

# Constitution

CPA Australia Advice Pty Ltd ACN ..... (“**Company**”)

A proprietary company limited by shares

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# Constitution

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# Constitution

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## 1 Interpretation

### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under article 8.9.

**Committee** means a committee of Directors constituted under article 7.7.

**Company** means CPA Australia Advice Pty Ltd ACN, as that name may be changed from time to time.

**Constitution** means this constitution and a reference to an article is a reference to an article of this constitution.

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

**Director** means a person holding office as a director of the Company and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Holding Company** means CPA Australia Ltd ACN 008 392 452, as that name may be changed from time to time.

**Member** means a person entered in the Register as a holder of shares in the capital of the Company.

**Register** means the register of Members of the Company under the Corporations Act and, if appropriate, includes a branch register.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Secretary** means a person appointed under article 9.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

### 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Constitution:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include all other genders;
- (c) a reference to a document includes any variation or replacement of it;

- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (g) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (h) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacement of any of them;
- (i) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (j) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (k) a reference to “**writing**” or “**written**” includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (l) a chairman appointed under this Constitution may be referred to as a chairperson, chairwoman or as chair, as appropriate;
- (m) a reference to a person being “**present**” at a meeting includes participating using technology approved by the Directors in accordance with this Constitution; and
- (n) where a document (including a record of resolution, notice or consent) is required to be “**signed**”, the requirement may be satisfied in relation to an electronic communication of the document in any manner:
  - (i) permitted by relevant law relating to electronic transmissions (including electronic signature); or
  - (ii) approved by the Directors (which could include authentication by providing an allocated code or specified personal information).

### 1.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
- (b) “section” means a section of the Corporations Act.

### 1.4 Replaceable rules not to apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

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## 2 Objects of the Company

The primary object of the Company is to:

- (a) hold an Australian financial services licence (“**AFSL**”) and/or an Australian credit licence (“**ACL**”); and
- (b) appoint as its authorised representatives members of the Holding Company for the purpose of providing financial services and credit services to those members’ clients.

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## 3 Share capital and variation of rights

### 3.1 Directors to issue shares

The issue of shares in the Company is under the control of the Directors who may:

- (a) issue and cancel shares in the Company;
- (b) grant options over unissued shares in the Company; and
- (c) settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Corporations Act and any special rights conferred on the holders of any shares or class of shares.

### 3.2 Preference shares

The Company may not issue preference shares (including redeemable preference shares) and issued shares may not be converted into preference shares unless the rights attached to the preference shares have been approved by special resolution.

### 3.3 Conversion of preference shares

Subject to compliance with the Corporations Act and other applicable laws, the conversion of any preference share issued in compliance with article 3.2 will not constitute a cancellation, redemption or termination of the preference share or the issue, allotment or creation of new shares, but will have the effect of varying the status of, and the rights attaching to, the preference share so that it becomes an ordinary share.

### 3.4 Variation of class rights

Subject to this Constitution and the terms on which any shares in the Company are issued, the rights attaching to shares in a class of shares may only be varied or cancelled by a special resolution of the Company and:

- (a) by a special resolution passed at a meeting of Members entitled to vote and holding shares in that class; or
- (b) with the written consent of holders entitled to vote in respect of at least 75% of the issued shares of that class.

### **3.5 Class meetings**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (a) a quorum is constituted by at least two persons who, between them, hold or represent one-third of the issued shares of the class (unless only one person holds all of the shares of the class, in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

### **3.6 Redemption in accordance with terms of issue of shares**

The terms of article 3.4 do not apply and consent is not required for a redemption of any shares or variation of rights attaching to any shares in compliance with the terms of issue of those shares.

### **3.7 No variation**

The rights attaching to shares in a class of shares will not be taken to be varied by:

- (a) the issue of further shares of that class;
- (b) the issue of any shares of any other class; or
- (c) the conversion of shares or other securities to new shares or securities,

which rank equally with, or in priority to, the shares in the relevant class of shares, unless expressly provided by their respective terms of issue or the Corporations Act.

