

CONSTITUTION OF BARRISTERS' CHAMBERS LIMITED
ACN 004 454 004

(Adopted 18 October 2010)



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TABLE OF CONTENTS

1. PRELIMINARY	1
2. DIRECTORS	3
3. POWERS OF THE BOARD	5
4. EXECUTING NEGOTIABLE INSTRUMENTS	5
5. MANAGING DIRECTOR	5
6. DELEGATION OF BOARD POWERS	6
7. DIRECTORS' DUTIES AND INTERESTS	7
8. DIRECTORS' REMUNERATION	8
9. OFFICERS' INDEMNITY AND INSURANCE	9
10. BOARD MEETINGS	10
11. MEETINGS OF MEMBERS	12
12. PROCEEDINGS AT MEETINGS OF MEMBERS	14
13. PROXIES, ATTORNEYS AND REPRESENTATIVES	15
14. ENTITLEMENT TO VOTE	18
15. HOW VOTING IS CARRIED OUT	19
16. RESOLUTIONS WITHOUT MEETINGS	20
17. SECRETARY	20
18. MINUTES	21
19. COMPANY SEALS	22
20. FINANCIAL REPORTS AND AUDIT	23
21. SHARES	24

22.	CERTIFICATES	24
23.	REGISTER	24
24.	DIVIDENDS	25
25.	TRANSFER OF SHARES	28
26.	TRANSMISSION OF SHARES	29
27.	SHARE CAPITAL	30
28.	WINDING UP	32
29.	NOTICES	33
30.	UNCLAIMED MONEY	35

THIS IS THE CONSTITUTION OF BARRISTERS' CHAMBERS LIMITED MARKED A AND REFERRED TO IN THE NOTICE OF MEETING OF BARRISTERS CHAMBERS LIMITED DATED

**CONSTITUTION OF BARRISTERS' CHAMBERS LIMITED
ACN 004 454 004**

1. PRELIMINARY

1.1. Replaceable rules

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

1.2. Definitions

In this Constitution unless the contrary intention applies:

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

Board means the Directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum.

Company means Barristers' Chambers Limited ACN 004 454 004.

Director means a person who is, for the time being, a director of the Company.

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

Holding Company means:

- (a) where the Victorian Bar Inc is the sole Member - the Victorian Bar Inc; or
- (b) where the Victorian Bar Inc is not the sole Member - Members who between them are entered in the Register as holders of 90% or more of the issued ordinary shares.

Managing Director means a managing director appointed under rule 5.1.

Member means a person whose name is entered in the Register as the holder of a share.

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

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

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

Special resolution has the meaning given by section 9.

The Victorian Bar Inc means the Victorian Bar Incorporated, an association incorporated under the *Associations Incorporation Act 1981 (Vict)*.

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

1.3. Interpretation of this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
- (i) legislation (including subordinate legislation) is to that legislation as amended, modified, re-enacted or replaced, and includes any subordinate legislation made under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.

1.3.2. A singular word includes the plural, and vice versa.

1.3.3. A word which suggests one gender includes the other genders.

1.3.4. If a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

- 1.3.5. If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- 1.3.6. The word 'agreement' includes an undertaking or other binding arrangement or understanding whether or not in writing.
- 1.3.7. A reference to something being written or in writing includes that thing being represented or reproduced in any mode in a visible form.
- 1.3.8. A word (other than a word defined in rule 1.2) which is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.
- 1.3.9. A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

2. DIRECTORS

2.1. Number of Directors

The Company must have a minimum of three (3) Directors and, until otherwise decided by ordinary resolution, not more than ten (10) Directors.

2.2. Appointment of Directors

Subject to the maximum number of Directors for the time being fixed under rule 2.1 not being exceeded:

- (a) the Holding Company, by writing delivered to the Company; or
- (b) if there is no Holding Company:
- (i) the Company by ordinary resolution; or
 - (ii) the Board (except during a general meeting),

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

2.3. No share qualification

A Director need not be a member.

2.4. Cessation of Director's appointment

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

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend six (6) consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company; or
- (f) is removed from office under rule 2.5; or
- (g) is the Managing Director and ceases to hold that office,

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

2.5. Removal from office

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

- (a) the Holding Company, by writing delivered to the Company; or
- (b) if there is no Holding Company, the Company by ordinary resolution,

may remove a Director from office.

2.6. Too few Directors

If the number of Directors is reduced below the minimum required by rule 2.1, the continuing Directors may act as the Board only:

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

3. POWERS OF THE BOARD

3.1. Powers generally

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

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

3.2. Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 10; or
- (b) in accordance with a delegation of the power under rule 5 or 6.

4. EXECUTING NEGOTIABLE INSTRUMENTS

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

5. MANAGING DIRECTOR

5.1. Appointment and power of Managing Director

The Board, having consulted with the Holding Company, if any, may appoint a Managing Director, either for a specified term or without specifying a term. Any person so appointed shall, notwithstanding rule 2.1, become a Director and, subject to this Constitution, the Managing Director has all the duties, and can exercise all the powers and rights, of a Director.

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

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

and may revoke the delegation at any time.

This rule does not limit rule 6.

5.2. Termination of appointment of Managing Director

The appointment of a Managing Director terminates if:

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

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

6. DELEGATION OF BOARD POWERS

6.1. Power to delegate

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

Note: The delegation must be recorded in the Company's Minute Book – Section 251A.

6.2. Power to revoke delegation

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

6.3. Terms of delegation

A delegation of powers under rule 6.1 may be made:

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

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

6.4. Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical,

governed by the rules of this Constitution which regulate the meetings and proceedings of the Board.

7. DIRECTORS' DUTIES AND INTERESTS

7.1. Compliance with duties under the Act

Each Director must comply with sections 180 to 183.

7.2. Director can hold other positions

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor;
- (c) be a creditor of any corporation (including the Company) or partnership;
or
- (d) enter into any agreement with the Company.

7.3. Disclosure of interests

Each Director must comply with section 191.

Note: s. 191 relates to the disclosure of, and restrictions on the voting on, matters involving material personal interests

7.4. Director interested in a matter

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

- (a) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter that relates to the interest;
- (b) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may retain benefits under the transaction even though the Director has the interest; and

- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

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

7.5. Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers, votes on, or participates in the execution of, that agreement.

7.6. Directors acting in the best interests of the holding company

If the Company is a wholly-owned subsidiary of a body corporate, a Director is authorised to act in the best interests of that body corporate in the circumstances contemplated by Section 187 if:

- (a) the Director acts in good faith in the best interests of the body corporate; and
- (b) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

8. DIRECTORS' REMUNERATION

8.1. Remuneration of Executive Directors

Subject to any contract with the Company, the Board may fix the remuneration of each Executive Director. That remuneration may consist of salary, bonuses, participation in profits or any other elements.

8.2. Remuneration of non-executive Directors

The Directors (other than the Executive Directors) are entitled to be paid, out of the funds of the Company, an amount of remuneration which:

- (a) does not in any year exceed in aggregate the amount last fixed by ordinary resolution;
- (b) is allocated among them:

- (i) on an equal basis having regard to the proportion of the relevant year for which each Director held office; or
 - (ii) as otherwise decided by the Board; and
- (c) is provided in the manner the Board decides, which may include provision of non-cash benefits.

If the Board decides to include non-cash benefits in the remuneration of a Director, the Board must also decide the manner in which the value of those benefits is to be calculated for the purposes of this rule.

8.3. Expenses of Directors

The Company may pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out duties as a Director.

9. OFFICERS' INDEMNITY AND INSURANCE

9.1. Indemnity

Subject to and so far as permitted by the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer,

employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

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

9.2. Insurance

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

9.3. Former officers

The indemnity in favour of officers under rule 9.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

9.4. Deeds

Subject to the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this rule 9, enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 9 on any terms and conditions that the Board thinks fit.

10. BOARD MEETINGS

10.1. Convening Board meetings

The Chairman or any three (3) Directors may at any time, and a Secretary must on request from the Chairman or any three (3) Directors, convene a Board meeting.

10.2. Notice of Board meeting

The convenor or convenors of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director; and
- (b) may give that notice orally (including by telephone) or in writing,

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

10.3. Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairman of the meeting is located.

Note: Section 248D permits directors meetings to be called and held using any technology consented to by all directors, and the consent may be a standing one.

10.4. Chairing Board meetings

- (a) The Holding Company may by notice in writing to the Company appoint one of the Directors to chair meetings of the Board and decide the period for which that Director holds that office.
- (b) If the Holding Company does not appoint one of the Directors to chair meetings of the Board, the Board may elect a Director to chair their meetings and decide the period for which that Director holds office.
- (c) If there is no chairman of Directors or the chairman is not present at the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

10.5. Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is three (3) Directors and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

10.6. Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The chairman of a Board meeting shall have a second or casting vote.

