

**DIRECTORS' CIRCULATING RESOLUTION**

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Directors' Circulating Resolution

** Guidance note warning**

Guidance notes to help you select relevant options are in blue shaded text. Yellow highlighted text shows where you need to include information or select which text option applies. Please delete all guidance notes and highlighted text before you publish, and double-check you have included all relevant information.

** Guidance note**

**Purpose of document**

This is a template directors' circulating resolution. It is a document used by the board of directors of a Company to pass resolutions without holding a meeting. Circulating resolutions are typically used when dealing with non-contentious matters or matters that will not require much discussion among the Board. This document provides a few examples of resolutions the directors may wish to pass via circulating resolution.

The Company's constitution will generally give the board of directors the power to pass resolutions in this way. The Constitution should also specify the process the directors must follow when using a circulating resolution. Generally, the document must be circulated to all directors and signed by a certain percentage of directors (such us all directors, or a majority of directors) to be valid.

The A-Suite Constitution allows the board to pass resolutions by way of circulating resolution so long as (i) all directors receive a copy of the document (ii) the number of directors required to pass the relevant resolution at a board meeting (per the terms of the Constitution and Shareholders' Agreement) sign the document.

Circulating resolutions of directors of the Company under rule [\*] of the Constitution of the Company

**Background**

** Guidance note**

In this section you should insert the details of the event giving rise to the resolution so that the directors have sufficient information to inform their decision. If you are using the circulating resolution to pass multiple resolutions, you should separate out each subject under appropriate headings.

1. [Example 1] Adoption of Constitution

[***insert details of event giving rise to resolution***]

1. [Example 2] Issue of Shares

[***insert details of event giving rise to resolution***]

**Directors' Declaration of Interests**

** Guidance note**

If a Director is a director of another company, or has any other interest in any of the matters covered by this resolution, they must declare this interest before the resolutions are passed and this document signed by the directors. A director should declare such interests in writing to the other directors, and a record should be kept with the board materials. A director will not be required to declare his or her interest if the director has already given a standing notice of the nature and extent of the interest under section 192 of the Corporations Act and the notice is still effective in relation to the interest.

You should ensure that you review the Company's constitution to determine what rules apply to personal interests of Directors, however it is common for a public company Constitution to allow a director who has disclosed an interest to vote on the matter that relates to that interest. This is the position taken in the A-Suite Constitution (see rule 62).

Each director disclosed their interest in the subject matter of the proposed resolutions, including their directorship, if any, in every other company concerned in or by the subject matter of the proposed resolutions as required by section 191(1) of the *Corporations Act 2001* (Cth) (***Corporations Act***).

**Resolutions**

** Guidance note**

In this section you should set out each relevant resolution as a statement of approval ie, "It is resolved that [\*] is approved in accordance with [\*]." The following are examples only and may not be suitable for your Company. You should ensure that you review your Company's constitution and shareholders agreement (as applicable) to confirm the required approvals and prepare the following resolutions accordingly.

In accordance with rule [\*] of the Constitution of the Company, we, the undersigned, being all the directors of the Company entitled to vote on the resolutions, state that we are in favour of the following resolutions.

1. [Example 1] Adoption of Constitution
   1. Constitution
      1. **It is noted** that the directors have received a copy of a draft of the Constitution of the Company.
      2. **It is resolved** that the proposed form of the amended Constitution be approved for distribution to the shareholders for approval in accordance with section 136(2) of the Corporations Act.
   2. Circulating Resolutions of Members
      1. **It is noted** that the directors have received draft minutes of circulating resolutions of members (***Circulating Resolutions***) prepared in accordance with section 249A of the Corporations Act and rule [\*] of the Constitution of the Company for the purposes of the shareholders approving the abovementioned matter.
      2. **It is resolved** that the form of the Circulating Resolutions be approved for distribution to the shareholders (together with the relevant attachments) for approval and execution by the shareholders of the Company.
2. [Example 2] Issue of Shares
   * 1. **It is noted** that the Company proposes to issue [\*] fully-paid [ordinary shares] in the capital of the Company (***Subscription Shares***) at an issue price of $[\*] (***Subscription Price***) to [insert name of investor] (***Investor***) on the terms set out in [the subscription agreement to be entered into by the Company and the Investor (***Subscription Agreement***)] (the ***Share Issue***).
     2. **It is noted** that the Share Issue is in the best interests of the Company and for its commercial benefit.
     3. **[It is noted** that clause [\*] of the Company's shareholders agreement contains pre-emptive rights of existing shareholders on the issue of any securities in the capital of the Company. The Company has requested that the shareholders waive such pre-emptive rights in connection with the Share Issue by way of circulating resolution of the members prepared in accordance with section 249A of the Corporations Act and rule [\*] of the Constitution of the Company (***Shareholder Waiver***).]
     4. [**It is resolved** that the Company enter into the Subscription Agreement and any two directors or any director and company secretary be authorised to execute the Subscription Agreement on behalf of the Company].
     5. [**It is resolved** that the form of the Shareholder Waiver be approved for distribution to the shareholders (together with the relevant attachments) for approval and execution by the shareholders of the Company.]
     6. **It is resolved** that subject to receipt by the Company of:
        1. [an executed counterpart of the Subscription Agreement from the Investor; [and]]
        2. [an executed share application form from the Investor; [and]]
        3. [an executed Shareholder Waiver from all shareholders of the Company; [and]]
        4. the subscription moneys payable by the Investor in respect of the Subscription Shares,

the Company:

* + - 1. issue the Subscription Shares to the Investor by entering the Investor in the Company's register of members as the holder of the Subscription Shares; and
      2. issue a new share certificate to the Investor in respect of the Subscription Shares.
    1. **It is resolved** that the Directors be empowered and authorised to undertake all related matters on behalf of the Company which the Director deems necessary or desirable to give effect to the Share Issue, including recording the new shareholdings on the register of members of the Company, issuing new share certificates and notifying the Australian Securities and Investment Commission of the change in shareholding.

1. Further Assurance

** Guidance note**

Ensure that you include this section at the end of your resolutions. It confirms the directors' authority to implement the resolutions.

**It is resolved** that each director of the Company be severally authorised to do any act, matter or thing and to execute and deliver any document as he or she may deem necessary, advisable or incidental in connection with the preceding resolutions.

**Signed by the directors:**

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| --- |
|  |
| **[Director name]** |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |
| **[Director name]** |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |
| **[Director name]** |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |