

Australian Securities & Investments Commission

**A Company limited by Shares**

**Under The *Corporations Act* 2001**

**SPECIAL PURPOSE COMPANY**

**The Constitution of**

**DG Pappin Properties Pty Ltd**

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## **The Constitution**

### **Table of contents**

<b><u>Rule No.</u></b>	<b><u>Description</u></b>	<b><u>Page No.</u></b>
1	Definitions and Interpretation	1
2	Proprietary Company Provisions	2
3	Classes of Shares	2
4	Variations of Share Rights and Issue of Shares	8
5	Payments by Way of Brokerage or Commission	9
6	Shares Held in Trust	9
7	Certificates	9
8	Lien	10
9	Calls on Shares	11
10	Forfeiture of Shares	12
11	Transfer of Shares	13
12	Transmission of Shares	17
13	Share Buy-Backs and Capital Reduction	17
14	Offers of Shares	18
15	General Meetings	18
16	Proceedings at General Meetings	19
17	Unanimous Resolutions of Members	23
18	Appointment, Remuneration and Removal of Directors	24
19	Powers and Duties of Directors	25
20	Proceedings of Directors	26
21	Alternate Directors	28
22	Managing Director	29
23	Associate Directors	30
24	Secretary	30
25	Seal	30
26	Inspection of Records	31
27	Dividends and Reserves	31
28	Capitalisation of Profits	33
29	Notices	34
30	Winding Up	35
31	Indemnity of Officers, Auditors or Agents	35

# **SPECIAL PURPOSE COMPANY**

## **The Constitution** **of DG Pappin Properties Pty Ltd**

### **A Company limited by shares** **under the *Corporations Act 2001***

#### **1. DEFINITIONS AND INTERPRETATION**

##### **a. Definitions**

In this Constitution:

**"Company"** means the company named above governed by the terms of this Constitution;

**"Corporations Act"** means the *Corporations Act 2001*;

**"Director"** has the meaning given by section 9 of the *Corporations Act*;

**"Rule"** means a provision of this Constitution;

**"Secretary"** means any person (including a sole Director) appointed to perform the duties of a secretary of the Company; and

**"Special Resolution"** means has the meaning given by section 9 of the *Corporations Act*.

##### **b. Interpretation**

- i. The singular means and includes the plural and vice versa.
- ii. Any reference to Directors is deemed to mean a sole Director acting alone where the Company has only one (1) Director.
- iii. Any gender means and includes all other genders.
- iv. References to any statutory enactment means and is construed as references to that enactment as amended, modified and re-enacted from time to time.
- v. The table of contents and headings used are for ease of reference only. They do not affect the construction or interpretation of this Constitution.
- vi. Words importing persons shall include corporations.

- vii. Unless the contrary intention appears in this Constitution, an expression used in a particular Part or Division of the *Corporations Act* that is given a special meaning for the purposes of that Part or Division has, in any Rule of this Constitution that deals with a matter dealt with by that Part or Division, the same meaning as in that Part or Division.

## **2. PROPRIETARY COMPANY PROVISIONS**

- a. The Company is registered as a proprietary Company within the meaning of section 113 of the *Corporations Act* and accordingly:
  - i. is limited by shares;
  - ii. has no more than fifty (50) non-employee members;
  - iii. does not engage in any activity that would require disclosure to investors under Chapter 6D of the *Corporations Act* or a corresponding law except that the Company may offer its shares to:
    - A. existing members of the Company; or
    - B. employees of the Company or a subsidiary of the Company;
  - iv. is prohibited to distribute income or property to its members;
  - v. will at all times satisfy the appropriate requirements of paragraph (f) in the definition of "special purpose company" contained in regulation 3 of the *Corporations (Review Fees) Regulations 2003*; and
  - vi. the sole purpose of this Company is to act as trustee of a regulated superannuation fund within the meaning of section 19 of the *Superannuation Industry (Supervision) Act 1993*.

## **3. CLASSES OF SHARES**

### **a. Classes of Shares**

- i. The nominal capital of the Company is as decided by the Directors by resolution and as permitted under the *Corporations Act*.
- ii. The class or classes of shares and the rights and conditions to be ascribed to a class of share will be as decided by the Directors by resolution.
- iii. The Directors may increase the share capital upon the creation of new shares, consolidate and divide or subdivide any of the shares or cancel shares including shares that have been forfeited as decided by the Directors by resolution.
- iv. Shares may be issued with such preferential, deferred, qualified or special rights, privileges or conditions as the Directors may think fit.

v. All shares are under the absolute control of the Directors and the Directors may:

- A. allot;
- B. grant options over; or
- C. otherwise dispose of or deal with,

a share, to such person, on such terms and conditions, and for such consideration, and such time, and subject or not to the payment of any part of the issue price of the share in cash.

**b. Issue of Shares**

- i. The Directors may decide to issue shares to such persons and on such conditions as permitted under the *Corporations Act*.
- ii. The Directors may decide to issue shares with any special privileges, rights or conditions attached to the shares.
- iii. The Directors may refuse to issue shares to any person and shall not be required to give any reasons for any such refusal.
- iv. The shares allotted to the original subscribers shall be deemed to be duly issued by the Directors.

**c. Classes**

- i. Without limiting any power to issue shares, issued shares may include:
  - A. ordinary shares;
  - B. "A" class shares;
  - C. "B" class shares;
  - D. "C" class shares;
  - E. "D" class shares;
  - F. "E" class shares;
  - G. "F" class shares;
  - H. "G" class shares;
  - I. "H" class redeemable preference shares;
  - J. "I" class redeemable preference shares; or
  - K. "J" class redeemable preference shares.

- ii. A holder of an ordinary share or "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 (1) vote for every share held;
  - B. the right to participate in the dividends (if any) declared on that share; and
  - C. in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled.
- iii. A 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 (1) vote for every share held;
  - B. the right to participate in the dividends (if any) declared on that share; and
  - C. in a winding up of the Company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the Company.
- iv. A 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 (1) vote for every share held;
  - B. no right to participate in the dividends (if any) declared on that share; and
  - C. in a winding up of the Company to repayment of the paid issue price of such share but no right to participate in the division of surplus assets or profits of the Company.
- v. A 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 (1) vote for every share held;
  - B. no right to participate in the dividends (if any) declared on that share; and
  - C. in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled.

