22.3 Lost and Worn Out Certificates

If a certificate:

- (a) is lost or destroyed and the owner of the relevant securities applies in accordance with section 1070D(5), the Company must; or
- (b) is defaced or worn out and is produced to the Company, the Company may, issue a new certificate in its place.

23. PARTLY PAID SHARES

23.1 Fixed Instalments

If a share is issued on terms that some or all of the issue price is payable by instalments, the registered holder of the share must pay every instalment to the Company when due. If the registered holder does not do so, rules 23.6 to 23.14 apply as if the registered holder had failed to pay a call.

23.2 Prepayment of Calls

The Board may:

- (a) accept prepayment of some or all of the amount unpaid on a share above the sums actually called as a payment in advance of calls;
- (b) agree:
 - (i) to payment by the Company of interest at a rate no higher than the Interest Rate on that part of the advance payment which for the time being exceeds the aggregate amount of the calls then made on the shares in respect of which it was paid; or
 - (ii) that the amount paid in advance will be taken into account in calculating participation in profit or ascertaining entitlement to surplus on a winding up or other distributions attributable to that share; and
- (c) unless otherwise agreed between the Member and the Company, repay the sum.

23.3 Calls Made by Board

Subject to the terms of issue of a share and to any Special Resolution passed under section 254N, the Board may:

- (a) make calls on a Member for some or all of the money unpaid on a share held by that Member;
- (b) make a call payable by instalments; and

- (c) revoke or postpone a call,

and must give the relevant Member written notice of the call specifying to whom the call must be paid and the time for payment (which must be at least 14 days after the notice is given).

23.4 Classes of Shares

The Board may issue shares on terms as to the amount of calls to be paid and the time for payment of those calls which are different as between the holders of those shares. The Board may make different calls on different classes of shares.

23.5 Obligation to Pay Calls

Subject to section 1072E(8), a Member subject to a call must pay the amount of the call to the payee named in the notice of call no later than the time specified in the notice. Joint holders of a share are jointly and severally liable for calls.

23.6 Called Amounts

If a call is not paid on or before the day specified for payment, the Board may require the Member liable for the call to pay:

- (a) interest on the amount of the call at the Interest Rate from that day until payment is made; and
- (b) all costs and expenses incurred by the Company because payment was not made on that day.

23.7 Proof of Call

If, on the hearing of an action for recovery of a Called Amount, it is proved that:

- (a) the minute books of the Company record the Board's resolution making the call;
- (b) notice of the call was given under rule 23.3; and
- (c) the person sued appears in the Register as a holder of the share in respect of which the call was made,

proof of those matters is conclusive proof of the debt.

23.8 Forfeiture Notice

At any time until a Called Amount is paid, the Board may give the relevant Member a notice which:

- (a) requires the Member to pay the Called Amount;
- (b) specifies a date at least 14 days after the date of the notice by which, and a place at which, payment must be made; and
- (c) states that if payment is not made at that place on or before that date, the share to which the call relates is liable to be forfeited.

23.9 Forfeiture

If the requirements of a notice given under rule 23.8 are not satisfied, the Board may forfeit the share in respect of which that notice was given (and all of the dividends, interest and other money payable in respect of that share and not actually paid before the forfeiture) by resolution passed before the Called Amount is paid.

23.10 Disposal and Reissue of Forfeited Shares

A share forfeited under rule 23.9 immediately becomes the property of the Company. The Board, on behalf of the Company, may:

- (a) re-issue the share with or without any money paid on it by any former holder credited as paid; or
- (b) sell or otherwise dispose of the share, and execute and register a transfer of it,

on the terms it decides. The title of the new holder is not affected by any irregularity in the forfeiture or the re-issue, sale or disposal and the sole remedy of any person previously interested in the share is damages which may be recovered only from the Company. The new holder is not liable for the Called Amount.

23.11 Notice of Forfeiture

The Company must promptly:

- (a) give notice of the forfeiture of a share to the Member who held the share immediately before the resolution for the forfeiture was passed; and
- (b) enter the forfeiture and its date in the Register.

A written declaration that a share was forfeited on a specified date and notice of forfeiture was given in accordance with this document signed by a Director or Secretary is, in the absence of proof to the contrary, evidence of those facts and of the Company's right to dispose of the share.

23.12 Cancellation of Forfeiture

The Board may cancel the forfeiture of a share on any terms at any time before it disposes of that share under rule 23.10.

23.13 Effect of Forfeiture

A person who held a share which has been forfeited under rule 23.9 ceases to be a Member in respect of that share but remains liable to pay the Called Amount until it is paid in full. The Board may elect not to enforce payment of an amount due to the Company under this rule.

23.14 Application of Proceeds

The Company must:

- (a) apply the net proceeds of any re-issue, sale or disposal of a forfeited share under rule 23.10 (after payment of all costs and expenses) to satisfy the Called Amount; and
- (b) pay any surplus to the person who held the share immediately before forfeiture.

