

Consolidated Version dated 15 February 2022

Constitution of Host-Plus Pty Limited

Constitution

of

Host-Plus Pty Limited

Introduction

1. Replaceable rules excluded

- 1.1 The replaceable rules contained in the Act (other than sections 250F and 250H to 250M) do not apply to the Company.
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2. Constitution subject to Relevant Laws

- 2.1 This constitution shall be read and construed on the basis that:
- (1) the provisions of the Relevant Laws are incorporated into this constitution to the extent that they impose covenants or obligations on the Company to ensure that the Company remains eligible to hold a RSE Licence in accordance with the Relevant Laws and to enable:
 - (a) the Fund to operate as a public offer fund and to qualify as a Complying Superannuation Fund; and
 - (b) the PST to qualify as a Pooled Superannuation Trust; and
 - (2) where there is any inconsistency between a provision in this constitution and a provision of the Relevant Laws incorporated into this constitution pursuant to rule 2.1(1), the latter shall prevail but this constitution shall not be so read or construed and no such provision of the Relevant Laws shall be so incorporated if to do so would contravene the Act.
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3. Exercise of power

- 3.1 The Company is to act only as trustee of the Fund and PST, and in doing so has a not-for-profit objective. Nothing in this rule 3 shall be taken to restrict or limit the powers of the Company to ensure compliance with the Relevant Laws or to act in accordance with the Trust Deed or the PST Deed (as the case requires).
- 3.2 Notwithstanding any other provision of this Constitution, in exercising their powers or making any determinations under this Constitution, the Company and the directors must ensure any such exercise of power or the making of any determination:
- (1) is consistent with the Company's not-for-profit objective;
 - (2) is consistent with this Constitution;

- (3) is consistent with the objectives of the Fund and the PST (as far as such exercise of power or the making of such determination affects the Fund or the PST, as the case may be); and
- (4) would not give rise to a breach of the terms of the Trust Deed or the PST Deed (as the case may be).

3.3 For the purpose of this Constitution, the **not-for-profit objective** of the Company is:

- (1) the objective of the Company to act solely as trustee of the Fund and PST and not for any other purpose; and
- (2) the intention that no portion of the income or property of the Company be paid or distributed directly or indirectly by way of dividend, bonus or otherwise to or for the benefit of its shareholders, other than for the payment of a bona fide invoice for goods or services rendered by a shareholder of an amount which is no more than what would be determined on arms' length terms (for example, a director's remuneration and expenses in respect of a director appointed by a shareholder).

4. Definitions and interpretation

4.1 Definitions

In this constitution:

- (1) **"A" Class Directors** means those directors appointed by the shareholder holding the "A" class shares;
- (2) **"AA" Class Directors** means those directors appointed by the shareholder holding the "AA" class shares;
- (3) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (4) **AHA** means Australian Hotels Association of 24 Brisbane Avenue, Barton ACT 2600;
- (5) **Approved Benefit Arrangement** means a fund or benefit arrangement including without limitation another Complying Superannuation Fund, Retirement Savings Account and an annuity arrangement into which or from which assets can be transferred into or from the Fund or PST as the case may be, without causing the Fund or PST to be in breach of or to fail to comply with the Relevant Law;
- (6) **APRA** means the Australian Prudential Regulation Authority;
- (7) **auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
- (8) **"B" Class Directors** means those directors appointed by the shareholder holding the "B" class shares;
- (9) **"BB" Class Directors** means those directors appointed by the shareholder holding the "BB" class shares;

- (10) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (11) **Company** means Host-Plus Pty Limited ACN 008 634 704;
- (12) **Complying Superannuation Fund** in relation to a year of income means a fund which is a complying superannuation fund within the meaning of that term in the SIS Act;
- (13) **directors** has the meaning given by Section 9 of the Act, but generally means the directors assembled as a board;
- (14) **Employee** has the meaning given in section 15A of the SIS Act;
- (15) **Employee Body** means an organisation representing the interests of an Employee or Employees;
- (16) **Employer** has the meaning given in section 15A of the SIS Act;
- (17) **Employer Body** means an organisation representing the interests of an Employer or Employers;
- (18) **Equal Representation** means an equal number of "A" Class Directors and "AA" Class Directors as directors of the Company or as members of a committee;
- (19) **Founding Members** means the Australian Hotels Association (and its successors) and the Liquor Hospitality and Miscellaneous Workers Union (and its successors);
- (20) **Fund** means the superannuation fund known as the Hostplus Superannuation Fund established under the Trust Deed;
- (21) **LHMU** means Liquor, Hospitality and Miscellaneous Union of 9th Floor, 187 Thomas Street, Haymarket, NSW 2000;
- (22) **month** means calendar month;
- (23) **officer** has the meaning given by section 9 of the Act;
- (24) **Policy** means a written policy document approved by the board of directors as amended from time to time;
- (25) **Pooled Superannuation Trust** in relation to a year of income means a trust which is a Pooled Superannuation Trust within the meaning of that term in the SIS Act;
- (26) **PST** means the Pooled Superannuation Trust known as the Hostplus Pooled Superannuation Trust, established under the PST Deed;
- (27) **PST Deed** means the trust deed dated 7 February 2014, executed by the Company, as amended from time to time under which the PST was established;
- (28) **Register** means the register of shareholders as members to be kept under the Act;
- (29) **Relevant Laws** has the same meaning as is given to the term "Relevant Law" under the Trust Deed and in this Constitution shall also be read such that any reference to the "Fund" in that definition shall be taken to be a reference to the "Fund or the PST"

and any reference to a "Member or Beneficiary" shall be taken to be a reference to a "Member or Beneficiary of the Fund or a Unitholder of the PST";

- (30) **representative** means a person authorised to act as a representative of a body corporate under section 250D of the Act;
- (31) **Retirement Savings Account** has the same meaning as in the *Retirement Savings Account Act 1997* (Cth);
- (32) **Risk Premium** means an amount levied by the Company pursuant to clause 19.2A of the PST Deed or 4.11 of the Trust Deed from time to time, to hold on its own account as capital to address the risk of acting as trustee of the Fund or PST, as the case requires;
- (33) **RSE Licence** has the same meaning as given in section 10 of the SIS Act;
- (34) **seal** means the common seal of the Company and includes any official seal of the Company;
- (35) **secretary** means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary;
- (36) **securities** has the meaning given by section 92(1) of the Act and includes options over unissued securities and renounceable and non-renounceable rights to subscribe for securities;
- (37) **Selection Committee** means the committee established pursuant to rule 62.1;
- (38) **shareholder** means any person entered in the Register as a member for the time being of the Company;
- (39) **SIS Act** means the *Superannuation Industry (Supervision) Act 1993* and includes any amendment or re-enactment of it or any legislation passed in substitution for it; and
- (40) **Trust Deed** means the trust deed dated 8 February 1988 between the Company, AHA and LMHU as amended from time to time under which the Fund was established.

4.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a person includes their successors and permitted assigns; and
 - (e) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (2) Except so far as the contrary intention appears in this constitution:

- (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) “Including” and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

Proprietary company

5. Restrictions

[compare section 113]

5.1 The Company must not have more than 50 non-employee shareholders. For this purpose:

- (1) joint holders of a particular parcel of shares are counted as 1 person; and
- (2) an employee shareholder is:
 - (a) a shareholder who is an employee of the Company or of a subsidiary of the Company; or
 - (b) a shareholder who was an employee of the Company, or of a subsidiary of the Company, when they became a shareholder.