### **3.8 Non-recognition of interests**

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

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## **4 Transfer of shares**

### **4.1 Forms of instrument of transfer**

Subject to this Constitution, a share in the Company is transferable by any method of transfer required or permitted by the Corporations Act.

### **4.2 Execution and delivery of transfer**

If a duly completed instrument of transfer:

- (a) is used to transfer a share in accordance with article 4.1; and



- (b) is left for registration at the share registry of the Company, accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in, and the restrictions on, the Directors by this Constitution, register the transferee as the holder of the share.

#### **4.3 Effect of registration**

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

#### **4.4 Directors to register**

The Directors may not register a transfer of shares without the consent of the Holding Company and must register a transfer of shares approved by the Holding Company.

#### **4.5 Transfer to or by a Secured Party**

The Directors may not refuse to register a transfer of shares under article 4.4 if the transfer is either to a person holding a mortgage, charge, pledge or other security interest (or to a person acting as agent, trustee or nominee for such a person) (“**Secured Party**”) which is given by a Member over their shares in the Company (“**Share Security**”), or is pursuant to the exercise by a Secured Party of rights in relation to a Share Security.

In any such case, the Directors must register the transferee as a Member. The Directors may request and rely on a written statement of the Secured Party certifying that the transfer is pursuant to an exercise of rights under a Share Security.

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## **5 General meetings**

### **5.1 Convening a general meeting**

The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

### **5.2 Use of technology at general meetings**

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.

### **5.3 Notice of general meeting**

Notice of a general meeting must be given in accordance with article 14 and the Corporations Act.

### **5.4 Calculation of period of notice**

In computing the period of notice under article 5.3, both the day on which the last notice to Members is given or taken to be given and the day of the meeting convened by it are to be disregarded.

## **5.5 Cancellation or postponement of a meeting**

Where a general meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This article 5.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a court.

## **5.6 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member; and
- (b) to each other person entitled to be given notice of a general meeting.

## **5.7 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

## **5.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

## **5.9 Business at postponed meeting**

The only business that may be transacted at a postponed general meeting is the business specified in the original notice convening the meeting.

## **5.10 Proxy, attorney or Representative at postponed meeting**

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or

Representative gives to the Company at its registered office written notice to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

#### **5.11 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

#### **5.12 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

#### **5.13 Appointment of proxy, Representative or attorney**

Subject to the Corporations Act, a Member who is entitled to participate in and vote at a meeting of the Company may appoint a person as the Member's proxy, or may appoint a Representative or an attorney to participate in and vote at the meeting for the Member.

If a Member is entitled to cast two or more votes at the meeting, the Member may appoint two proxies who may each exercise half of the Member's votes at the meeting, unless the instrument appointing the proxies specifies the proportion or number of the Member's votes that each proxy may exercise.

#### **5.14 Number for a quorum**

The quorum for a general meeting is, where the Company has only one Member, that Member and otherwise, two Members, present in person or by proxy, attorney or Representative. If an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted once for that Member and once for each Member for whom that individual is attending as proxy, attorney or representative.

#### **5.15 If quorum not present**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened in accordance with the Corporations Act by a single Director, by Members or by the Directors at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

#### **5.16 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

### **5.17 No casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the general meeting is not entitled to a casting vote.

### **5.18 Voting on show of hands**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

### **5.19 Entitlement to vote**

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

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each share held by the Member and each person present as proxy, attorney or Representative of a Member has one vote for each share held by the Member that the person represents.

### **5.20 Record of resolution**

If the Company has only one member, it may pass a resolution by the member recording it and signing the record (including electronically).

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## **6 The Directors**

### **6.1 Number of Directors**

The Company must have at least two Directors.

### **6.2 Appointment of Director**

The Holding Company may by notice in writing to the Company appoint a person to be a Director (including a managing or executive director).