24. COMPANY LIENS

24.1 Existence of liens

Unless the terms of issue provide otherwise, the Company has a first and paramount lien on each share for:

- (a) all money called or payable at a fixed time in respect of that share (including money payable under rule 23.6) whether or not payment is due;
- (b) all money owed to the Company by the Member; and
- (c) amounts for which the Company is indemnified under rule 24.3.

The lien extends to all dividends payable in respect of the share and to all proceeds of sale of the share.

24.2 Sale under Lien

If:

- (a) the Company has a lien on a share;
- (b) an amount secured by the lien is due and payable;
- (c) the Company has given notice to the Member registered as the holder of the share:
 - (i) requiring payment of the amount which is due and payable and secured by the lien; and
 - (ii) specifying a date (at least 14 days after the date of the notice) by which and a place at which payment of that amount must be made; and
- (d) the requirements of the notice given under rule 24.2(c) are not fulfilled,

the Company may sell the share as if it had been forfeited under rule 23.9 and rules 23.10 and 23.14 apply, to the extent practical and modified as necessary, as if the amount referred to in rule 24.2(b) were the Called Amount in respect of that share.

24.3 Indemnity for Payments Required to be Made by the Company

If the law of any jurisdiction imposes or purports to impose any immediate, future or possible liability on the Company, or empowers or purports to empower any person to require the Company to make any payment, on account of a Member or referable to a share held by that Member (whether alone or jointly) or a dividend or other amount payable in respect of a share held by that Member, the Company:

- (a) is fully indemnified by that Member from that liability;
- (b) may recover as a debt due from the Member the amount of that liability together with interest at the Interest Rate from the date of payment by the Company to the date of repayment by the Member; and
- (c) may refuse to register a transfer of any share by that Member until the debt has been paid to the Company.

Nothing in this document in any way prejudices or affects any right or remedy which the Company has (including any right of set off) and, as between the Company and the Member, any such right or remedy is enforceable by the Company.

25. DIVIDENDS

25.1 Accumulation of Reserves

Before paying any dividend to Members, the Board may:

- (a) set aside reserves to be applied, in the Board's discretion, for any purpose it decides and use any sum so set aside in the business of the Company or invest in investments selected by the Board and vary and deal with those investments as it decides; or
- (b) carry forward any amount which the Board decides not to distribute without transferring that amount to a reserve; or
- (c) do both.

25.2 Time for Payment

The Company does not incur a debt merely by fixing the amount or time for payment of a dividend. A debt arises only when the time fixed for payment arrives. The decision to pay a dividend may be revoked by the Board at any time before then. A resolution of the Board as to any amount available for a dividend is conclusive.

25.3 Payment of Dividends

Subject to the Act, rules 25.2, 25.4 and 25.9, and the terms of issue of shares, the Board may resolve to pay any dividend it thinks appropriate and fix the time for payment.

25.4 Amount of Dividend

Subject to the terms of issue of shares, the Company may pay a dividend on one class of shares to the exclusion of another class. Subject to rule 25.5, each share of a class on which the Board resolves to pay a dividend carries the right to participate in the dividend in the same proportion that the amount for the time being paid on the share bears to the total issue price of the share.

25.5 Prepayments and Payments During Dividend Period

For the purposes of rule 25.4:

- (a) unless the Board has agreed otherwise under rule 23.2(b)(ii), an amount paid in advance of calls is not taken into account as part of the amount for the time being paid on a share; and
- (b) if an amount was paid on a share during the period to which a dividend relates (Broken Payment), the Board may when calculating the amount for the time being paid on the share (Paid Up Amount), apportion the Broken Payment across the period to which the dividend relates so that only the portion from the date of payment to the end of the dividend period is included in the Paid Up Amount.

25.6 Dividends in Kind

The Board may resolve to pay a dividend in cash or satisfy it by distribution of specific assets (including shares or securities of any other corporation), the issue of shares or the grant of options. If the Board satisfies a dividend by distribution of assets, the Board may:

- (a) fix the value of any asset distributed; and
- (b) make cash payments to Members on the basis of the value fixed so as to adjust the rights of Members between themselves.

25.7 Method of Payment

The Company may pay any cash dividend, interest or other money payable in respect of shares by cheque sent, and may distribute assets by sending the certificates or other evidence of titles to them, through the post directed to:

- (a) the address of the Member (or in the case of a jointly held share, the address of the joint holder named first in the Register); or
- (b) to any other address the Member (or in the case of a jointly held share all the joint holders) directs in writing.

25.8 Joint Holders' Receipt

Any one of the joint holders of a share may give an effective receipt for any dividend, interest or other money payable in relation to that share.