- vi. A holder of an "E" class share holds that share subject to the following rights, privileges and conditions:
  - A. no right to attend and vote at any meeting of the Company;
  - B. the right to participate in the dividends (if any) declared on that share; and
  - C. in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled.
- vii. A holder of an "F" class share holds that share subject to the following rights, privileges and conditions:
  - A. no right to attend and vote at any meeting of the Company;
  - B. the right to participate in the dividends (if any) declared on that share; and
  - C. in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled.
- viii. A 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. no right to participate in the dividends (if any) declared on that share; and
  - C. in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company and in this regard to rank equally with all other shareholders so entitled.
- ix. A holder of an "H" 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 (7) days notice in writing of its intention so to do, delivered or posted to the last known address of the shareholder 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 (1) or more of the said redeemable preference shares and such redemption shall take place immediately upon the expiry of seven (7) days from the delivery or posting of the said notice of redemption and payment;
  - C. in a winding up of the Company to repayment of the issue price of such share in priority to all other shares in the Company but no right to participate in the division of any surplus assets or profits of the Company;

and

- 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 centum (5%) per annum on the paid issue price of the "H" class redeemable preference shares held.
- x. A holder of an "I" class redeemable preference share holds that share subject to the following rights, privileges and conditions:
  - A. no right whatsoever to vote at any meeting of the Company;
  - B. upon giving seven (7) days notice in writing of its intention so to do, delivered or posted to the last known address of the shareholder 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 (1) or more of the said redeemable preference shares and such redemption shall take place immediately upon the expiry of seven (7) days from the delivery or posting of the said notice of redemption and payment;
  - C. in a winding up of the Company to repayment of the issue price of such share in priority to all other shares in the Company except the "H" Class Redeemable Preference shares but no right to participate in the division of any surplus assets or profits of the Company; and
  - D. the right to participate in the dividends (if any) declared on that share.
- xi. A holder of a "J" class redeemable preference share holds that share subject to the following rights, privileges and conditions:
  - A. the right to attend and vote at all meetings of the Company and on a show of hands or poll to one vote for every share held;
  - B. upon giving seven (7) days notice in writing of its intention so to do, delivered or posted to the last known address of the shareholder 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 (7) days from the delivery or posting of the said notice of redemption and payment;
  - C. in a winding up of the Company to repayment of the issue price of such share in priority to all other shares in the Company except the "H" class redeemable preference shares but no right to participate in the division of any surplus assets or profits of the Company; and
  - D. the right to participate in the dividends (if any) declared on that share.

**d. Employee Class Shares**

- i. Without limiting any power to issue shares, issued shares may include employee class shares.



- ii. The employee class shareholders shall:
  - A. receive dividends as determined by the Directors;
  - B. hold their shares subject to any special terms and conditions imposed by the Directors and annotated on the shares by the Directors whether connected to the terms of their employment or otherwise; and
  - C. forfeit the employee class shares on ceasing to be an employee of the Company or a Related Company on such terms and conditions as may be endorsed on the shares on the instructions of the Board at the time the shares are issued provided that to do so does not breach the *Corporations Act*.

**e. Professional Class Shares**

- i. Without limiting any power to issue shares, issued shares may include professional class shares.
- ii. A holder of a "professional" class shares holds that share subject to the following rights privileges and conditions:
  - A. where the issue of shares is to a professional person restricted or governed by the rules of conduct or requirements of a professional governing body then the issue of such share shall be restricted to the issue of same to a qualified professional and the rights privileges and conditions attaching to the shares shall to the extent inconsistent with this Constitution incorporate such requirements as published professional governing body rules as are and remain in force;
  - B. where the published professional governing body rules so prescribe the holder of professional class shares may attend and vote at all meetings exclusive to any other shareholders of the Company and on a show of hands or poll to one (1) vote for every share held;
  - C. the right to participate in the dividends (if any) declared on that share;
  - D. in a winding up of the Company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the Company all other shareholders so entitled; and
  - E. where published professional governing body rules so restrict, the restricted right to transfer shares, but the Directors may refuse to register any transfer without assigning a reason for such refusal.

**f. Redeemable Shares**

- i. The Company has power to issue redeemable shares whether:
  - A. preference;
  - B. carrying the right of redemption out of profits;

- C. in accordance with section 254A of the *Corporations Act*; or
  - D. liable to be so redeemed at the option of the Company.
- ii. The Directors may, subject to the provisions of sections 254J - 254L inclusive of the *Corporations Act*, exercise such power of redemption in any manner they may think fit.

**g. Redeemable Preference Shares**

- i. Without limiting any power to issue shares, issued shares may include redeemable preference shares.
- ii. Redeemable preference shares shall be redeemed on the date specified by the Directors when the shares were issued or such other date or as may be required under the *Corporations Act*.
- iii. The amount paid to the redeemable preference shareholders on redemption shall include the original amount subscribed for the shares, any premium paid on subscription, any accrued dividends as decided by the Directors and any other amount required under the *Corporations Act*.
- iv. Redeemable preference shares may be issued with such special conditions as the Directors may decide including:
  - A. repayment of capital;
  - B. participation in surplus assets and profits;
  - C. dividends, including cumulative dividends;
  - D. attendance at meetings of Directors;
  - E. voting rights; and
  - F. priority of payment should the Company be liquidated.

**4. VARIATIONS OF SHARE RIGHTS AND ISSUE OF SHARES**

**a. Variations of Share Rights**

Variations of share rights are subject to this Constitution, the *Corporations Act* and to any special rights attached to any shares for the time being issued.

**b. Share Capital Structure**

- i. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of the issued shares who are entitled to at least seventy five per centum (75%) of the votes that may be cast in respect of shares of that class, or with the sanction of a special resolution passed at a separate meeting

of the holders of the shares of that class.