### **6.3 Term**

Each Director must retire on 30 September of the third calendar year following the calendar year during which the Director is appointed. On the retirement of a Director, the retiring Director shall be eligible for reappointment for up to two subsequent reappointments. The Director shall be ineligible for any subsequent reappointment.

### **6.4 Removal of Director.**

The Holding Company may by notice in writing to the Company remove a Director (including a managing or executive director) from office as a Director.

Whether or not the appointment of a managing or executive director was expressed to be for a specified term, the appointment of a managing or executive director terminates if the managing or executive director ceases to be employed by the Company or a related body corporate.

## **6.5 Remuneration and expenses of Directors**

The Directors may be remunerated by the Company for their services as Directors as determined by the Holding Company. The remuneration is taken to accrue from day to day.

The Directors may be reimbursed out of the funds of the Company for reasonable travelling, accommodation and other expenses incurred when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company as determined by the Holding Company.

## **6.6 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company;
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement; and
- (i) exercise the voting power conferred by securities in any entity held by the Company, as they determine including in circumstances where a Director may be interested in the exercise, such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity.

A reference to the Company in this article 6.6 is also a reference to each related body corporate of the Company.

## **6.7 Vacation of office of Director**

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

- (a) is a managing or executive director and ceases to be employed by the Company or a related body corporate;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (c) resigns from the office by notice in writing to the Company.

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## **7 Powers and duties of Directors**

### **7.1 Directors to manage Company**

1. The Directors are responsible for overseeing the proper management of the business of the Company and may approve Board Charters from time to time that set out the main functions and responsibilities of the Board and the governance of the Company. The Directors may exercise all the powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **7.2 Specific powers of Directors**

Without limiting the generality of article 7.1, the Directors may exercise all the powers of the Company to borrow or raise 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.

### **7.3 Interests of holding company**

The Directors are authorised to act in the best interests of any company of which the Company is a wholly-owned subsidiary in the circumstances contemplated by section 187 of the Corporations Act.

### **7.4 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **7.5 Provisions in power of attorney**

A power of attorney granted under article 7.4 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **7.6 Signing of cheques**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

## **7.7 Committees**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

## **7.8 Delegation of Directors' powers**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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# **8 Proceedings of Directors**

## **8.1 Directors' meetings**

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

## **8.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

## **8.3 Use of technology for Directors' meetings**

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

## **8.4 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

## **8.5 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

## **8.6 Chairman of Directors**

The Directors may appoint the chairman of each Directors' meeting from amongst the Directors as approved by the Holding Company.

## **8.7 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been appointed under article 8.6; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

#### **8.8 Chairman's casting vote at Directors' meeting**

The chairman of the Directors' meeting has a casting vote, unless only two Directors are present and entitled to vote on the question.

#### **8.9 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person approved by the Holding Company to be an Alternate Director in the Director's place during any period as the Director thinks fit.

#### **8.10 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

#### **8.11 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

#### **8.12 Alternate Director responsible for own acts and defaults**

While acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

#### **8.13 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 6.5.

#### **8.14 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by notice to the Company by the appointor or by the Holding Company even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director for any reason.

#### **8.15 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.



### **8.16 Director attending and voting by proxy**

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) the appointment is signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director, who would be entitled to vote if present at the meeting, has one vote for the appointor and one vote in his or her own capacity as Director.

### **8.17 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is two Directors.

### **8.18 Continuing Directors may act**

The continuing Directors may act despite a vacancy in their number.

### **8.19 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

### **8.20 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

### **8.21 Determination of questions of Committee**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting. The Chairman of the meeting has a casting vote unless only two members of the Committee are present and entitled to vote on the question.

### **8.22 Circulating resolutions**

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last participating Director signs. The resolution is not invalidated if it is consented to by a Director who is not entitled to vote.