5.2 The Company must not engage in any activity that would require the lodgement of a disclosure document under Chapter 6D of the Act.

5.3 Rule 5.2 does not apply to an offer of shares to:

- (1) existing shareholders of the Company; or
- (2) employees of the Company or a subsidiary of the Company.

Shares

6. Control of issue of shares

[compare sections 254A and 254B]

6.1 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, the issue of shares in the Company is under the control of the directors.

6.2 Subject to the Act and rule 6.3 and 6.4, the directors may issue shares to persons at times and on terms and conditions and having attached to them preferred, deferred or other special rights or restrictions as the directors see fit.

6.3 The directors may only issue:

- (1) “A” class shares to LHMU or its nominees;

- (2) "AA" class shares to the AHA or its nominees
- (3) "B" class shares to LHMU or its nominees; and
- (4) "BB" class shares to the AHA or its nominees,

provided that at all times the total number of "A" class shares and "AA" class shares issued shall not be less than the total number of other shares issued except with the agreement of the holders of all the shares then issued.

- 6.4 The directors must not make an issue of "A" class shares without making an issue of an equal number of "AA" class shares and no issue of "AA" class shares may be made without an equal amount of "A" class shares being issued, so that at all times the number of "A" class shares and "AA" class shares on issue is equal.
- 6.5 The directors must not make an issue of "B" class shares without making an issue of an equal number of "BB" class shares and no issue of "BB" class shares may be made without an equal amount of "B" class shares being issued, so that at all times the number of "B" class shares and "BB" class shares on issue is equal.
- 6.6 Subject to the Act and this Constitution, any preference shares may, with the sanction of a resolution of the Company in general meeting, be issued on the terms that they are, or at the option of the Company are, liable to be redeemed.
- 6.7 Subject to the Act and this Constitution, the directors may grant to any person options or other securities with rights of conversion to shares or pre-emptive rights to any shares for any consideration and for any period.
- 6.8 The Company may redeem all or any redeemable preference shares upon 7 days written notice. The notice must be delivered or posted to the holder of the redeemable preference shares accompanied by a cheque for the amount paid up in respect of the shares to be redeemed. Redemption takes place 7 days after delivery or posting of the notice.

7. Ordinary shares

- 7.1 Subject to rule 92, all shares of the Company which are not issued upon special terms and conditions are ordinary shares and confer on the holders:
 - (1) the right to attend and vote at meetings of the Company and on a show of hands to 1 vote and on a poll to 1 vote for each share held;
 - (2) the right to participate in dividends (if any) determined on the class of shares held but only to the extent permitted under this Constitution; and
 - (3) without limiting rule 93.4, on the winding up of the Company, the right to participate in the division of any surplus assets or profits of the Company in proportion to the number of shares held, irrespective of the amount paid or credited as paid on the shares (except that, in the case of any shares that were partly paid up at the commencement of the winding up, that the amount required to be paid to make them fully paid must first be contributed to the Company.)

8. Classes of shares

- 8.1 The directors may issue shares in any of the following classes:

- (1) "A" class shares;
- (2) "AA" class shares;
- (3) "B" class shares; and
- (4) "BB" class shares.

8.2 The "A" class shares, the "AA" class shares, the "B" class shares and the "BB" class shares are different classes of ordinary shares.

9. Conversion of shares

[compare section 254H]

- 9.1 Subject to rule 9.2, the Company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.
- 9.2 The Company may not convert any or all of the "A" class shares without also converting the same number of "AA" class shares and the company may not convert any or all of the "AA" class shares without also converting the same number of "A" class shares.
- 9.3 The Company may not convert any or all of the "B" class shares without also converting the same number of "BB" class shares and the company may not convert any or all of the "BB" class shares without also converting the same number of "B" class shares.
- 9.4 Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

10. Calls on partly-paid shares

[compare section 254M]

- 10.1 If shares in the Company are partly-paid, the shareholder is liable to pay calls on the shares in accordance with the terms on which the shares are on issue.

Transactions affecting share capital

11. Recognition of ownership

- 11.1 Except as required by law, the Company is not bound to recognise a person as holding a share upon any trust.
- 11.2 The Company is not bound to recognise any equitable, contingent, future or partial interest or any other right in respect of a share except an absolute right of ownership in the registered holder.
- 11.3 Rule 11.2:
 - (1) applies whether or not the Company has notice of the interest or right; but
 - (2) does not apply where the Company is bound to recognise the interest or right by another provision of this constitution or by law.

12. Transfer of shares

[compare section 1071B]

- 12.1 Subject to this constitution, a shareholder may transfer all or any of the shareholder's shares by instrument in writing in any form that the directors approve.
- 12.2 Should the holders of the "A" class shares or "AA" class shares cease to be a Employee Body or an Employer Body respectively, that shareholder must transfer its shares to another organisation or person which the directors acknowledge to be an Employee Body or an Employer Body (as the case may be) and which the directors, acting reasonably, consider to be a suitable shareholder of the Company.
- 12.3 Should the holders of the "B" class shares or "BB" class shares cease to be a Employee Body or an Employer Body respectively, that shareholder must transfer its shares to another organisation or person which the directors acknowledge to be an Employee Body or an Employer Body (as the case may be) and which the directors, acting reasonably, consider to be a suitable shareholder of the Company.

13. Pre-emptive rights

- 13.1 In relation to any transfer of shares, the provisions of this rule 13 must be observed.
- 13.2 No transfer of shares will be permitted in relation to a proposed transfer of "A" class shares unless the shares are transferred to an Employee Body and no transfer of shares will be permitted in relation to a proposed transfer of "AA" class shares unless the shares are transferred to an Employer Body.
- 13.3 No transfer of shares will be permitted in relation to a proposed transfer of "B" class shares unless the shares are transferred to an Employee Body and no transfer of shares will be permitted in relation to a proposed transfer of "BB" class shares unless the shares are transferred to an Employer Body.

14. Registration of transfers – directors' discretion

[compare replaceable rule 1072G]

- 14.1 The directors may in their discretion refuse to register a transfer of shares without giving any reason for refusal.

15. Registration of transfers – procedure

[compare replaceable rule 1072F]

- 15.1 A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of shareholders in respect of the shares.
- 15.2 Before a transfer of shares is registered:
 - (1) the transfer and any share certificate must be lodged at the Company's registered office or any other place the directors allow;
 - (2) any fee payable on registration of the transfer must be paid; and

- (3) the directors must be given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.
- 15.3 The directors may suspend the registration of transfers of shares in the Company for any periods they determine, not exceeding a total of 30 days in any 1 calendar year.
- 15.4 The directors may in their discretion dispense with any of the requirements of rule 15.2.
- 15.5 The instrument of transfer must be executed by or on behalf of both the transferor and the transferee.
- 15.6 All powers of attorney granted by shareholders which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company must be treated as between the Company and the grantor of the powers as remaining in full force and may be acted upon until express notice in writing of their revocation or of the death of the grantor is lodged at the registered office of the Company.

Meetings of shareholders holding shares in a class

16. Variation of class rights

[compare sections 246B and 246C]

- 16.1 Rights attached to shares in a class of shares may be varied or cancelled only:
 - (1) by special resolution of the Company; and
 - (2) either:
 - (a) by special resolution passed at a meeting of the shareholders holding shares in the class; or
 - (b) with the written consent of shareholders with at least 75% of the votes in the class.
- 16.2 Rule 16.1 applies whether or not the Company is being wound up.
- 16.3 The Company must give a notice in writing of the variation or cancellation of shares to shareholders of the class affected within 7 days after the variation or cancellation.
- 16.4 The provisions of this constitution relating to general meetings apply so far as they are capable of application and with the necessary changes to every meeting of shareholders holding shares in a class except that:
 - (1) a quorum is constituted by not less than 2 shareholders (personally present or represented by a duly appointed proxy, attorney or representative) holding at least 75% of the issued shares of the class or if there is one holder of shares in a class, that person; and
 - (2) any shareholder who holds or represents shares of the class may demand a poll.