- ii. The provisions of this Constitution relating to general meetings apply so far as they are capable of application and mutatis mutandis to every such separate meeting of classes of shareholders except that:
  - A. a quorum is constituted by two (2) persons who, between them hold or represent by proxy one-third (1/3) of the issued shares of that class;
  - B. where the Company has issued shares of that class to only one (1) member, that member shall constitute a quorum; and
  - C. any holder of shares of that class, present in person or by proxy, may demand a poll.

## **5. PAYMENTS BY WAY OF BROKERAGE OR COMMISSION**

### **a. Power to Pay**

The Company may exercise the power to make payments by way of brokerage or commission conferred by the *Corporations Act* in the manner provided by the *Corporations Act*.

### **b. Permitted Payment**

Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

## **6. SHARES HELD IN TRUST**

### **a. No Liability to Trust**

Shares held by a member as trustee of a particular trust may be marked in the register of members of the Company in such a way as to identify them as being held in respect of that trust. No liability shall be created by any such marking and the Company shall not be affected with notice of any trust so recorded.

### **b. Share Recognition**

Notwithstanding the provisions of Sub-Rule 6.a. the Company is not bound by or compelled in any way to recognise or to investigate (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or the holding of any share upon any trust or any dealing by the trustee of such share or (except as otherwise provided by this Constitution or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

## **7. CERTIFICATES**

### **a. Share Certificate**

A person whose name is entered as a member in the register of members of the Company is entitled without payment to receive a certificate in accordance with the *Corporations Act*.

**b. Issue of Certificate**

The Company is not bound to issue more than one (1) certificate in respect of a share or shares held jointly by several persons.

**c. Delivery**

Delivery of a certificate for a share to one (1) of several joint holders is sufficient delivery to all such holders.

**8. LIEN**

**a. Lien on Shares**

- i. The Company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- ii. The Company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by the person or the person's estate to the Company.
- iii. The Directors may at any time exempt a share wholly or in part from the provisions of this Rule.
- iv. The Company's lien (if any) on a share extends to all dividends payable in respect of that share.

**b. Sale of Shares**

The Company may sell, in such manner as the Directors think fit, any shares on which the Company has a lien, provided that a share on which the Company has a lien must not be sold unless:

- i. a sum in respect of which the lien exists is presently payable; and
- ii. the Company has, not less than fourteen (14) days before the date of the sale, given to the present registered shareholder, or the person entitled to the share as a result of the death or bankruptcy of the registered holder a notice in writing setting out and demanding payment of such part of the amount in respect of which the lien exists as is presently payable.

**c. Transfer of Shares**

- i. For the purpose of giving effect to the sale of a share pursuant to a lien in accordance with the preceding Sub-Rule, the Directors may authorise a person to transfer the shares sold to the purchaser of the shares.
- ii. The Company will register the purchaser as the holder of the shares comprised in such transfer and the person is not bound to see to the application of the purchase money.
- iii. The title of the purchaser to the shares is not affected by any irregularity or invalidity

in connection with the sale.

**d. Proceeds of Sale**

The proceeds of the sale of a share on which the Company has a lien by the Company pursuant to this clause is to be applied by the Company in payment first of the expenses of sale, then of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) is (subject to any like lien for sums not presently payable that existed upon the shares before the sale) to be paid to the person entitled to the shares at the date of the sale.

**9. CALLS ON SHARES**

**a. Calls**

- i. The Directors may make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of the amount paid up on the shares) and not by the terms of issue of those shares made payable at fixed times.
- ii. Each member, upon receiving at least fourteen (14) days notice specifying the time or times and place of payment, must pay to the Company at the time or times and place so specified the amount called on the person's shares.
- iii. The Directors may revoke or postpone a call.

**b. Authorisation**

A call is 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.

**c. Calls on Joint Holders**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

**d. Interest on Calls**

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 must pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate as the Directors may determine but, not exceeding the rate charged by the Company's bankers on overdrafts of \$100,000 and the Directors may waive payment of that interest wholly or in part.

**e. Payment of Calls**

- i. Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal value of the share or by way of the amount paid up on the shares, shall be deemed to be a "call duly made" and is payable on the date on which by the terms of issue the sum becomes payable.
- ii. In the 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.

**f. Directors May Differentiate**

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.

**g. Payment on Shares**

- 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.
- ii. 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 of interest, as is agreed upon between the Directors and the member paying the sum.
- iii. For the purpose of this Sub-Rule, the "prescribed rate of interest" is:
  - A. if the Company has resolved a fixed rate of interest, then that fixed rate of interest; or
  - B. in any other case, the rate charged by the Company's bankers on overdrafts of \$100,000.

**10. FORFEITURE OF SHARES**

**a. Notice for Payment**

- i. 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 thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on the person requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.
- ii. The notice referred to in this Sub-Rule will name a further day (not earlier than fourteen (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 will state that, in the event of non-payment on or before the time appointed, the shares in respect of which the call was made are liable to be forfeited.

**b. Forfeiture**

- i. If the requirements of the notice referred to in the preceding Sub-Rule are not complied with, any share in respect of which the notice has been given may at any time before the payment has been made, be forfeited by a resolution of the Directors to that effect.
- ii. Such a forfeiture includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

**c. Director's Discretion on Forfeiture**

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.

**d. Liability**

- i. A person whose shares have been forfeited ceases to be a member of the Company in respect of the forfeited shares.
- ii. The person remains liable to pay to the Company all money that, at the date of forfeiture, was payable by the person to the Company in respect of the shares, including interest charged at the rate charged by the Company's bankers on overdrafts of \$100,000 from the date of forfeiture, on the money for the time being unpaid.
- iii. The person's liability ceases if and when the Company receives payment in full of all the money (including interest) so payable in respect of the forfeited shares.

**e. Statement of Forfeiture**

A statement in writing declaring that the person making the statement is a Director or a Secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in that statement, is prima facie evidence of the facts stated in that statement as against all persons claiming to be entitled to the share.

**f. Consideration for Forfeiture**

- i. 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.
- ii. Upon the execution of the transfer, the transferee is registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- iii. 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.

**g. Non-Payment**

The provisions of this Constitution 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, whether on account of the nominal value of the share or by way of the amount paid up on the shares, as if that sum had been payable by virtue of a call duly made and notified.