10.7. Procedural rules

The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides.

10.8. Written resolution

If not less than two-thirds of the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document, notice of which has previously been given to all the Directors, containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

10.9. Additional provisions concerning written resolutions

For the purpose of rule 10.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

10.10. Valid proceedings

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

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

11. MEETINGS OF MEMBERS**11.1. Calling meetings of members**

A meeting of members:

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

11.2. Notice of meeting

Subject to rules 11.3 and 11.6, at least 21 days' written notice of a meeting of members must be given individually to each member entitled to vote at the meeting. Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

11.3. Short notice

Subject to section 249H(4):

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

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

Note: Section 249H(4) relates to a meeting at which a resolution will be moved to remove an auditor under Section 329.

11.4. Postponement or cancellation

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

11.5. Fresh notice

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

11.6. Notice to joint holders of shares

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

11.7. Technology

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

11.8. Accidental omission

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

12. PROCEEDINGS AT MEETINGS OF MEMBERS**12.1. Member present at meeting**

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

12.2. Quorum

Subject to section 249B, the quorum for a meeting of members is:

- (a) where the Company has only one Member, that Member, or
- (b) where the Company has more than one Member, two (2) Members.

Each individual present may only be counted once toward a quorum. If a member has appointed more than one proxy or representative only one of them may be counted toward a quorum.

Note: Section 249B authorises a Company that has only one (1) member to pass a resolution by the member recording it and signing the record.

12.3. Quorum not present

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

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:

- (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
- (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

12.4. Chairing meetings of members

If the Holding Company or the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. If:

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

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

12.5. Adjournment

Subject to rule 11.5, the chairman of a meeting of members at which a quorum is present:

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

adjourn it to another time and place.

12.6. Business at adjourned meetings

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

13. PROXIES, ATTORNEYS AND REPRESENTATIVES

13.1. Appointment of proxies

A member may appoint not more than two proxies in accordance with section 249X to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company that

complies with section 250A(1) or in any other form and mode that is, and is signed or otherwise authenticated by the member in a manner, satisfactory to the Board. If a member appoints two proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of those votes.

13.2. Member's attorney

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

13.3. Deposit of proxy appointment forms and powers of attorney

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

13.4. Corporate representatives

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

13.5. Appointment for particular meeting, standing appointment and revocation

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

13.6. Suspension of proxy or attorney's powers if member present

A proxy or attorney has no power to act for a member at a meeting at which the member is present:

- (a) in the case of an individual, in person; or

- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a member at a meeting at which the member is present by attorney.

13.7. Priority of conflicting appointments of attorney or representative

If more than one attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 13.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

13.8. More than two current proxy appointments

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than two proxies of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

13.9. Continuing authority

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up;
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party; or
- (d) transfers the share to which the appointment relates,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

14. ENTITLEMENT TO VOTE

14.1. Number of votes

Subject to section 250A(4), rules 13, 14.2 and 14.3 and the terms on which shares are issued:

- (a) on a show of hands:
 - (i) if a member has appointed two proxies, neither of those proxies may vote;
 - (ii) a member who is present and entitled to vote and is also a proxy, attorney or representative of another member has one vote; and
 - (iii) subject to paragraphs (a)(i) and (a)(ii), every individual present who is a member, or a proxy, attorney or representative of a member, entitled to vote has one vote; and
- (b) on a poll, a member has one vote for every share held.

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

14.2. Votes of joint holders

If there are joint holders of a share, any one of them may vote at a meeting of members, in person or by proxy, attorney or representative, as if that holder were the sole owner of the share. If more than one of the joint holders of a share (including, for the purposes of this rule, joint legal personal representatives of a dead member) are present at a meeting of members, in person or by proxy, attorney or representative, and tender a vote in respect of the share, the Company may only count the vote cast by, or on behalf of, the most senior joint holder who tenders a vote. For this purpose, seniority depends on the order in which the names of the joint holders are listed in the Register.

14.3. Voting restrictions

If:

- (a) the Act requires that some members do not vote on or in favour of a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and

- (b) the notice of the meeting at which the resolution is proposed states that fact,

those members have no right to vote on or in favour of that resolution and the Company must not count any votes purported to be cast by those members. If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), on a show of hands the vote is invalid and the Company must not count it and on a poll rule 15.3(c) applies.

14.4. Decision on right to vote

A Voting Member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

15. HOW VOTING IS CARRIED OUT

15.1. Method of voting

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 15.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is final.

15.2. Demand for a poll

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

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

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

15.3. When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 15.3(c), in the manner that the chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 15.3(c), in the manner that the chairman of the meeting directs;
- (c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

16. RESOLUTIONS WITHOUT MEETINGS

16.1. Written resolutions

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

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

16.2. Signature of resolutions

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

17. SECRETARY

17.1. Appointment of Secretary

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

17.2. Terms and conditions of office

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

17.3. Cessation of Secretary's appointment

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

- (a) is not permitted by the Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 17.4.

17.4. Removal from office

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

18. MINUTES**18.1. Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 6);
- (d) resolutions passed by members without a meeting;
- (e) resolutions passed by Directors, without a meeting; and

- (f) disclosures and notices of Directors' interests,
to be kept in accordance with sections 191, 192 and 251A.

18.2. Minutes as evidence

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

18.3. Inspection of minute books

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members and for resolutions of members passed without meetings in accordance with section 251B.

19. COMPANY SEALS

19.1. Common seal

The Board:

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

19.2. Use of seals

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

19.3. Fixing seals to documents

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

- (a) by two Directors or one Director and one Secretary; or
- (b) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

20. FINANCIAL REPORTS AND AUDIT

20.1. Company to keep financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director to inspect those records at all reasonable times.

20.2. Financial reporting

If required by Part 2M.3, the Board must cause the Company to prepare a financial report and a directors' report that comply with that Part and must report to members in accordance with section 314 no later than the deadline set by section 315.

20.3. Inspection of Records

The Holding Company may inspect the financial records and other documents of the Company at any time.

20.4. Audit

Unless section 301(2) applies, the Board must cause the Company's financial report (if any) for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any) are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

20.5. Inspection of financial records and books

Subject to rule 18.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by a resolution of members.

21. SHARES

21.1. Issue at discretion of Board

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

21.2. Preference and redeemable preference shares

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

22. CERTIFICATES

22.1. Issue of share certificate

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

22.2. Multiple certificates and joint holders

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

22.3. Lost and worn out certificates

If a certificate:

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

issue a new certificate in its place.

23. REGISTER

23.1. Joint holders

If the Register names two or more joint holders of a share, the Company must treat the person named first in the Register in respect of that share as the sole owner of it for all purposes (including the giving of notice) except in relation to:

- (a) delivery of certificates (to which rule 22.2 applies);
- (b) the right to vote (to which rule 14.2 applies);
- (c) the power to give directions as to payment of, or a receipt for, dividends (to which rules 24.8 and 24.9 apply); and
- (d) transfer.

23.2. Nominee holders

A registered holder of shares who holds them as trustee for, or otherwise on behalf of or on account of, a body corporate, must give the Company written notice of that fact in accordance with section 1072E(11).

23.3. Non-beneficial holders

Subject to sections 169(5A) and 1072E, unless otherwise ordered by a court of competent jurisdiction or required by statute, the Company:

- (a) may treat the registered holder of any share as the absolute owner of it; and
- (b) need not recognise any equitable or other claim to or interest in a share by any person except a registered holder.

24. DIVIDENDS

24.1. Accumulation of reserves

Before paying any dividend to members, the Board may:

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

24.2. Dividends must be paid out of profits

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

24.3. Payment of dividends

Subject to the Act, rules 24.2, 24.4 and 24.10, and the terms of issue of shares, the Board may resolve to pay any dividend it thinks appropriate and fix the time for payment.

24.4. Amount of dividend

Subject to the terms of issue of shares, the Company may pay a dividend on 1 class of shares to the exclusion of another class. Subject to rule 24.5, each share of a class on which the Board resolves to pay a dividend carries the right to participate in the dividend in the same proportion that the amount for the time being paid on the share bears to the total issue price of the share.

24.5. Prepayments and payments during dividend period

For the purposes of rule 24.4:

- (a) unless the Board has agreed otherwise under rule 27.5(b), an amount paid in advance of calls is not taken into account as part of the amount for the time being paid on a share; and
- (b) if an amount was paid on a share during the period to which a dividend relates, the Board may resolve that only the proportion of that amount which is the same as the proportion which the period from the date of payment to the end of the period to which the dividend relates bears to the total period to which the dividend relates counts as part of the amount for the time being paid on the share.

24.6. Dividends in kind

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

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

24.7. Payment of dividend by way of securities in another corporation

Where the Company satisfies a dividend by way of distribution of specific assets, being shares or other securities in another corporation, each member is taken to have agreed to become a member of that corporation and to have agreed to be bound by the constitution of that corporation. Each member also appoints each Director and each Secretary their agent and attorney to:

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

24.8. Method of payment

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

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

24.9. Joint holders' receipt

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

24.10. Retention of dividends by Company

The Company may retain the dividend payable on a share:

- (a) of which a person seeks to be registered as the holder under rule 26.2 or 26.3, until that person is registered as the holder of that share or transfers it; or
- (b) on which the Company has a lien, to satisfy the liabilities in respect of which the lien exists.

24.11. No interest on dividends

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

25. TRANSFER OF SHARES

25.1. Instrument of transfer

Subject to rule 25.2, a member may transfer a share by a document the form of which is permitted by law and which is signed by or on behalf of both the transferor and the transferee. The Company must not register a transfer that does not comply with this rule.

25.2. Delivery of transfer and certificate

A document of transfer must be:

- (a) delivered to the registered office of the Company or the address of the Register last notified to members by the Company;
- (b) accompanied by the certificate for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction; and
- (c) marked with payment of any stamp duty payable.

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

25.3. Refusal to register transfer

The Board, without giving any reason, may refuse to register a transfer of shares and, subject to section 259C, must not register a transfer to a subsidiary of the Company. If the Board refuses to register a transfer, the Company must give the transferee notice of the refusal within 2 months after the date on which the transfer was delivered to it.

25.4. Transferor remains holder until transfer registered

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

25.5. Powers of attorney

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

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

26. TRANSMISSION OF SHARES**26.1. Death of joint holder**

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

26.2. Death of single holder

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

- (a) subject to rules 25.3 and 26.4 the Company must register the personal representative as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from the representative requiring it to do so; and
- (b) whether or not registered as the holder of the shares, the personal representative:
- (c) may, subject to rule 25, transfer the shares to another person; and
- (d) has the same rights as the deceased member.

26.3. Transmission of shares on insolvency or mental incapacity

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

- (a) subject to rules 25.3 and 26.4 the Company must register that person as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from that person requiring it to do so; and
- (b) whether or not registered as the holder of the shares, that person:
 - (i) may, subject to rule 25, transfer the shares to another person; and
 - (ii) has the same rights as the insolvent or incapable member.

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

26.4. Refusal to register holder

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

27. SHARE CAPITAL

27.1. Capitalisation of profits

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

27.2. Adjustment of capitalised amounts

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

- (a) fix the value of specific assets;
- (b) issue fractional certificates;

- (c) make cash payments to members on the basis of the value fixed or on the basis that fractional entitlements are disregarded so as to adjust the rights of members between themselves; and
- (d) vest cash or specific assets in trustees.

27.3. Conversion of shares

Subject to Part 2H.1 and rules 21.2 and 27.7, the Company may convert:

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

27.4. Reduction of capital

The Company may reduce its share capital:

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

27.5. Payments in kind

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

- (a) fix the value of any assets distributed;
- (b) make cash payments to members on the basis of the value fixed so as to adjust the rights of members between themselves; and
- (c) vest an asset in trustees.

27.6. Payment in kind by way of securities in another corporation

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

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

27.7. Variation of rights

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

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

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

28. WINDING UP**28.1. Entitlement of members**

Subject to the terms of issue of shares and this rule 27.7, the surplus assets of the Company remaining after payment of its debts are divisible among the members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

28.2. Distribution of assets generally

If the Company is wound up, the liquidator may, with the sanction of a special resolution:

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

28.3. No distribution of liabilities

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

28.4. Distribution not in accordance with legal rights

If the liquidator decides on a division or vesting of assets of the Company under rule 28.2 which is not in accordance with the legal rights of the contributories, any contributory who would be prejudiced by it has a right to dissent and ancillary rights as if that decision were a special resolution passed under section 507.

29. NOTICES**29.1. Notices by Company**

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

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

- (iv) sent by electronic message to the electronic address (if any) nominated by that person.

29.2. Overseas members

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

29.3. When notice is given

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

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 5 pm (local time in the place of receipt) on a business day — on that day; or
 - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day — on the next business day; and
- (b) if it is sent by mail:
 - (i) within Australia — 1 business day after posting; or
 - (ii) to a place outside Australia — 3 business days after posting.

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

29.4. Business days

For the purposes of rule 29.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

29.5. Notice to joint holders

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

29.6. Counting days

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

30. UNCLAIMED MONEY

The Company must deal with unclaimed dividends and distributions in accordance with the law relating to unclaimed money in the Company's jurisdiction of registration.