Meetings of shareholders

17. Circulating resolutions

[compare section 249A]

- 17.1 This rule 17 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 17.2 The Company may pass a resolution without a general meeting being held if all the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 17.3 Separate copies of a document may be used for signing by shareholders if the wording of the resolution and statement is identical in each copy.
- 17.4 The resolution is passed when the last shareholder signs.
- 17.5 If the Company receives by facsimile transmission a copy of a document referred to in this rule 17 it is entitled, but not required, to assume that the copy is a true copy.

18. Calling of general meeting

[compare replaceable rule 249C and section 249D]

- 18.1 The directors may call a meeting of the Company's shareholders.
- 18.2 Except as provided in the Act no shareholder or shareholders may call a general meeting.
- 18.3 So long as the Company remains a proprietary company, no annual general meeting need be held.

19. Amount of notice of meeting

[compare section 249H]

- 19.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company

20. Persons entitled to notice of general meeting

[compare sections 249J(1) and 249K, and replaceable rule 249J(2)]

- 20.1 Written notice of a meeting of the Company's shareholders must be given individually to:
 - (1) each shareholder entitled to vote at the meeting;
 - (2) each director; and
 - (3) the Company's auditor.
- 20.2 No other person is entitled to receive notice of general meetings.

21. How notice is given

[compare sections 249J(3) and 249J(3A)]

21.1 The Company may give the notice of meeting to a shareholder:

- (1) personally;
- (2) by sending it by post to the address for the shareholder in the Register or the alternative address (if any) nominated by the shareholder;
- (3) by sending it to the facsimile number or electronic address (if any) nominated by the shareholder;
- (4) by sending it by other electronic means (if any) nominated by the shareholder; or
- (5) by notifying the shareholder in accordance with rule 21.2.

21.2 If the shareholder nominates:

- (1) an electronic means (**nominated notification means**) by which the shareholder may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the shareholder may use to access notices of meeting, the Company may give the shareholder notice of the meeting by notifying the shareholder (using the nominated notification means):
- (3) that the notice of meeting is available; and
- (4) how the shareholder may use the nominated access means to access the notice of meeting.

22. When notice is given

[compare replaceable rules 249J(4) and 249J(5)]

22.1 A notice of meeting sent by post is taken to be given on the 2nd business day after it is posted.

22.2 Except as provided by rule a notice of meeting given to a shareholder under rule 21.1(3) is taken to be given on the business day after it is sent.

22.3 A notice of meeting given to a shareholder under rule 21.1(3) is not effective if:

- (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
- (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
- (3) in either case, the addressee notifies the Company immediately that the notice was not fully received in a legible form.

22.4 A notice of meeting given to a shareholder under rule 21.1(5) is taken to be given on the business day after the day on which the shareholder is notified that the notice of meeting is available.

22.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 22 is conclusive evidence of the matter.

23. Period of notice

23.1 Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

24. Contents of notice

[compare section 249L]

24.1 A notice of a general meeting must:

- (1) set out the place, date and time for the meeting;
 - (2) state the general nature of the meeting's business;
 - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
 - (4) be worded and presented in a clear, concise and effective manner; and
 - (5) contain a statement setting out the following information:
 - (a) that the shareholder has a right to appoint a proxy;
 - (b) that the proxy need not be a shareholder of the Company; and
 - (c) that a shareholder who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
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25. Constructive notice

25.1 Every person who by operation of law, transfer or any other means becomes entitled to any share is bound by every notice in respect of the share which, before his or her name and address is entered on the Register, has been duly given to the person from whom he or she derives title or to any previous holder of the share.

26. Notice of adjourned meeting

[replaceable rule 249M]

26.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

27. Accidental omission to give notice

[compare section 1322(3)]

27.1 Subject to the Act, the accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution or the accidental omission to advertise (if necessary) the meeting does not invalidate the proceedings at or any resolution passed at the meeting.

28. Postponement of general meeting

- 28.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by shareholders as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 28.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 29.3 or rule 30.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

29. Quorum

[compare replaceable rule 249T]

- 29.1 The quorum for a meeting of the Company's shareholders is 2 shareholders provided that one shareholder holding "A" class shares and one shareholder holding "AA" class shares are present and, if "B" class shares and "BB" class shares have been issued, provided that one shareholder holding "B" class shares and one shareholder holding "BB" class shares are also present. The quorum must be present at all times during the meeting.
- 29.2 In determining whether a quorum is present proxies, attorneys or body corporate representatives are counted.
- 29.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the shareholders or upon the requisition of shareholders, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 29.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

30. Chair at general meetings

[compare replaceable rule 249U]

- 30.1 If the directors have appointed 1 of their number as chair of their meetings, the person appointed presides as chair at every general meeting.
- 30.2 Where a general meeting is held and:
- (1) a chair has not been appointed as referred to in rule 30.1; or

- (2) the chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present may appoint 1 of the independent directors present to be chair of the meeting and in default of their doing so the shareholders present must appoint an independent director or if no independent director is present or willing to act then the shareholders present may appoint any 1 of their number to be chair of the meeting.

- 30.3 The chair may, at any time during the meeting, with the consent of the shareholders present at the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- 30.4 The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting may be the subject of a motion of dissent from chair's ruling and the decision on that ruling shall be final.
- 30.5 The meeting may in its absolute discretion refuse admission to, or require to leave and remain out of the meeting, any person who is not a shareholder, director or auditor of the Company.
- 30.6 Where a general meeting is held:
 - (1) a director who is not a shareholder is entitled to be present and to speak to any general meeting;
 - (2) a secretary who is not a shareholder is entitled to be present and to speak at any general meeting;
 - (3) the auditor of the Company from time to time and any assistant of the auditor who is not a shareholder is entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the auditor in the capacity as auditor of the Company; and
 - (4) any professional adviser of the Company (including, without limitation, a solicitor or financial adviser), at the request of any director, is entitled to be present and, at the request of the chair, to speak at any general meeting. However, subject to the Act and this constitution, the Company is not obliged to send a notice of meeting to any professional adviser.

31. Business at adjourned meetings

[replaceable rule 249W(2)]

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

Proxies and body corporate representatives

32. Who can appoint a proxy

[compare replaceable rule 249X]

- 32.1 A shareholder who is entitled to attend and cast a vote at a meeting of the Company's shareholders or at a meeting of the holders of a class of shares may appoint an individual or a

body corporate as the shareholder's proxy to attend and vote for the shareholder at the meeting. The proxy need not be a shareholder.

- 32.2 The appointment may specify the proportion or number of votes that the proxy may exercise.
- 32.3 If the shareholder is entitled to cast 2 or more votes at the meeting, the shareholder may appoint 2 proxies. If the shareholder appoints 2 proxies and the appointment does not specify the proportion or number of the shareholder's votes each proxy may exercise, each proxy may exercise half of the votes.
- 32.4 Any fractions of votes resulting from the application of rule 32.2 or rule 32.3 are disregarded.
- 32.5 Further provisions for dealing with proxies are provided in section 249Y to section 250C (inclusive) of the Act.