**11. TRANSFER OF SHARES**

**a. Rights of Pre-Emption**

Subject to this Constitution and except as provided in Sub-Rule 11.i., no shares in the Company will be transferred unless and until the rights of pre-emption conferred by Sub-

Rule 11.b. - 11.h. inclusive have been exhausted, provided always that these pre-emption provisions do not apply where the Company buys back its own shares pursuant to the provisions of Division 2 of Part 2J.1 of the *Corporations Act*.

**b. Transfer Notice**

- i. Any member proposing to transfer any share or shares ("the Transferor") must give notice ("the Transfer Notice") in writing to the Company of the person's intention to do so. The Transfer Notice must specify the share or shares the person proposes to transfer and if the person so desires the price per share which the person is willing to accept.
- ii. The Transfer Notice appoints the Company as the Transferor's agent for a period of twenty-eight (28) days from the date of the Company's receipt of the Transfer Notice for the sale (subject to the other provisions of this Rule) of such share or shares to any person eligible to be a member (whether or not a member) at the price per share specified in the Transfer Notice or as determined pursuant to Sub-Rule 11.c.
- iii. A Transfer Notice, if it relates to more than one (1) share, operates as a separate Transfer Notice in respect of each such share. A Transfer Notice is not revocable except as provided in Sub-Rule 11.c.

**c. Valuation of Share Price**

- i. If no price is specified in the Transfer Notice or if in the opinion of the Directors the price per share specified by the Transferor in the Transfer Notice is not its fair value, the Directors may request:
  - A. the Company's auditor; or
  - B. if the Company does not have an auditor, a person selected by the Directors; or
  - C. if the Directors do not select a person or cannot agree, a person selected by the President for the time being of the Australian Society of Certified Practising Accountants or any succeeding association,

(the auditor or person so selected being referred to in this Rule as the "Valuer") to determine the fair value per share of such shares. The Valuer must act as an expert and not as an arbitrator in determining the fair value of the share or shares.
- ii. The costs of the valuation in Sub-Rule 11.c.i. will be paid equally by the Transferor and the Company.
- iii. The Directors will notify the Transferor of the Valuer's determination. The Transferor is entitled to withdraw the Transfer Notice within seven (7) days after receiving such notification.
- iv. If the Transferor wishes to withdraw the Transfer Notice more than seven (7) days after receiving the notification referred to in Sub-Rule 11.c.iii., the Transferor needs to obtain the prior written consent of the Directors.



**d. Offer to Existing Shareholders**

- i. The Directors will offer the share or shares, which is or are the subject of a Transfer Notice, to all other holders of shares in the same class in the Company as nearly as may be in proportion to the existing shares held by them respectively at the price specified by the Transferor or determined by the Valuer (whichever is the lower).
- ii. The offer limits the time within which it may be accepted. The offer specifies that any member entitled, who desires to acquire shares in excess of the person's proportion, should in the person's reply state how many excess shares the person desires to acquire. If all the members entitled do not claim their proportions, the unclaimed shares are used in or towards satisfying the requests for excess shares.
- iii. Any shares which are not be capable (without introducing fractions) of being offered to the members entitled in proportion to their existing holdings are offered to the members entitled or some of them in such proportions or in such manner as may be determined by lots to be drawn under the direction of the Directors.

**e. Purchase of Transfer Shares**

If the Directors:

- i. within a period of twenty eight (28) days after receiving a Transfer Notice find a purchaser in terms of Sub-Rule 11.d. willing to purchase all or any of the shares the subject of the Transfer Notice; and
- ii. give notice of the purchaser to the Transferor,

the Transferor is bound upon payment of such price to transfer the share or shares concerned to such purchaser.

**f. Default on Transfer**

If the Transferor, after having become bound pursuant to Sub-Rule 11.e. makes default in transferring any such share or shares, the Company may receive the purchase money and the Transferor is deemed to have appointed any one (1) Director or the Secretary of the Company as the person's agent to execute a transfer of such share or shares to the purchaser. Upon the execution of such transfer, the Company holds the purchase money in trust for the Transferor. The receipt of the Company for the purchase money is a good discharge to the purchaser. After the person's name has been entered in the register of members of the Company in purported exercise of the aforesaid power, the validity of the proceedings will not be questioned by any person.

**g. Discretion of Directors**

If within the period stipulated in Sub-Rule 11.e. the Directors do not find a member or purchaser in terms of Sub-Rule 11.d. for all or any of the shares concerned, the Transferor may at any time within six (6) months thereafter sell those shares or any of them to any person at any price but not being less than the price as specified by the Transferor or determined by the Valuer (whichever be the lower) but subject nevertheless to the right of the Directors to decline to register any transfers as otherwise provided by this Constitution.

**h. Company to Make and Vary Rules**

The Company in a general meeting may by special resolution make and from time to time vary rules as to the mode in which any shares specified in any Transfer Notice shall be offered to the members and as to their rights in regard to the purchase of those shares and in particular may give any member or class of members a preferential right to purchase the same.

**i. Exceptions to Rule**

The provisions of this Sub-Rule 11.a. to 11.h. inclusive do not apply to any transfer of a share or shares:

- i. merely for the purpose of effectuating the appointment of a new trustee;
- ii. to a husband, wife, brother, sister, parent, child or grandchild of a member;
- iii. by a trustee to a beneficiary under a will;
- iv. to a husband, wife or next of kin of a deceased member;
- v. where all the members of the Company (excluding the proposing Transferor) sign an instrument waiving all rights of entitlement they have under this Rule; or
- vi. where the share or shares are held jointly by several persons, by one (1) of those persons to one (1) or more of the other joint holders,

PROVIDED THAT it is proved to the satisfaction of the Directors that the transfer bona fide falls within one of these exceptions.

**j. Transfer of Shares**

- i. Unless otherwise restricted by this Constitution, a member may transfer all or any of the person's shares by instrument in writing in any usual or common form or in any other form that the Directors approve.
- ii. An instrument of transfer referred to in Sub-Rule 11.j.i. must be executed by or on behalf of both the transferor and the transferee.
- iii. A transferor of a share or shares remains the holder of the share or shares transferred until the transfer is registered and the name of the transferee is entered in the register of members of the Company in respect of such share or shares.
- iv. The instrument of transfer must be left for registration at the registered office of the Company. It must be accompanied by the certificate of the shares to which it relates and all other information as the Directors properly require to show the right of the transferor to make the transfer, upon receipt of which, subject to the powers vested in the Directors by this Constitution, the Company will register the transferee as a member.
- v. The Directors may decline to register any transfer of shares, without giving any reason.