25.9 Retention of Dividends by Company

The Company may retain the dividend payable on a share:

- (a) of which a person seeks to be registered as the holder under rule 27.2 and 27.3, until that person is registered as the holder of that share or transfers it; or
- (b) on which the Company has a lien, to satisfy the liabilities in respect of which the lien exists.

25.10 No Interest on Dividends

No Member may claim, and the Company must not pay, interest on a dividend (either in money or kind).

26. TRANSFER OF SHARES**26.1 Instrument of Transfer**

Subject to rule 26.2, a Member may transfer a share by a document the form of which is permitted by law and which is signed by or on behalf of both the transferor and the transferee. The Company must not register a transfer that does not comply with this rule.

26.2 Delivery of Transfer and Certificate

A document of transfer must be:

- (a) delivered to the registered office of the Company;

- (b) accompanied by the certificate for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction; and
- (c) marked with payment of any stamp duty payable.

Property in, and title to, a document or a transfer that is delivered to the Company (but not the shares to which it relates) passes to the Company on delivery.

26.3 Refusal to Register Transfer

The Board, without giving any reason, may refuse to register a transfer of shares and, subject to section 259C, must not register a transfer to a subsidiary of the Company. If the Board refuses to register a transfer, the Company must give the transferee notice of the refusal within two months after the date on which the transfer was delivered to it.

26.4 Transferor Remains Holder Until Transfer Registered

The transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the Register in respect of it.

26.5 Powers of Attorney

The Company may assume, as against a Member, that a power of attorney granted by that Member that is lodged with or produced or exhibited to the Company remains in force, and may rely on it, until the Company receives express notice in writing at its registered office of:

- (a) the revocation of the power of attorney; or
- (b) the death, dissolution or insolvency of the Member.

27. TRANSMISSION OF SHARES

27.1 Death of Joint Holder

The Company must recognise only the surviving joint holders as being entitled to shares registered jointly in the names of a deceased Member and others. The estate of the deceased joint holder is not released from any liability in respect of the shares.

27.2 Death of Single Holder

The Company must not recognise anyone except the legal personal representative of the deceased Member as having any title to shares registered in the sole name of a deceased Member. If the legal personal representative gives the Board the documents described in section 1071B(9) or 1071B(13) or other information that satisfies the Board of the representative's entitlement to be registered as holder of the shares:

- (a) subject to rules 26.3 and 27.4, the Company must register the legal personal representative as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from the legal personal representative requiring it to do so; and
- (b) whether or not registered as the holder of the shares, the legal personal representative:
 - (i) may, subject to rule 26, transfer the shares to another person; and
 - (ii) has the same rights as the deceased Member.

27.3 Transmission of Shares on Insolvency or Mental Incapacity

Subject to the *Bankruptcy Act 1966* (Cth), if a person entitled to shares, because of the insolvency or mental incapacity of a Member, gives the Board the information it reasonably requires to establish the person's entitlement to be registered as holder of the shares:

- (a) subject to rules 26.3 and 27.4, the Company must register that person as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from that person requiring it to do so; and
- (b) whether or not registered as the holder of the shares, that person:
 - (i) may, subject to rule 26, transfer the shares to another person; and
 - (ii) has the same rights as the insolvent or incapable Member.

If section 1072C applies, this rule is supplemental to it.

27.4 Refusal to Register Holder

The Company has the same right to refuse to register a legal personal representative or person entitled to shares on the insolvency or mental incapacity of a Member as it would have if that person was the transferee named in a transfer signed by a living, solvent and competent Member.

28. SHARE CAPITAL

28.1 Capitalisation of Profits

The Company may capitalise profits, reserves or other amounts available for distribution to Members. Subject to the terms of issue of shares, Members are entitled to participate in a capital distribution in the same proportions in which they are entitled to participate in dividends.

28.2 Adjustment of Capitalised Amounts

The Board may settle any difficulty that arises in regard to a capitalisation of profits as it thinks appropriate and necessary to adjust the rights of Members among themselves including:

- (a) fix the value of specific assets;
- (b) issue fractional certificates; and
- (c) make cash payments to Members on the basis of the value fixed or on the basis that fractional entitlements are disregarded so as to adjust the rights of Members between themselves.

28.3 Conversion of Shares

Subject to Part 2H.1 and rules 21.2 and 28.7, the Company may convert:

- (a) an ordinary share into a preference share;
- (b) a preference share into an ordinary share; or
- (c) all or any of its shares into a larger or smaller number of shares by Ordinary Resolution.

28.4 Reduction of Capital

The Company may reduce its share capital:

- (a) by reduction of capital in accordance with Division 1 of Part 2J.1;
- (b) by buying back shares in accordance with Division 2 of Part 2J.1;
- (c) in the ways permitted by sections 258E and 258F; or
- (d) in any other ways for the time being permitted by the Act.