33. Body corporate representative

[section 250D]

- 33.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:
- (1) at meetings of the Company's shareholders;
 - (2) at meetings of creditors or debenture holders;
 - (3) relating to resolutions to be passed without meetings; or
 - (4) in the capacity of a shareholder's proxy appointed under rule 32.

The appointment may be a standing one.

- 33.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 33.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.
- 33.4 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

Voting at meetings of shareholders

34. How many votes a shareholder has

[compare replaceable rule 250E]

- 34.1 Subject to any rights or restrictions attached to any class of shares and to this constitution, at a meeting of shareholders:
- (1) on a show of hands, each shareholder has 1 vote; and
 - (2) on a poll, each shareholder has 1 vote for each share the shareholder holds.
- 34.2 The vote may be exercised in person, by proxy or body corporate representative.

- 34.3 When a shareholder appoints 2 proxies the appointment must specify the proportion of the shareholder's voting rights which each proxy is entitled to represent.
- 34.4 Where a person is entitled to vote in more than one capacity (representative or proxy) in respect of the same share, that person is only entitled to one vote.
- 34.5 A shareholder is not entitled to vote at a general meeting in respect of shares on which any calls or other sums presently payable are unpaid.

35. Chair's casting vote

- 35.1 In the case of an equality of votes, the chair of the meeting does not have the casting vote.

36. Voting at meetings

- 36.1 All shareholder resolutions must be passed by a two-thirds majority.
- 36.2 The voting at meetings of shareholders will be governed by the provisions of section 250F and 250H to 250M (inclusive) of the Act.

37. Objections to right to vote

[compare replaceable rule 250G]

- 37.1 A challenge to a right to vote at a meeting of shareholders:
- (1) may only be made at the meeting; and
 - (2) must be determined by the chair, whose decision is final.
- 37.2 A vote not disallowed following the challenge is valid for all purposes.

Appointment of directors

38. Number of directors

[compare section 201A]

- 38.1 The board of directors must consist of 9 directors and be made up of the following:
- (1) 3 Employee Body directors appointed pursuant to rule 39.1;
 - (2) 3 Employer Body directors appointed pursuant to rule 39.2; and
 - (3) 3 independent directors appointed pursuant to rule 48.1.

39. Appointment of directors

[compare section 120, and replaceable rules 201G and 201H]

- 39.1 Subject to rule 39.5, the Founding Member holding the "A" class shares and the "B" class shares (if any) is entitled to, and shall, appoint 3 Employee Body directors.
- 39.2 Subject to rule 39.5, the Founding Member holding the "AA" class shares and the "BB" class shares (if any) is entitled to, and shall, appoint 3 Employer Body directors.

- 39.3 All directors appointed under this rule 39 must meet the propriety and fitness standards imposed under Part 3 of the SIS Act on a Registrable Superannuation Entity (as defined in the SIS Act).
- 39.4 Each appointment under rules 39.1 and 39.2 shall be for a term of 3 years, at the end of which, if the appointee has not been previously removed from office, or vacated office, the appointee will be eligible for reappointment.
- 39.5 Equal Representation must be maintained at all times. If a vacancy in the office of a director occurs and:
- (1) immediately before the vacancy there was Equal Representation;
 - (2) the vacancy is filled within 7 days of its occurrence; and
 - (3) immediately after the vacancy is filled, there is Equal Representation,
- then the Company is taken to have maintained Equal Representation at all times during the period of the vacancy.

40. Time appointment takes effect

Subject to the Relevant Laws, an appointment under rule 39 takes effect only when the Company receives notice in writing of the appointment. The notice may be given by facsimile.

41. Insufficient directors

[compare replaceable rule 201H]

- 41.1 Any vacancy in the office of a director that needs to be filled to maintain Equal Representation as required by rule 39.5 shall be filled by the Founding Member who is entitled under rule 39.1 or 39.2 to appoint a director to fill that vacancy as soon as practicable, but in any event, no later than 7 days after the occurrence of that vacancy, failing which the continuing directors may continue to conduct the business of the Company and to hold meetings and, if the result of the failure to replace the Director concerned when added to any other vacancies in the office of Director means a quorum for Directors' meetings cannot be attained, to vote as if the quorum for meetings and the requirements for voting were reduced by the number of vacancies for which no replacement has been appointed.
- 41.2 For the avoidance of doubt, any replacement director appointed to fill a vacancy shall be appointed for the balance of the term for which the director, whose office has become vacant, had been appointed.

Alternate directors

[compare replaceable rule 201K]

42. Appointment

- 42.1 Subject to rule 42.2:
- (1) an "A" Class Director or a "B" Class Director (if any) may only appoint another "A" Class Director or "B" Class Director or a person within a group of persons nominated for the purpose by the shareholder entitled to make an appointment under rule 39.1;
or

- (2) an "AA" Class Director or "BB" Class Director (if any) may only appoint another "AA" Class Director or "BB" Class Director or a person within a group of persons nominated for the purpose by the shareholder entitled to make an appointment under rule 39.1;

to act as alternate director in place of the appointing director for a meeting or for a specified period.

- 42.2 All alternate directors appointed under this rule 42 must meet the propriety and fitness standards imposed under Part 3 of the SIS Act on a Registrable Superannuation Entity (as defined in the SIS Act) unless otherwise approved by APRA.
- 42.3 An alternate director is not required to have any share qualification.
- 42.4 An alternate director is not taken into account for the purpose of rule 38 except when acting as a director in the place of the appointing director.

43. Rights and powers of alternate director

- 43.1 An alternate director is entitled to notice of meetings of the directors and, if the appointing director is not present at a meeting, is entitled to attend and vote in his or her stead.
- 43.2 Subject to the requirements of the Act, an alternate director is entitled to a separate vote for each director that the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- 43.3 An alternate director, when acting as a director, is responsible to the Company for his or her own acts and defaults and is not to be taken as the agent of the director by whom he or she was appointed.

44. Suspension or revocation of appointment

- 44.1 A director may suspend or revoke the appointment of an alternate director appointed by him or her.

45. Form of appointment, suspension or revocation

- 45.1 Subject to the Relevant Laws, an appointment, suspension or revocation under rule 42 or rule 44 takes effect only when the Company has received notice in writing of the appointment, suspension or revocation. The notice may be given by facsimile.

46. Termination of appointment

- 46.1 The appointment of an alternate director automatically terminates:
 - (1) if the appointing director ceases to hold office as director;
 - (2) on the happening in respect of the alternate director of any event which causes a director to vacate the office of director; or
 - (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

47. Power to act as alternate for more than 1 director

- 47.1 A director or an alternate director may act as alternate director to represent more than 1 director.
- 47.2 Subject to the Act, notwithstanding rule 47.1, in determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is only to be counted once as a director.

Independent directors

48. Terms of appointment

- 48.1 Subject to the Relevant Laws, there must be at least 3 persons appointed as independent directors at any one time.
- 48.2 Subject to rule 48.3, the independent directors will be appointed by the Founding Members, or failing agreement by the Founding Members, by the Selection Committee.
- 48.3 All independent directors appointed under this rule 48 must meet the propriety and fitness standards imposed under Part 3 of the SIS Act on a Registrable Superannuation Entity (as defined in the SIS Act).
- 48.4 Each appointment under rule 48 shall be for a term of 3 years, at the end of which, if the appointee has not been previously removed from office, or vacated office, the appointee will be eligible for reappointment.
- 48.5 The Founding Members must reach agreement on the appointment or re-appointment of the independent directors (as the case may be) in each relevant year by 16 May. If the Founding Members fail to reach agreement by this date, the Selection Committee must appoint or re-appoint the independent directors (as the case may be) by no later than 30 June in each relevant year.
- 48.6 The appointment or reappointment of the independent directors (as the case may be) is deemed to take place at midnight on 30 June in each relevant year.