- vi. The registration of transfers may be suspended at such times and for such periods as the Directors from time to time determine not exceeding in the whole thirty (30) days in any year.

## **12. TRANSMISSION OF SHARES**

### **a. Death of a Member**

In the case of the death of a member, the survivor; or survivors where the deceased was a joint holder and the legal representatives of the deceased where the person was a sole holder, are the only persons recognised by the Company as having any title to the person's interest in the shares, but this Rule does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by the person with other persons.

### **b. Transfer Due to Death or Bankruptcy**

- i. Subject to this Constitution and to the *Bankruptcy Act* 1966 as amended, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the Directors, elect either to be registered themselves as holder of the share or to have some other person nominated by the person registered as the transferee of the share.
- ii. If the person becoming entitled elects to be registered themselves, the person shall deliver or send to the Company a notice in writing signed by the person stating that person so elects.
- iii. If the person elects to have another person registered, the person must execute a transfer of the share to that other person.
- iv. All the limitations, restrictions and provisions of this Constitution relating to the right to transfer, and the registration of a transfer of a share is applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

### **c. Rights on Death or Bankruptcy**

- i. Where the registered holder of a share dies or becomes bankrupt, the person's personal representative or the trustee of the person's estate, as the case may be, is, upon the production of such information as is properly required by the Directors, entitled to the same dividends and other advantages and to the same rights (whether in relation to meetings of the Company, or to voting or otherwise), as the registered holder would have been entitled to if the person had not died or become bankrupt.
- ii. For the purpose of this Constitution, when two (2) or more persons are jointly entitled to any share as a result of the death of the registered holder, they are deemed to be joint holders of the share.

## **13. SHARE BUY-BACK AND CAPITAL REDUCTION**

Subject to Division 2 of Part 2J.1 of the *Corporations Act*, the Company may buy back its own shares and may, by special resolution, reduce its share capital, any capital redemption

reserve fund, or any paid up share capital.

## **14. OFFERS OF SHARES**

### **a. Pre-emptive Rights to Shares and Options**

Subject to this Constitution and to any direction to the contrary that may be given by the Company in a general meeting, all un-issued shares in any class shall, before issue, be offered to such persons as at the date of the offer who holds shares in that class in proportion, as nearly as the circumstances allow, to the sum of the nominal values of the shares already held by them in that class.

### **b. Notice of Share Offers**

The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted will be deemed to be declined.

### **c. Time for Acceptance**

After the expiration of that time or on being notified by the person to whom the offer is made that the person declines to accept the shares offered, the Directors may issue those shares in such manner as they think most beneficial to the Company.

### **d. Directors Limited Discretion**

Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with Sub-Rule 14.a., the Directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the Company.

## **15. GENERAL MEETINGS**

### **a. Who Can Convene a Meeting**

- i. Any Director may whenever the person thinks fit convene a general meeting.
- ii. Members with at least five per centum (5%) of the votes that may be cast at a general meeting of the Company may call and arrange to hold a general meeting in accordance with section 249F of the *Corporations Act*.

### **b. Notice of Meeting**

- i. Except as provided by Sub-Rule 15.b.ii., a notice of a general meeting shall:
  - A. be given at least twenty one (21) days prior to the date of the general meeting unless otherwise agreed in accordance with section 249H (2) of the *Corporations Act*;
  - B. set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this);
  - C. state the general nature of the business to be transacted at the meeting;

- D. if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- E. if a member is entitled to appoint a proxy, contain a statement setting out the following information:
  - I. that the member has a right to appoint a proxy;
  - II. whether or not the proxy needs to be a member of the Company; and
  - III. that a member who is entitled to cast two (2) or more votes may appoint two (2) proxies and specify the proportion or number of votes each proxy is appointed to exercise.
- ii. It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of accounts and the reports of the Directors and auditors, or the appointment and fixing of the remuneration of the auditors.

## **16. PROCEEDINGS AT GENERAL MEETINGS**

### **a. More Than One Venue**

The Company may hold a meeting at two (2) or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

### **b. Quorum of Meeting**

- i. No business can be transacted at any general meeting of the Company unless a quorum of members is present at the time when the meeting proceeds to business.
- ii. For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a corporation that is a member, shall be deemed to be a member.
- iii. A quorum is two (2) members entitled to vote or where the Company has only one (1) member entitled to vote, one (1) member.
- iv. If a quorum is not present within thirty (30) minutes from the time appointed for the meeting:
  - A. where the meeting was convened upon the requisition of members, the meeting will be dissolved; or
  - B. in any other case:
    - I. the meeting stands adjourned to such day and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and

- II. if at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting:
  - 1. two (2) members (or one (1) member where the Company has only one (1) member entitled to vote) constitute a quorum; or
  - 2. where two (2) members (or one (1) member where the Company has only one (1) member entitled to vote) are not present, the meeting will be dissolved.

**c. Chairperson**

- i. If the Directors have elected one (1) of their number as chairperson of their meetings, that person will preside as chairperson at every general meeting.
- ii. Where a general meeting is held and:
  - A. a chairperson has not been elected as provided by Sub-Rule 16.c.i.; or
  - B. the chairperson is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act,the members present will elect one (1) of their number to be chairperson of the meeting.

**d. Adjournment**

- i. The chairperson may with the consent of any meeting at which a quorum is present and if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- ii. When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting will be given as in the case of an original meeting.
- iii. Except as provided by Sub-Rule 16.d.ii., it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**e. Voting**

- i. At any general meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is demanded before, or on the declaration of the result of the show of hands by:
  - A. at least two (2) members (or one (1) member where the Company has only one (1) member entitled to vote) present in person or by proxy;
  - B. a member or members with at least five per centum (5%) of the votes that may be cast on the resolution on a poll; or

**C.** the chairperson.

- ii. The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.
- iii. Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- iv. The demand for a poll may be withdrawn.