### **8.23 Record of Director's resolution or declaration**

If the Company has only one Director and is a proprietary company, the Director may pass a resolution or make a declaration by recording it and signing the Record (including electronically).

### **8.24 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

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## **9 Secretary**

### **9.1 Appointment of Secretary**

The Company may, but need not, have one or more Secretaries who are to be appointed and may be suspended or removed by the Directors.

### **9.2 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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## **10 Seals**

### **10.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **10.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **11 Inspection of records**

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

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## **12 Dividends and reserves**

### **12.1 Payment of dividend**

Subject to the Corporations Act, this Constitution and the terms of issue or rights of any shares with special rights to dividends, and with the consent of the Holding Company, the Directors may declare or determine that a dividend is payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend. The Directors may rescind or alter any such determination before payment is made.

### **12.2 No interest on dividends**

Interest is not payable by the Company on a dividend.

### **12.3 Calculation and apportionment of dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of issue of any shares to the contrary, all sums that the Company determines are to be distributed among the Members as dividends are divisible among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each share on which all amounts payable have been paid; and
- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in paragraph (a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and
- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

All dividends are to be apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period for which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

### **12.4 Deductions from dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Member any sums presently payable by the Member to the Company on account of calls or otherwise in relation to shares in the Company.

### **12.5 Distribution of specific assets**

When resolving to pay a dividend or to return capital by a reduction of capital, a buy-back or otherwise, the Directors may with the consent of the Holding Company:

- (a) resolve that the dividend or return of capital be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend or return of capital including fully paid shares in or

debentures or other securities of the Company or fully paid shares in or debentures of any other body corporate or trust; and

- (b) direct that the dividend or return of capital payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend or return of capital payable in respect of other shares be paid in cash.

## 12.6 Ancillary powers regarding distributions

- (a) In relation to any decision to pay a dividend or to return capital by a reduction of capital, a buy-back or otherwise, the Directors may:
  - (i) settle any difficulty that arises in making the distribution as they think expedient and in particular:
    - (A) make cash payments in cases where Members are entitled to fractions of shares, debentures or other securities;
    - (B) decide that amounts or fractions of less than a particular value decided by the Directors may be disregarded in order to adjust the rights of all parties by withholding assets, cash, shares, debentures or other securities where the Company is required to make a payment in respect of the Member to a government or taxing authority in relation to the distribution or issue; and
    - (C) decide to make distributions by disregarding transfers of shares or aggregating parcels of shares where they form the opinion that shareholdings have been split or aggregated to obtain the benefit of rounding on fractions of shares;
  - (ii) fix the value for distribution of any specific assets;
  - (iii) pay cash or issue shares, debentures or other securities to any Member in order to adjust the rights of all parties;
  - (iv) vest any of those specific assets, cash, shares, debentures or other securities in a trustee or nominee on trust for the persons entitled to the distribution or capitalised amount, on such terms that seem expedient to the Directors; and
  - (v) authorise any person to make, on behalf of the Members, or a particular Member, entitled to any specific assets, cash, shares, debentures or other securities as a result of the decision, an agreement (including in writing) with the Company or another person which provides as appropriate, for the distribution or issue to them of the assets, cash, shares, debentures or other securities and by supplying to them their respective proportions of the amount resolved to be distributed.
- (b) Any agreement made under an authority referred to in article 12.6(a)(v) is effective and binds all Members concerned.
- (c) Instead of making a distribution or issue of specific assets, shares, debentures or other securities to a particular Member, the Directors may make a cash payment to that Member or allocate some or all of the assets, shares, debentures or other securities to a trustee to be sold on behalf of, and for the benefit of, or in respect of, that Member, if:

- (i) the distribution or issue would otherwise be illegal or unlawful;
  - (ii) in the Directors' discretion, the distribution or issue would, for any reason, be impracticable; or
  - (iii) the Member so agrees.
- (d) If the Company distributes to Members (either generally or to specific Members) shares, debentures or securities of the Company or another body corporate or trust (whether as a dividend or return of capital or otherwise and whether or not for value), each of those Members appoints the Company and any officer of the Company nominated on their behalf by the Directors, as his or her agent or attorney to do anything needed or desirable to give effect, or assist in giving effect, to that distribution, including agreeing to become a member, holder of shares, holder of debentures or holder of securities of the Company or that other body corporate or trust.