49. Voting

- 49.1 An independent director will be entitled to vote in any proceedings of directors but shall not be entitled to exercise a casting vote in addition to any vote which that independent director has as a director.

50. Removal of independent director

- 50.1 The Founding Members may, by resolution passed in a general meeting, vote to remove any independent director.

51. Vacancy

- 51.1 Any vacancy in the office of an independent director shall be filled by the Founding Members who are entitled under rule 48.2 to appoint the independent director as soon as practicable, but in any event, no later than 7 days after the occurrence of that vacancy or failing

agreement by the Founding Members, by the Selection Committee as soon as practicable, but in any event, no later than 21 days after the occurrence of the vacancy, failing which the continuing directors may continue to conduct the business of the Company and to hold meetings and, if the result of the failure to replace the Director concerned when added to any other vacancies in the office of Director means a quorum for Directors' meetings cannot be attained, to vote as if the quorum for meetings and the requirements for voting were reduced by the number of vacancies for which no replacement has been appointed.

Powers of directors

52. Validation of acts of directors and secretaries

[compare sections 201M and 204E]

- 52.1 An act done by a director or secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment is invalid because the Company, the director or secretary did not comply with this constitution or any provision of the Act.
- 52.2 Rule 52.1 does not deal with the question whether an effective act by a director or secretary:
- (1) binds the Company in its dealings with other people; or
 - (2) makes the Company liable to another person.

53. General business management

[compare replaceable rule 198A]

- 53.1 The business of the Company is to be managed by or under the direction of the directors.
- 53.2 The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 53.3 A rule made or resolution passed by the Company in general meeting:
- (1) must comply with the requirements of rule 3.2; and
 - (2) does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.

54. Borrowing powers

- 54.1 Without limiting the generality of rule 53, but subject to rule 5, 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, but only if in doing so they are not in breach of the Relevant Laws.
- 54.2 Debentures or other securities may be issued on the terms and at prices decided by the directors, including bearing interest or not, with rights to subscribe for, or exchange into, shares or other securities in the Company or a related body corporate or with special privileges as to redemption, participating in share issues, attending and voting at general meetings and appointing directors.

55. Appointment of attorney

- 55.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.
- 55.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

56. Negotiable instruments

[compare replaceable rule 198B]

- 56.1 Any 2 directors, if the Company has 2 or more directors, or the director, if the Company has only 1 director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 56.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

57. Delegation

[compare replaceable rule 198D]

- 57.1 The directors may delegate any of their powers to:
- (1) a committee of directors with Equal Representation and at least one "A" Class Director, one "AA" Class Director and one independent director;
 - (2) a committee of 3 persons, at least one of whom shall be a director or employee of the Company to deal with insurance matters related to the Fund;
 - (3) a director or 2 directors;
 - (4) an employee of the Company; or
 - (5) any other person,
- and may revoke the delegation.
- 57.2 The delegate must exercise the powers delegated in accordance with any directions of the directors.
- 57.3 The exercise of the power by the delegate is as effective as if the directors had exercised it.
- 57.4 The delegate has no power to delegate further.

58. Committee meetings

- 58.1 The members of a committee may elect one of their number as chair of their meetings.
- 58.2 Where a committee meeting is held and:

- (1) a chair has not been elected pursuant to clause 58.1; or
- (2) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the members present may elect one of themselves to act as chair of the meeting.

- 58.3 A committee may meet together for the despatch of business and adjourn and otherwise regulate its meetings as it sees fit.
- 58.4 A resolution of a committee constituted under rule 57.1 must be passed by that number of votes cast by the committee members entitled to vote on the resolution as specified by the directors in the delegation of powers.
- 58.5 Subject to rule 58.4, the committee members may pass a resolution without a committee meeting being held if a majority of the committee members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 58.6 Separate copies of a document may be used for signing by the committee members if the wording of the resolution and statement is identical in each copy.
- 58.7 Subject to rules 58.4 and 58.5, the resolution is passed when signed by the required majority of the committee members.
- 58.8 The meetings and proceedings of any committee of directors consisting of 2 or more members are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.
- 58.9 The chair of a committee does not have the casting vote.
- 58.10 In the exercise of delegated powers, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the directors. A delegate appointed by the directors may be authorised by the directors to sub-delegate any of the powers vested in them, but the sub-delegate has no power to delegate the delegated powers further.

Removal and resignation of directors

59. Removal of directors

[compare replaceable rule 203C]

- 59.1 A shareholder holding a share or shares which gives the shareholder the right to appoint a director may at any time by instrument in writing:
- (1) remove such a director from office; or
 - (2) appoint a person to be a director either in place of the director so removed or to fill a vacancy in the office of such director.
- 59.2 Subject to the Relevant Laws, a removal or appointment under rule 59.1 takes effect only when the Company has received notice in writing of the removal or appointment. The notice may be given by facsimile.

60. Resignation of directors

[replaceable rule 203A]

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

61. Vacation of office of director

[compare section 203B and Part 2D.6, being sections 206A to 206H]

61.1 In addition to any other circumstances in which the office of a director becomes vacant under the Act, the office of a director becomes vacant if the director:

- (1) becomes disqualified from being a director under the SIS Act, the Act or any order made under the Act;
- (2) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (3) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (4) dies;
- (5) becomes disqualified from the office of director pursuant to this Constitution;
- (6) is removed from office in accordance with rule 59;
- (7) resigns from office in accordance with rule 60.1; or
- (8) is an independent director and:
 - (a) is removed from office by the Founding Members in accordance with rule 50.1;
 - (b) ceases to be Independent (as that term is defined in the SIS Act) unless otherwise approved by APRA; or
 - (c) is appointed to the Selection Committee; provided that to do so does not breach the Relevant laws.

61.2 The person appointed in place of the director vacating office shall be appointed for the remainder of the term of the office of the vacating director.

Selection Committee

62. Appointment

62.1 The Company must have a Selection Committee consisting of 5 members and made up as follows:

- (1) a nominee from each Founding Member;
- (2) two nominees of the Australian Institute of Superannuation Trustees; and
- (3) a nominee of the President of the Law Institute of Victoria.

- 62.2 Each appointment to the Selection Committee shall be effective when the Company receives written notice of his or her nomination. The notice may be given by facsimile.
- 62.3 No member of the Selection Committee can be a director of the Company.

63. Powers of the Selection Committee

- 63.1 The Selection Committee has the following powers:
- (1) to select for appointment an independent director in the event that the Founding Members are unable to reach agreement on the person to be appointed in accordance with rule 48.2; and
 - (2) to determine any other matters referred to it by the board of directors relating to the terms of appointment and remuneration of the independent directors.
- 63.2 In considering whether to appoint someone as an independent director pursuant to rule 63.1(1), the Selection Committee is to have regard to whether the person is capable of:
- (1) contributing to the attainment of the objects of the Fund, including its not-for-profit objective and low cost operation;
 - (2) reflecting in their approach to the role of director, consistently with their obligations as independent directors of the Company as trustee under the trust deed of the Fund, the character of the Fund and its operation in the best interests of the Members and Beneficiaries and its on-going development as part of the industry superannuation funds movement; and
 - (3) satisfying the requirements of an independent director imposed by the Relevant Laws and maintaining the fact and perception of independence from the interests of either shareholder.