**f. Polling**

- i. If a poll is duly demanded, it is taken in such manner and (subject to Sub-Rule 16.f.ii.) either at once or after an interval or adjournment or otherwise as the chairperson directs, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- ii. A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

**g. Casting Vote**

In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting of the Company's members at which the show of hands takes place or at which the poll is demanded, does not have a casting vote.

**h. Class of Share Restrictions or Limitations**

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

- i. at meetings of the Company's members or classes of members each member entitled to vote may vote in person or by proxy or by attorney; and
- ii. on a show of hands every person present who is a member or a proxy or an attorney of a member has one (1) vote, and on a poll every person present in person or by proxy or by attorney has one (1) vote for each share the person holds.

**i. Joint Shareholder Voting Rights**

In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy or by attorney, is 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 Company members.

**j. Incapacity to Vote**

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 person's committee or trustee or such other person as properly has the management of the person'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.

**k. Unpaid Shares**

A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by the person in respect of shares in the Company have been paid.

**l. Objections**

- i. An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- ii. Any such objection will be referred to the chairperson of the meeting, whose decision is final.
- iii. A vote not disallowed pursuant to such an objection is valid for all purposes.

**m. Instruments Appointing a Proxy**

- i. An instrument appointing a proxy will be in writing under the hand of the appointor or of the person's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised by such corporation.
- ii. 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.
- iii. An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- iv. An instrument appointing a proxy will be in the following form or in a form that is as similar to the following form as the circumstances allow:

<p>(Name of company) (ACN)</p> <p>I/We, of [Address of Member] , being a member/members of the above-named Company, hereby appoint [Name of Member attending the meeting] of [Address of the Member]</p> <p>or,</p> <p>in his/her absence, [Name of the person appointed as Proxy] of [Address of the Proxy] as my/our proxy to vote for me/us on my/our behalf at the *annual general / *general meeting of the Company to be held on the            day of            20 and at any adjournment of that meeting.</p> <p>Signed this            day of            20</p>
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\* Strike out whichever is not desired.



**n. Validity of Instrument**

An instrument appointing a proxy will not be treated as valid unless the instrument and:

- i. the power of attorney or other authority (if any); or
- ii. a notarially certified copy of that power or authority,  
  
under which the instrument is signed is or are deposited:
- iii. not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
- iv. in the case of a poll, not less than twenty four (24) hours before the time appointed for the taking of the poll at the registered office of the Company or at such other place within the State as is specified for that purpose in the notice convening the meeting.

**o. Revocation of Instrument**

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid provided the Company has not received at the registered office a notice in writing of the:

- i. death or unsoundness of mind of the principal;
- ii. revocation of the transfer of the share for the instrument or the given power; or
- iii. revocation of the instrument (or of the authority under which the instrument was executed),

before the commencement of the meeting or adjourned meeting at which the instrument is used or the power of attorney is exercised.

**17. UNANIMOUS RESOLUTIONS OF MEMBERS**

**a. Signing of Resolution**

- i. If all the members of the Company have signed a document containing a statement that they are in favour of a prescribed resolution, the terms of which are set out in the document, a resolution in those terms will be deemed to have been passed at a general meeting of the Company held on the day on which the document was signed and at the time at which the document was last signed by a member or, if the members signed the document on different days, on the day and at the time on which, the document was last signed by a member and the document will be deemed to constitute a minute of that general meeting.
- ii. Sub-Rule 17.a.i. does not apply in relation to a document unless the document has been signed by each person who was a member of the Company at the time when the document was last signed.
- iii. For the purposes of Sub-Rule 17.a.i.:

- A. two (2) or more separate documents containing statements in identical terms, each of which is signed by one (1) or more members, will together be deemed to constitute one (1) document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents; and
- B. a prescribed resolution is a resolution that is required by or permitted by the *Corporations Act* or this Constitution to be passed at a general meeting of the Company and includes a resolution appointing a Director or auditor or approving of or agreeing to any act, matter or thing but does not include a resolution of which special notice is required or that is required to be passed by a majority other than a simple majority.

**b. Single Member Company Resolution**

Where the Company has only one (1) member and the member records the member's decision to a particular effect, the recording and signing of the decision counts as the passing by the member of a resolution to that effect in accordance with section 249B of the *Corporations Act* and a record made has effect as a minute of the passing of the resolution.

**18. APPOINTMENT, REMUNERATION AND REMOVAL OF DIRECTORS**

**a. Number of Directors**

Until otherwise determined by a general meeting, the total number of Directors at any time will not be less than one (1) or more than twenty (20).

**b. Term of Directors**

The Directors and also every Director appointed under this Constitution hold office until they are removed by a resolution of the Company passed in general meeting or until their office shall ipso facto become vacant pursuant to this Constitution or pursuant to the *Corporations Act*.

**c. Replacements**

The Company may at any time appoint any person by a resolution of the Company passed in general meeting, to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not at any time exceed the number determined in accordance with this Constitution.

**d. No Shareholding Qualification**

A Director is not required to hold any share or shares in the capital of the Company.

**e. Remuneration**

- i. The Directors are paid such remuneration as is from time to time determined by the Company in general meeting.
- ii. The remuneration of the Directors is deemed to accrue from day to day.

- iii. 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 committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.

**f. Disqualifying Events**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the *Corporations Act*, the office of a Director becomes vacant if the Director:

- i. becomes bankrupt;
- ii. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- iii. resigns the person's office by notice in writing to the Company; or
- iv. is absent without the consent of the Directors from meetings of the Directors held during a period of six (6) months.

**19. POWERS AND DUTIES OF DIRECTORS**

**a. General Powers**

- i. Subject to the *Corporations Act* and to any other provision of this Constitution, the business of the Company is managed by the Directors, who may pay all expenses incurred in promoting and forming the Company and may exercise all such powers of the Company as are not, by the *Corporations Act* or this Constitution, required to be exercised by the Company in general meeting.
- ii. Without limiting the generality of Sub-Rule 19.a.i., the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

**b. Granting Power of Attorney**

- i. The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- ii. Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the person.