28.5 Payments in Kind

Where the Company reduces its share capital in accordance with Division 1 of Part 2J.1, it may do so by way of payment of cash, distribution of specific assets (including shares or other securities in another corporation), or in any other manner permitted by law. If the reduction is by distribution of specific assets, the Board may:

- (a) fix the value of any assets distributed; and
- (b) make cash payments to Members on the basis of the value fixed so as to adjust the rights of Members between themselves.

28.6 Payment in Kind by Way of Securities in Another Corporation

Where the Company reduces its share capital by way of distribution of specific assets, being shares or other securities in another corporation, each Member is taken to have agreed to become a member of that corporation. Each Member also appoints the Company their attorney to:

- (a) agree to the Member becoming a member of that corporation; and
- (b) agree to the Member being bound by the constitution of that corporation; and
- (c) execute any transfer of shares or securities, or other documents required to give effect to the distribution of shares or other securities to that Member.

28.7 Variation of Rights

If the Company issues different classes of shares, or divides issued shares into different classes, the rights attached to shares in any class may (subject to sections 246C and 246D) be varied or cancelled only:

- (a) with the written consent of the holders of 75% of the issued shares of the affected class; or
- (b) by Special Resolution passed at a separate meeting of the holders of the issued shares of the affected class.

Subject to the terms of issue of shares, the rights attached to a class of shares are not treated as varied by the issue of further shares of that class.

29. WINDING UP

29.1 Entitlement of Members

Subject to the terms of issue of shares, the surplus assets of the Company remaining after payment of its debts are divisible among Members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

29.2 Distribution of Assets Generally

If the Company is wound up, the liquidator may, with the sanction of a Special Resolution:

- (a) divide the assets of the Company among the Members in kind;
- (b) for that purpose fix the value of assets and decide how the division is to be carried out as between the Members and different classes of Members; and
- (c) vest assets of the Company in trustees on any trusts for the benefit of the Members the liquidator thinks appropriate.

29.3 No Distribution of Liabilities

The liquidator cannot compel a Member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.

29.4 Distribution Not in Accordance with Legal Rights

If the liquidator decides on a division or vesting of assets of the Company under rule 29.2 which is not in accordance with the legal rights of the contributories, any contributory who would be prejudiced by it has a right to dissent and ancillary rights as if that decision were a special resolution passed under section 507.

30. LOANS TO MEMBERS

30.1 Interpretation

- (a) The application of this rule 30 to a loan will not be affected by the Member to whom the loan was made subsequently ceasing to be a Member.
- (b) A reference in this rule 30 to "loan" includes any arrangement or transaction that would be a loan under section 109D(3).
- (c) References to sections in this rule 30 are references to those sections in the Income Tax Assessment Act 1936 (Cth).

30.2 Application to Certain Loans to Members

If the Company makes a loan to a Member:

- (a) which is not fully repaid by 30 June next occurring after the loan is made; and
- (b) which loan would (in the absence of a written agreement between the Company and that Member which satisfies the requirements of section 109N) result in the Company being deemed under section 109D to have paid a dividend to that Member;

that loan is made under this rule 30 unless the Member and the Company have agreed in writing that this rule 30 is not to apply to the loan or there is another written agreement relating to that loan which is inconsistent with this rule 30.

30.3 Terms of Loan

In respect of each loan which is made under this rule 30:

- (a) it is made for a term of seven years from the date on which the loan is made;
- (b) interest will accrue from day to day on the loan amount outstanding from the 1 July next after the date on which the loan is made at the benchmark interest rate (as defined in section 109N(2)) for each year; and
- (c) the Member must pay to the Company instalments of principal and interest by 30 June in each financial year after the year in which the loan is made of an amount calculated in the manner set out in section 109E.

30.4 Amendments to Tax Rules

If the provisions of Division 7A of Part III are amended or re-enacted as so to impose further conditions that must be satisfied to avoid the Company being deemed to have paid a dividend in respect of any payment or loan to a Member, to the extent that the conditions relate to the relationship between the Company and the Member, this document is to apply as if those conditions had been expressly included from the date that the amendment or re-enactment commences to apply.

31. NOTICES

31.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address;
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

31.2 Overseas Members

A Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

31.3 When Notice is Given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 5 pm (local time in the place of receipt) on a business day – on that day;
 - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day; and
- (b) if it is sent by mail:
 - (i) within Australia – on the second business day after posting; or
 - (ii) to a place outside Australia – on the seventh business day after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

31.4 Business Days

For the purposes of rule 31.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

31.5 Notice to Joint Holders

Notice to joint holders of shares must be given to the joint Member named first in the Register. Every person who becomes entitled to a share is bound by every notice in respect of that share that was properly given to a person registered as the holder of the share before the transfer or transmission of the share was entered in the Register.

31.6 Counting Days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.