64. Meetings

- 64.1 The Selection Committee will meet at such times as is necessary to select persons for appointment or reappointment (as the case may be) as independent directors pursuant to rule 63.1(1) or to resolve any issues referred to it pursuant to rule 63.1(2).
- 64.2 Meetings of the Selection Committee may be called by the chair of the Selection Committee and shall be called by the Chair of the Selection Committee or if there is at the time no chair of the Selection Committee, by the secretary of the Company at the request of two of the members of the Selection Committee.
- 64.3 Each member of the Selection Committee has one vote.
- 64.4 A resolution of a Selection Committee must be passed by a simple majority of the votes cast by the committee members entitled to vote on the resolution unless there is less than 4 members on the Selection Committee for a period of 45 days or more, in which case the resolutions shall be passed by a majority of the committee members entitled to vote on the resolution.
- 64.5 Subject to this constitution, the Selection Committee may adopt such procedures and regulations as it sees fit for the calling and conduct of its meetings.

65. Quorum

- 65.1 The quorum for a meeting of the Selection Committee is 4 members, or if there is less than 4 members at the time the meeting is held, then the quorum will be a majority of members.

66. Chair at meetings

- 66.1 The members of the Selection Committee may elect one of their number as chair of their meetings.
- 66.2 In the case of an equality of votes, the chair of the meeting does not have a casting vote.

67. Removal of members

- 67.1 A member of the Selection Committee may be removed at any time by its nominator, but such removal becomes effective only upon the appointment of a replacement member of the Selection Committee on the nomination of the nominator in accordance with rule 62.

Directors' interests

68. Director to disclose interests

[compare section 191]

- 68.1 A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest as soon as practicable after the director becomes aware of his or her interest in the matter and in the manner required by section 191(3) of the Act.
- 68.2 The requirements of rule 68.1 are subject to the limitations and qualifications set out in section 191 of the Act.

69. Effect of interest in contract

[compare replaceable rule 194]

- 69.1 If a director or officer has a material personal interest in a matter which relates to the affairs of the Company and which could create a potential conflict of interest in relation to a matter being, or to be, dealt with by the board of directors or a committee of the board or directors;

then:

- (1) the director or officer must fully disclose and give details to the directors on the board or the relevant committee of the nature and extent of that material personal interest as soon as practicable after that director or officer becomes aware of the director's or officer's interest in the matter;
- (2) the directors on the board or on the relevant committee who do not have a material personal interest shall at a meeting consider all information relevant to the director's or officer's material personal interest;
- (3) unless the directors on the board or the relevant committee at that meeting otherwise decide, the director or officer who has the interest may not be present, or in the case

of the director, be both present and vote, at the meeting referred to in rule 69.1(2) or that part of the meeting which deals with the relevance of the interest concerned;

- (4) the directors in the meeting referred to in rules 69.1(2) and 69.1(3) shall resolve whether the interest concerned should disqualify the director or officer having that interest from being present at, or in the case of a director from being both present and voting at, a meeting of directors on the board or the relevant committee while it deals with the matter in relation to which the material personal interest has been disclosed; and
- (5) where under rule 69.1(4) the directors resolve that a director concerned may be present and vote at the second mentioned meeting then:
 - (a) that director may vote on the matter that relates to the material personal interest;
 - (b) any transactions that relate to that interest may proceed;
 - (c) the director may retain the benefits under the transaction even though the director has the material personal interest; and
 - (d) the Company cannot avoid the transaction merely because of the existence of the material personal interest.

69.2 If a disclosure is required under rule 68 and section 191 of the Act, rules 69.1(5)(c) and 69.1(5)(d) apply only if the disclosure is made before the transaction is entered into.

70. Standing notice of interest

[compare section 192]

- 70.1 A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- 70.2 A notice under rule 70.1 may be given:
- (1) at a directors' meeting (either orally or in writing); or
 - (2) to the other directors individually in writing.
- 70.3 If the standing notice is given to the other directors individually in writing:
- (1) the notice is effective when it has been given to every director; and
 - (2) the notice must be tabled at the next directors' meeting after it is given.
- 70.4 The director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

71. Extension of meaning of "Company"

- 71.1 For the purposes of rules 68, 69 and 70 Company includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

72. Other directorships and shareholdings

72.1 A director of the Company may be or become a director, officer, employee or shareholder of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any remuneration or benefits received as a director, officer, employee or shareholder of the other company.

72.2 Subject to the Act:

- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (2) any director of the Company may vote at a meeting of directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that director as a director or other officer of the other company;
- (3) any director of the Company may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that director as a director or other officer of the other company; and
- (4) a director of the Company who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the director to any other office in the other company and a resolution appointing any other directors of the Company as directors or other officers of the other company.

Directors' meetings

[compare sections 248A to 248G]

73. Circulating resolutions

[compare replaceable rule 248A]

73.1 The directors may pass a resolution without a directors' meeting being held if a majority of the directors entitled to vote on the resolution (except a director absent from Australia who has not left a facsimile number or other contact details acceptable to the directors, at which he or she may be given notice) sign a document containing a statement that they are in favour of the resolution set out in the document.

73.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

73.3 The resolution is passed when signed by the majority of directors.

73.4 A facsimile or PDF addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this rule 73 must be treated as a document in writing signed by that director.

73.5 In this rule 73 a reference to all directors does not include a reference to an alternate director whose appointor has signed the document, but an alternate director may sign the document in the place of his or her appointor.

73.6 Subject to rule 73.1, each director must be given notice of the proposed resolution unless he or she is not able to be contacted.

74. Meetings of directors

74.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

75. Calling directors' meetings

[compare replaceable rule 248C]

75.1 A director may at any time, and a secretary must on the requisition of a director, call a meeting of the directors.

76. Notice of meeting

[compare replaceable rule 248C]

76.1 Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:

- (1) has been given special leave of absence; or
- (2) is absent from Australia and has not left a facsimile number or other contact details acceptable to the directors at which he or she may be given notice.

76.2 A notice of a meeting of directors may be given in writing or orally, by facsimile, telephone, electronic mail or any other means of communication.

77. Waiver of notice

77.1 All resolutions of the directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

78. Technology meeting of directors

[compare section 248D]

78.1 A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.

78.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

78.3 The following provisions apply to a technology meeting:

- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and

- (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.
- 78.4 If the secretary is not present at a technology meeting or the Company does not have a secretary 1 of the directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- 78.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- 78.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

79. Chairing directors' meetings

[compare replaceable rule 248E]

- 79.1 The directors must elect an independent director to chair their meetings. The directors may determine the period for which the independent director is to be the chair.
- 79.2 The directors must elect a deputy chair present to chair a meeting, or part of it, if a previously elected chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act for the meeting or the part of the meeting. If the directors cannot agree on the deputy chair to be elected to chair the meeting, the directors must elect an independent director present to chair the meeting.
- 79.3 The Founding Members shall each appoint a deputy chair.

80. Quorum

[compare replaceable rule 248F]

- 80.1 The quorum for a directors' meeting is 5 directors entitled to vote including at least one independent director, or a greater number determined by the directors but always including an independent director. The quorum must be present at all times during the meeting.
- 80.2 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (so long as the alternate is, under the law relating to directors' interests and the Act generally, entitled to vote).