**c. Execution of Negotiable Instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, are signed, drawn, accepted,

endorsed or otherwise executed, as the case may be, by any Director or in such other manner as the Directors may determine.

## **20. PROCEEDINGS OF DIRECTORS**

### **a. Convening Meetings**

- i. The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- ii. A Director may at any time, and a Secretary on the request of a Director, convene a meeting of the Directors.

### **b. Resolution of Directors**

- i. Subject to this Constitution, questions arising at a meeting of Directors are decided by a majority of votes of Directors present and voting and any such decision, for all purposes, is deemed a decision of the Directors.
- ii. In the case of equality of votes, the chairperson of the meeting does not have a casting vote.

### **c. Director May Contract With Company**

- i. Notwithstanding any rule of law to the contrary or the holding by a Director of any office in the Company or in any other Company or any other interest a Director may:
  - A. hold any office or place of profit in the Company or in any Company in which the Company may be a shareholder or otherwise interested;
  - B. in any capacity enter into a contract, arrangement or understanding with the Company;
  - C. help to constitute a quorum and vote at any meeting of Directors convened to deal with any contract, arrangement or understanding;
  - D. where there is no Seal, sign any instrument in respect of any contract, arrangement or understanding and, where the Company has only one (1) Director then, subject to section 127(1)(c) of the *Corporations Act*, where the Director is also the Secretary of the Company that person may sign and state next to their signature their capacity as sole Director and Secretary; and
  - E. where there is a Seal, affix the Seal to and sign any instrument in respect of any contract, arrangement or understanding and, where the Company has only one (1) Director then, subject to section 127(2) (c) of the *Corporations Act*, where the Director is also the Secretary of the Company that person may witness the use of the Seal of the Company and state next to the affixed Seal their capacity as sole Director and Secretary.
- ii. No Director is liable to account to the Company for any profit realised by the person

from any contract, arrangement or understanding provided that, subject to section 191(5) of the *Corporations Act*, a Director entering into a contract, arrangement or understanding discloses the person's interest in that contract, arrangement or understanding in the manner mentioned in section 191 of the *Corporations Act*.

- iii. No contract, arrangement or understanding is avoided or rendered voidable by reason that the Director is or may be interested in that contract, arrangement or understanding within the meaning of section 191 of the *Corporations Act* or otherwise.

**d. Quorum**

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is such number as is determined by the Directors and, unless so determined, is two (2) except where the Company has only one (1) Director, the quorum shall be one (1).

**e. Where Director Number Insufficient**

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or of convening a general meeting of the Company.

**f. Chairperson**

- i. The Directors will elect one (1) of their members as chairperson of their meetings and may determine the period for which the person is to hold office.
- ii. Where such a meeting is held and:
  - A. a chairperson has not been elected as provided by Sub-Rule 20.f.i.; or
  - B. the chairperson is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act,the Directors present will elect one (1) of their number to be chairperson of the meeting.

**g. Delegation of Power**

- i. The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- ii. A committee to which any powers have been so delegated exercises the powers delegated in accordance with any directions of the Directors and a power so exercised is deemed to have been exercised by the Directors.
- iii. The members of such a committee may elect one (1) of their number as chairperson of their meetings.
- iv. Where such a meeting is held and:

- A. a chairperson has not been elected as provided by Sub-Rule 20.g.iii.; or
- B. the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the members present may elect one (1) of their numbers to be chairperson of the meeting.

- v. A committee may meet and adjourn as it thinks proper.
- vi. Questions arising at a meeting of a committee are determined by a majority of votes of the members present and voting.
- vii. In the case of an equality of votes, the chairperson does not have a casting vote.

#### **h. Signed Resolutions**

- i. If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in the terms set out in the document, a resolution in these terms is deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director. If the Directors signed the document on different days, the resolution is deemed to have been passed on the day on which, and at the time at which, the document was last signed by a Director.
- ii. For the purposes of Sub-Rule 20.h.i., two (2) or more separate documents containing statements in identical terms each of which is signed by one (1) or more Directors shall together be deemed to constitute one (1) document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- iii. A reference in Sub-Rule 20.h.i. to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.
- iv. Subject to section 249B of the *Corporations Act*, where the Company has only one (1) Director and the Director records the decision to a particular effect, the recording of the decision counts as the passing by the Director of a resolution to that effect.

#### **i. Effect of Defective Appointment**

All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of the committee, or to act as a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

### **21. ALTERNATE DIRECTORS**

#### **a. Appointment of Alternate Director**

A Director may appoint a person (whether a member of the Company or not) to be an

alternate Director in the person's place during such period as the person thinks fit.

**b. Rights of Alternate Director**

An alternate Director is entitled to notice of meetings of the Directors and, if the appointee is not present at such a meeting, is entitled to attend and vote in the person's stead.

**c. Powers of Alternate Director**

An alternate Director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate Director is deemed to be the exercise of the power by the appointor.

**d. No Share Qualification**

An alternate Director is not required to have any share qualification.

**e. Termination of Appointment**

The appointment of an alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate Director has not expired, and terminates in any event if the appointor vacates office as a Director.

**f. Notice to be Served on Company**

An appointment or the termination of an appointment of an alternate Director is effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.

**22. MANAGING DIRECTOR**

**a. Appointment of Managing Director**

- i. The Directors may from time to time appoint one (1) or more of their number to the office of managing Director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.
- ii. A Director so appointed shall have the person's appointment automatically terminated if the person ceases from any cause to be a Director.

**b. Remuneration of Managing Director**

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

**c. Conferral of Power**

- i. The Directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a managing Director any of the powers exercisable by them.

- ii. Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.
- iii. The Directors may at any time withdraw or vary any of the powers so conferred on a managing Director.

## **23. ASSOCIATE DIRECTORS**

### **a. Appointment**

The Directors may from time to time appoint any person to be an Associate Director and may from time to time terminate any such appointment.

### **b. Powers to be Determined**

The Directors may from time to time determine the powers, duties and remuneration of any person so appointed.

### **c. Limits on Appointment**

A person so appointed is not required to hold any shares to qualify the person for appointment but, except by the invitation and with the consent of the Directors, does not have any right to attend or vote at any meeting of Directors.