### **12.7 Payments in respect of shares**

A dividend, interest or other money payable in cash in respect of shares may be paid using any payment method chosen by the Company, including:

- (a) by cheque sent through the post directed to the address in the Register of the holder or, in the case of joint holders, to the address of the joint holder first named in the Register;
- (b) by cheque sent through the post directed to such other address as the holder or joint holder directs in writing; or
- (c) by some other method of direct credit determined by the Directors to the holder or holders shown on the Register or to such person or place directed by them.

### **12.8 Election to reinvest dividend**

The Directors may grant to Members or any class of Members the right to elect to reinvest cash dividends paid by the Company by subscribing for shares in the Company on such terms and conditions as the Directors think fit.

### **12.9 Election to accept shares instead of dividends**

The Directors may determine for any dividend which it is proposed to pay on any shares of the Company that holders of the shares may elect:

- (a) to forego the right to share in the proposed dividend or part of such proposed dividend; and
- (b) to receive instead an issue of shares credited as fully paid on such terms as the Directors think fit.

### **12.10 Unclaimed dividends**

Unclaimed dividends may be invested by the Directors as they think fit for the benefit of the Company until claimed or until required to be dealt with in accordance with any law relating to unclaimed moneys.

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## **13 Capitalisation of profits**

### **13.1 Capitalisation of reserves and profits**

With the consent of the Holding Company, the Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 13.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

### **13.2 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under article 13.1 are:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

### **13.3 Implementing the resolution**

The Directors may do all things necessary to give effect to a resolution under article 13.1 and in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions;
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or
  - (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement so made is effective and binding on all the Members concerned;

- (c) fix the value of specified assets; or
- (d) vest property in trustees.

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## **14 Service of documents**

### **14.1 Document includes notice**

In this article 14, a reference to a document includes a notice and a notification by electronic means.

### **14.2 Form of document**

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

### **14.3 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by notifying the Member by an electronic means nominated by the Member that:
  - (i) the document is available; and
  - (ii) how the Member may use the nominated access means to access the document.

### **14.4 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and, in either case, is taken to have been given and received on the day after the day of its posting.

### **14.5 Fax or other electronic address**

A document sent or given by fax or to an electronic address:

- (a) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
- (b) is taken to have been given and received on the day after the day of its transmission.

### **14.6 Electronic means**

A document made available by electronic means is taken to have been given and received on the day after the date of transmission of the notification specifying that the document is available and how it can be accessed.

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## **15 Indemnity and insurance**

### **15.1 Indemnity**

The Company will indemnify any current or former Director or Secretary of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

### **15.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

### **15.3 Contract**

The Company may enter into an agreement with a person referred to in articles 15.1 and 15.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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## **16 Consent of Holding Company**

### **16.1 Restrictions on power of Directors**

The Directors may not without the consent of the Holding Company:

- (a) exercise their power under article 3.1 to issue and cancel shares and grant options over unissued shares in the Company;
- (b) sell or dispose of the Company's main undertaking;



- (c) borrow moneys from a person other than the Holding Company;
- (d) lend moneys or extend credit to any person other than the Holding Company; or
- (e) give a financial benefit to a related party.

## **16.2 Consent and notice from Holding Company**

The Holding Company may exercise a power or discretion or give its consent under this Constitution by notice in writing:

- (a) executed by the Holding Company; or
- (b) signed or sent electronically on behalf of the Holding Company by a director, secretary or executive officer of the Holding Company,

and delivered to or sent by fax or other electronic means to the Company.