81. Passing of directors' resolutions

[compare replaceable rule 248G]

- 81.1 Subject to this constitution, a resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- 81.2 The chair does not have a casting vote in addition to any vote he or she has as a director.
- 81.3 A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

Remuneration of directors

82. Payment of remuneration

[compare replaceable rule 202A(1)]

82.1 The directors are to be paid the remuneration that the Company determines by resolution.

82.2 The Company determines by resolution the total remuneration to be paid to each of the directors.

The expression “remuneration” in rule 82.1 does not include any amount which may be paid by the Company under rules 83, 85, 87, 88 or 96.

83. Payment of expenses

[compare replaceable rule 202A(2)]

83.1 The Company may also pay the directors’ travelling and other expenses that they properly incur:

- (1) in attending directors’ meetings or any meetings of committees of directors;
- (2) in attending any general meetings of the Company; and
- (3) in connection with the Company’s business.

84. Information about directors remuneration

[compare section 202B]

84.1 If required by the Act, the Company must comply with a direction by the shareholders to disclose the remuneration paid to each director by the Company (whether paid to the director in his or her capacity as a director or another capacity).

85. Payment for extra services

85.1 Subject to the Act, any director called upon to:

- (1) perform extra services; or
- (2) undertake any executive or other work for the Company beyond his or her general duties,

may be remunerated either by a fixed sum or a salary as determined by the directors.

85.2 Remuneration under rule 85.1 may be either in addition to or in substitution for the director’s remuneration provided by rule 82.

86. Cancellation, suspension, reduction or postponement

86.1 The Company may by resolution cancel, suspend, reduce or postpone payment of any remuneration of any director.

87. Effect of cessation of office

[contrast section 211(3)]

87.1 With the approval of the Company in general meeting the directors may:

- (1) upon a director ceasing to hold office; or
- (2) at any time after a director ceases to hold office,

whether by retirement or otherwise, pay to:

- (3) the former director; or
- (4) any of the legal personal representatives or dependants of the former director in the case of death,

a lump sum in respect of past services of the director of an amount not exceeding the amount permitted by the Act.

87.2 The Company may contract with any director to secure payment of the lump sum to the director, his or her legal personal representatives or dependants or any of them, unless prohibited by the Act.

87.3 A determination made by the directors in good faith that a person is or was at the time of the death of a director a dependent of the director is conclusive for all purposes of rule 87.1.

87.4 The directors may, on the death of a non-executive director who at the date of his or her death had been a director for a continuous period of at least 5 years, pay to the legal personal representative of that deceased director an amount not exceeding the total emoluments of that deceased director in the 3 years immediately preceding his or her death.

88. Payment of superannuation contributions

[compare section 211(3)]

88.1 The Company must also pay the directors' superannuation contributions of an amount at least necessary to meet the minimum level of superannuation contributions required under any applicable legislation.

Secretary

[compare Part 2D.4 being sections 204A to 204G]

89. Secretary

[compare section 204A]

89.1 The Company shall have a secretary.

90. Appointment of secretary

90.1 The appointment of the secretary must be in accordance with the Act.

90.2 The directors may appoint a person as an acting secretary or as a temporary substitute for a secretary.

91. Terms of office of secretary

[compare section 204D]

- 91.1 A secretary of the Company holds office on the terms and conditions (including as to remuneration) that the directors determine.

92. Prohibition on distribution of income and capital

- 92.1 Except in the case of a winding up of the Company but subject to rule 93, the Company is prohibited from distributing, transferring or paying any portion of the income or capital of the Company directly or indirectly to or for the benefit of shareholders, including by way of bonus, dividend or otherwise by way of profit or return of capital to shareholders, other than for the payment of a bona fide invoice for goods or services of an amount which is no more than what would be determined on arms' length terms (for example, a director's remuneration and expenses in respect of a director appointed by a shareholder).

93. Power to employ reserves

- 93.1 The directors may determine to set aside out of the profits, revenue or assets of the Company those sums they determine to be appropriate as:

- (1) a newly created reserve for the Company; or
- (2) a contribution to an existing reserve of the Company,

provided that if the Company receives on its own account any Risk Premium, the Company must set such amount aside in a reserve created in accordance with this rule 93.1, to be known as the 'Risk Premium Reserve', and maintained in accordance with any Policy in force from time to time.

- 93.2 Subject to rule 3.2 and 93.4, any reserves which are set aside under rule 93.1 may, at the discretion of the directors, be in whole or part:

- (1) used in the business of the Company for any purposes the directors see fit including but not limited to those set out in rule 93.3;
- (2) invested as the directors determine to be appropriate;
- (3) paid:
 - (a) to the Fund or PST, provided such amounts are not required to pay any creditors of the Company; or
 - (b) into an Approved Benefit Arrangement by way of payment of an amount to the trustee, operator or provider of the Approved Benefit Arrangement, provided:
 - (A) such amounts are not required to pay any creditors of the Company; and
 - (B) the Approved Benefit Arrangement into which funds are paid by the Company is an Approved Benefit Arrangement with respect to which all or some Members or Beneficiaries of the Fund or unitholders of

the PST or their interests in the Fund or PST, have been or are being transferred; or

- (4) used in such other manner as the directors determine to be appropriate.

93.3 Without limiting any other purposes for which any reserves which are set aside under rule 93.1 may be applied and subject to rule 93.4, the directors may determine to use the Risk Premium Reserve for purposes which include but are in no way limited to:

- (1) the payment of liabilities of the Company and its directors (including under an indemnity given by the Company) which are not able to be indemnified under the terms of the Trust Deed or PST Deed due to the operation of the SIS Act;
- (2) the payment of premiums for:
 - (a) professional liability or any other insurance coverage that the Company may maintain to cover risks associated with its operations as trustee of the Fund or the PST; or
 - (b) any insurance coverage (whether maintained by the Company, directors or officers) to cover any risks or liabilities incurred by its directors or officers in their capacity as directors or officers of the Company;
- (3) the payment of amounts to cover the payment of insurance policy excesses, deductibles and premiums and other like amounts incurred by the Company in connection with its role as trustee of the Fund or the PST;
- (4) the payment of amounts to cover claims against the Company, or a director or officer of the Company, in connection with its role as trustee of the Fund or the PST, or director or officer of the Company, which are not covered or claimed by the Company, director or officer under an insurance policy, including under an indemnity given by the Company to the director or officer, and including any fees and costs incurred in auditing or rectifying any claims against the Company, or a director or officer of the Company, in connection with its role as trustee of the Fund or the PST;
- (5) the payment of any refunds, discounts, rebates, credits, bonuses, or other amounts which are payable by the Company (or which the Company determines to pay):
 - (a) to the Fund or PST in relation to any Risk Premium paid or payable by the Fund or PST to the Company; or
 - (b) in relation to any Risk Premium paid or payable under or in respect of:
 - (A) a services agreement in place between the Company (as service provider), and the trustee, operator or provider of an Approved Benefit Arrangement for the benefit of that Approved Benefit Arrangement; or
 - (B) an agreement (whether formally documented or otherwise) by the Company to provide services to the trustee, operator or provider of an Approved Benefit Arrangement for the benefit of that Approved Benefit Arrangement,

provided it is an Approved Benefit Arrangement with respect to which Members or Beneficiaries of the Fund or unitholders of the PST, or their interests in the Fund or PST, have been or are being transferred;

- (6) the payment of costs or legal, audit or consulting fees for advice and/or representation of the Company in connection with its role as trustee of the Fund or the PST or its directors and/or officers independent of any advice obtained and/or representation appointed under an insurance policy, including under an indemnity given by the Company to the director or officer;
- (7) the payment of any amounts owed by the Company in connection with its role as trustee of the Fund or the PST or its directors and/or officers in connection with public relations or claim management advice and/or services, including under an indemnity given by the Company to the director or officer; and
- (8) the payment of any surplus funds of a reserve (as determined by the directors having regard to the purpose of the reserve) to:
 - (a) the Fund or PST;
 - (b) the trustee, operator or provider of an Approved Benefit Arrangement, for the benefit of that Approved Benefit Arrangement provided it is an Approved Benefit Arrangement with respect to which members of the Fund or unitholders of the PST or their interests in the Fund or PST have been or are being transferred;

except to the extent any payments under rules 93.3(1) to 93.3(8) are prohibited under the provisions of the Act or any other Relevant Law.