## **24. SECRETARY**

### **a. Secretary Optional**

The Company need not have a Secretary.

### **b. Terms of Office**

If the Company has a Secretary, the person holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

## **25. SEAL**

### **a. Seal not Needed**

The Company need not have a seal.

### **b. Safe Custody of Seal**

If the Company has a seal the Directors must provide for the safe custody of the seal.

### **c. Authority to Affix**

The seal of the Company may not be affixed to any instrument except by the authority of a resolution of the Directors or a committee of the Directors duly authorised by the Directors.

### **d. Execution Under Seal**



Every instrument to which the seal is affixed must be signed by at least one (1) Director and countersigned by either:

- i. another Director;
- ii. the Secretary; or
- iii. another person appointed by the Directors to countersign that document or a class of documents in which that document is included,

but the same person is unable to sign in the dual capacities of Director or Secretary.

**e. Single Director Company**

If one (1) person is the only Director of the Company the seal may be affixed in the presence of that person only. The person must:

- i. witness the use of the seal; and
- ii. state next to the signature that the person witnesses the sealing in the capacity of sole Director of the Company.

**f. Execution Without Seal**

The Company may execute instruments without a seal if the instrument is signed by:

- i. two (2) Directors; or
- ii. a Director and a Secretary (if applicable), but the same person is unable to sign in the dual capacities of Director and Secretary; or
- iii. if one (1) person is the only Director of the Company, the instrument may be signed by that person only and the person must state next to the person's signature that the person signs in the capacity of sole Director of the Company.

**26. INSPECTION OF RECORDS**

Subject to the *Corporations Act*, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of members other than Directors, and a member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

**27. DIVIDENDS AND RESERVES**

**a. Dividends**

- i. The Company in general meeting may declare a dividend if, and only if the Directors have recommended a dividend.
- ii. A dividend will not exceed the amount recommended by the Directors.

**b. Interim Dividends**

The Directors may authorise the payment by the Company to the members of such interim dividends as appear to the Directors to be justified by the profits of the Company.

**c. Interest**

Interest is not payable by the Company in respect of any dividend.

**d. Reserves**

- i. The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.
- ii. Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.
- iii. The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

**e. Paying Dividends**

- i. Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends will be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
- ii. All dividends will be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it ranks for dividend as from a particular date, that share ranks for dividend accordingly.
- iii. An amount paid or credited as paid on a share in advance of a call will not be taken for the purposes of this Rule to be paid or credited as paid on the share.

**f. Deductions on Dividends Payable**

The Directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by the person to the Company on account of calls or otherwise in relation to the shares in the Company.

**g. Resolution of Distribution of Dividends**

- i. Any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the Directors shall give effect to such a resolution.
- ii. Where a difficulty arises in regard to such a distribution, the Directors may settle the

matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.

**h. Method of Payment of Dividends**

- i. Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to:
  - A. the address of the holder as shown in the Register of Members, or in the case of joint holders, to the address shown in the Register of Members as the address of the joint holder first named in that register; or
  - B. to such other address as the holder or joint holders in writing direct or directs.
- ii. Any one (1) of two (2) or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

**28. CAPITALISATION OF PROFITS**

**a. Capitalisation of Profits**

Subject to Sub-Rule 28.b., the Company in general meeting may resolve that it is desirable to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, and that that sum be applied, in any of the ways mentioned in Sub-Rule 28.c., for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.

**b. Recommendation of Directors Required**

The Company will not pass a resolution as mentioned in Sub-Rule 28.a. unless the resolution has been recommended by the Directors.

**c. Application of Profit**

The ways in which a sum may be applied for the benefit of members under Sub-Rule 28.a. are:

- i. in paying up any amounts unpaid on shares held by members;
- ii. in paying up in full unissued shares or debentures to be issued to members as fully paid; or
- iii. partly as mentioned in Sub-Rule 28.c.i. and partly as mentioned in Sub-Rule 28.c.ii.

**d. Directors to Give Effect to Resolutions**

The Directors must do all things necessary to give effect to the resolution and, in particular,

to the extent necessary to adjust the rights of the members among themselves may:

- i. issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and
- ii. authorise any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised. Any agreement made under an authority referred to in this Sub-Rule 28.d.ii. is effective and binding on all the members concerned.

## **29. NOTICES**

### **a. Giving of Notices**

A notice may be given by the Company to any member either by:

- i. serving it on the person personally;
- ii. sending it by post to the person at their address as shown in the register of Company members or the address supplied by the person to the Company for the giving of notices to the person;
- iii. sending it to the fax number or electronic address (if any) nominated by the member; or
- iv. any other means that this Constitution permits

### **b. Service by Post**

Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, three (3) days after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

### **c. Service by Fax or Electronic Means**

Where a notice is sent by fax or other electronic means, in the case of a notice of a meeting, service of the notice will be deemed to be effected on the business day after it is sent and in any other case, on receipt by the Company of a transmission report confirming successful transmission.

### **d. Notice to Joint Holders of a Share**

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register of Company members in respect of that share.

**e. Notice on Death or Bankruptcy of a Member**

A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on the person, personally or by sending it to the person by post addressed to the person by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

**f. Who Should Be Given a Notice**

- i. Notice of every general meeting will be given in the manner specified in Sub-Rule 29.a. to:
  - A. every Director;
  - B. every member entitled to vote at a general meeting in accordance with this Constitution;
  - C. every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
  - D. the auditor (if any) for the time being of the Company.
- ii. No other person is entitled to receive notices of general meetings.

**30. WINDING UP**

**a. Division of Company Property**

If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members subject to the rights or restriction attached to such classes of shares.

**b. Power to Vest Property in Trust for Members**

The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

**31. INDEMNITY OF OFFICERS, AUDITORS OR AGENTS**

**a. Indemnity against a liability**

Subject to the *Corporations Act*, every officer, auditor or agent of the Company will be indemnified out of the property of the Company against any liability incurred by the person in the person's capacity as officer, auditor or agent in defending any proceedings, whether civil

or criminal, in which judgement is given in the person's favour or in which the person is acquitted or in connection with any application in relation to any such proceedings in which relief is granted to the person under the *Corporations Act* by the Court.

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