93.4 Notwithstanding the powers of directors under this rule 93, any reserves which are set aside under rule 93.1 must not be:

- (1) applied towards a distribution to shareholders by way of a dividend or return of capital; or
- (2) otherwise applied for the benefit of shareholders,

including, in either case, in connection with a winding-up of the Company.

Indemnity and insurance

94. Protection

94.1 Nothing contained in this Constitution will be construed to lessen or abrogate any indemnity or protection given or permitted to be given to directors or officers of the Company by the Act or under the Relevant Laws, including an indemnity given by the Company to directors or officers of the Company by deed which in terms is not inconsistent with the Act or any Relevant Law.

95. Indemnity

[compare section 199A]

95.1 To the extent permitted by law including under the Act, the Company indemnifies:

- (1) every person who is or has been an officer of the Company; and
- (2) where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company,

against all losses, liabilities, costs, charges and expenses incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be). This indemnity includes:

- (1) a liability for negligence; and
- (2) a liability for reasonable legal costs on a solicitor client basis including in respect of civil or criminal proceedings except to the extent prohibited by section 199A(3) of the Act.

95.2 The indemnity does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void or unenforceable or not permitted by law and does not operate in respect of any liability of the officer to the extent that liability is covered by insurance.

95.3 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Company:
 - (a) a liability owed to the Company or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE of the Act; or
 - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
 - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 95.3(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for the court order are found by the court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Act, in which the Court denies the relief.

Rule 95.3(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of rule 95.3(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

95.4 An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified by the Company;
- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

95.5 In rule 95.4, Claim means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 95.5(1) or 95.5(2) may be initiated.

95.6 If an officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, and the officer may be indemnified under rule 95.1, the directors may, despite the interest (if any) of the directors or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of the Company by way of indemnity to secure the officer so becoming liable from any loss in respect of that liability.

95.7 Rule 93 will apply and take precedence to the extent the obligations of the Company under the indemnity provided under this rule 95 will be met in whole or in part through the utilisation of a reserve set aside by directors under rule 93.1.

96. Insurance

[compare section 199B]

- 96.1 Subject to the Relevant Laws, the Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:
- (1) conduct involving a wilful breach of duty in relation to the Company; or
 - (2) a contravention of section 182 or 183 of the Act.
- 96.2 Rule 93 will apply and take precedence to the extent the obligations of the Company under this rule 96 will be met in whole or in part through the utilisation of a reserve set aside by directors under rule 93.1.

97. Director voting on contract of indemnity or insurance

[compare section 191]

- 97.1 Despite anything in this constitution, a director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance merely because the contract indemnifies or insures or would indemnify or insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

98. Liability

- 98.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

Winding up

99. Shareholders' rights on distribution of assets

- 99.1 Subject to rule 93.4, if the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the shareholders in kind the whole or any part of the property of the Company and may for that purpose set the value 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 shareholders or different classes of shareholders. This division need not be in accordance with the legal rights of the shareholders, and in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- 99.2 The liquidator may, with the sanction of a special resolution, vest the whole or any part of the property referred to in rule 99.1 in trustees upon trusts for the benefit of the contributories that the liquidator sees fit, but so that no shareholder is compelled to accept any shares or other securities on which there is any liability.

Minutes

100. Minutes to be kept

[compare section 251A]

- 100.1 The directors must keep minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Company's shareholders;
 - (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (3) resolutions passed by shareholders without a meeting; and
 - (4) resolutions passed by directors without a meeting.
- 100.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
 - (2) the chair of the next meeting.
- 100.3 The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 100.4 If the Company has only 1 director, the director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.
- 100.5 Without limiting rule 100.1 the directors must record in the minute books:
- (1) all appointments of officers;
 - (2) the names of the directors and alternate directors present at all meetings of directors and the Company;
 - (3) in the case of a technology meeting, the method by which the meeting was held;
 - (4) all orders, resolutions and proceedings of general meetings and of meetings of the directors and of committees formed by the directors;
 - (5) proxy votes exercisable and exercised in respect of each resolution at a meeting; and
 - (6) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest in a matter that relates to the affairs of the Company.

101. Requirements under Relevant Laws

- 101.1 The directors must ensure that the Company retains copies of all minutes affecting the Fund and any other records required to be kept and notices given by the Company under, or pursuant to, the Relevant Laws for such periods as specified in the Relevant Laws.

Inspection of records

102. Rights of inspection

[compare replaceable rule 247D and sections 173, 198F, 247A and 251B]

- 102.1 The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a shareholder to inspect books of the Company.
- 102.2 A shareholder other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its shareholders and for resolutions of shareholders passed without meetings, except as provided by law (including the Relevant Laws) or authorised by the directors or by the Company in general meeting.
- 102.3 Directors have the rights of inspection and access provided by section 198F of the Act.

103. Confidential information

- 103.1 Except as provided by the Act, no shareholder (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

Execution of documents

104. Common seal

- 104.1 The Company may, but need not, have a common seal.

105. Share seal

[compare section 123(2)]

- 105.1 The Company may have a duplicate common seal. It must be a copy of the common seal with the words duplicate seal, share seal or certificate seal added.

106. Use of common seal

[compare sections 127(2) and 129(6)]

- 106.1 If the Company has a common seal the directors must provide for its safe custody.
- 106.2 The common seal must not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.
- 106.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) 2 directors of the Company; or
 - (2) a director and a company secretary of the Company, and the form of execution complies with rule 109.

107. Execution of documents without common seal

[compare sections 127(1) and 129(5)]

107.1 The Company may execute a document without using a common seal if the document is signed by:

- (1) 2 directors of the Company; or
- (2) a director and a company secretary of the Company, and the form of execution complies with rule 109.

108. Execution of document as a deed

[section 127(3)]

108.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 106 or rule 107.

109. Execution – general

[compare sections 129(5), 129(6) and 127(4)]

109.1 The same person may not sign in the dual capacities of director and secretary.

109.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.

109.3 Rules 106 or rule 107 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

Notices

110. Notices other than notices of meeting

110.1 Any notice by the Company to a shareholder, including a notice in connection with a call or forfeiture, may be given in the same way as a notice of meeting may be given under rule 21, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 22.

Inadvertent omissions

111. Formalities omitted

[compare section 1322]

111.1 If some formality required by this constitution is inadvertently omitted or is not carried out, the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any shareholder financially. The decision of the directors is final and binding on all shareholders.

Alteration of Constitution

112. Alteration to Constitution

- 112.1 No variation or alteration of this Constitution may affect the operation of rules 3.2, 3.3, 92 or 93.4 unless it is a decision of the Company made in accordance with rule 3.2 and approved by all of the shareholders of the Company or is otherwise necessary to ensure that the Company is able to comply with the Relevant Laws.