

## COMPANY CONSTITUTION

## Constitution of

Prepared by:

Executive Legal Pty Ltd

The St James Trust Building  
Suite 204/185 Elizabeth Street  
Sydney NSW 2000

### **Please Note that this Document does not constitute advice**

A Constitution is a complex legal instrument and is binding upon the Corporation and any relevant stakeholders.

This Constitution is not designed to constitute advice nor is it specialised advice which may be relevant in all situations. The Constitution may be deficient for the needs of the Corporation, Members, or Directors. The users of this Constitution must seek independent legal and financial advice before deciding to use this Constitution.

Any deficiency in the Constitution and any liability which accrues due to such deficiency shall be the responsibility of the parties and the Corporation. The writer of the Constitution takes no responsibility for the consequences of using the Constitution.

## Contents

OVERVIEW & PRELIMINARY MATTERS .....	4
1. MANAGEMENT OF THE COMPANY .....	5
1.1 Powers of directors (s 198A) .....	5
1.2 Negotiable instruments (s198B) .....	5
1.3 Appointment of managing director (s 201J) .....	5
1.4 Powers of managing director (s 198C).....	5
1.5 Appointment of a director .....	6
1.6 Directors may appoint other directors (s 201H).....	6
1.7 Appointment of alternate directors and their powers (s201K) .....	6
1.8 Remuneration of Directors (s202A) .....	6
1.9 Resignation of a Director (s203A) .....	6
1.10 Removal of a Director (s203C) .....	6
1.11 Termination of appointment of managing director (s203F).....	7
1.12 Disclosure of an interest (s191) .....	7
2. OFFICERS AND EMPLOYEES.....	7
2.1 Directors to appoint Company Secretary (204D).....	7
2.2 Removal and resignation of auditors (s 329) .....	7
3. INSPECTION OF BOOKS (s247D).....	8
3.1 Member may inspect books.....	8
4. DIRECTORS MEETINGS (s 251A) .....	8
4.1 Minutes of meetings .....	8
4.2 Circulating resolutions (s248A & 249B) .....	8
4.3 Restrictions of resolutions by circular.....	9
4.4 Calling director's meetings (S248C) .....	9
4.5 Chairing director's meetings (s248E) .....	9
4.6 Quorum at directors' meeting (s248F AND 248B) .....	9
4.7 Passing of Directors' resolutions (s248G) .....	9
4.8 Director may vote despite interest.....	9
5. MEETINGS OF MEMBERS .....	10
5.1 Calling of meetings of members by a director.....	10
5.2 Notice of meetings of members .....	10
5.3 Notice by post or fax (s249J(4)) .....	10
5.4 Amount of notice of meetings (s 249H).....	10
5.5 Contents of notice of meetings (249L).....	10
5.6 Notice of adjourned meetings (s 249M) .....	10
5.7 Quorum (s248T & 249B) .....	11
5.8 Chairing meetings of members (248E).....	11

5.9	Adjourned meetings (249W).....	11
6.	VOTES AND PROXIES.....	11
6.1	Appointment of proxy (249X) .....	12
6.2	Rights of proxies (249Y) .....	12
6.3	Validity of proxy vote (250C) .....	12
6.4	How many votes a member has (s 250E).....	12
6.5	Jointly held shares (s 250F) .....	12
6.6	Objections to right to vote (s 250G) .....	12
6.7	How voting is carried out (250J) .....	13
6.8	Polls must be taken in certain situation (S 250k and s 250L).....	13
6.9	Polls must be taken in a certain way (s 250M) .....	13
7.	SHARES.....	13
7.1	Power to issue shares .....	13
7.2	Power to issue redeemable or non-redeemable preference shares.....	14
7.3	Issue Price .....	14
7.4	Preference shares .....	14
7.5	Redemption of redeemable preference shares.....	14
7.6	Pre-emptive rights (s 254D) .....	14
7.7	Dividend rights (s 254W).....	14
7.8	Payment of dividends .....	15
8.	TRANSFER OF SHARES.....	15
8.1	Member to offer to the company prior to selling existing shares.....	15
8.2	Transmission of shares on death (s1072A) .....	15
8.3	Transmission of shares on bankruptcy (s1072B) .....	16
8.4	Transmission of shares on mental incapacity (s1072D).....	16
8.5	Registration of transfers (s1072F).....	16
8.6	Directors' discretion to register transfers (s1072G) .....	16
9.	LOANS OF MEMBERS .....	16
10.	WINDING UP .....	17

## OVERVIEW & PRELIMINARY MATTERS

- A. The Company shall be named <NAME OF COMPANY>.
- B. The Company is a proprietary company limited by shares.
- C. Any invitation to the public to subscribe for and any offer to the public to accept subscriptions for any shares or debentures of the Company is prohibited.
- D. Any invitation to the public to deposit money with and any offer to the public to accept deposits of money with the Company for fixed periods or payable at call whether bearing or not bearing interest is prohibited.
- E. The liability of the members of <NAME OF COMPANY> is limited to any amount owing on their shares.
- F. <NAME OF COMPANY> must have at least 1 member at all times.
- G. The maximum number of members <NAME OF COMPANY> can have is 50.
- H. <NAME OF COMPANY> is prohibited from engaging in any activity that would require a disclosure document to be lodged under Chapter 6D of the *Corporations Act 2001*.
- I. The replaceable Rules contained in the *Corporations Act 2001* shall apply to the Company unless they have been replaced by a rule in this Constitution.
- J. This Constitution adopts the wording and definitions used in the *Corporations Act 2001* in both the section 9 Dictionary and where otherwise applicable.
- K. If any part of this Constitution is inconsistent with the provisions of the *Corporations Act* then the Corporations Act is to prevail over this constitution.
- L. If any provision of the Constitution is for any reason declared invalid or unenforceable the validity of the remaining portion of the Constitution will not be affected and the remaining portion will remain in force.

# 1. MANAGEMENT OF THE COMPANY

## 1.1 Powers of directors (s 198A)

- (1) The business of a company is to be managed by or under the direction of the directors.
- (2) The directors may exercise all the powers of the company except any powers that the *Corporations Act 2001* or the company's Constitution (if any) requires the company to exercise in general meeting.
- (3) The Powers of Directors include, but are not limited to:
  - (a) Borrowing moneys;
  - (b) Issuing shares;
  - (c) Issuing debentures;
  - (d) Entering contracts on behalf of the Company; and
  - (e) Other matters relevant to the conducting of Business.

## 1.2 Negotiable instruments (s198B)

The business of a company is to be managed by or under the direction of the directors

- (1) Any 2 directors of a company that has 2 or more directors, or the director of a proprietary company that has only 1 director, may sign, draw, accept, endorse, or otherwise execute a negotiable instrument.
- (2) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

## 1.3 Appointment of managing director (s 201J)

- (1) The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.

## 1.4 Powers of managing director (s 198C)

- (1) The directors of a company may confer on a managing director any of the powers that the directors can exercise.
- (2) The directors may revoke or vary a conferral of powers on the managing director.

### 1.5 Appointment of a director

- (1) A company may appoint a person as a director by resolution passed in general meeting.

### 1.6 Directors may appoint other directors (s 201H)

- (1) The directors of a company may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum.
- (2) If a person is appointed under this section as a director of a proprietary company, the company must confirm the appointment by resolution within 2 months after the appointment is made. If the appointment is not confirmed, the person ceases to be a director of the company at the end of those 2 months.

### 1.7 Appointment of alternate directors and their powers (s201K)

- (1) With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.
- (2) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.
- (3) When an alternate exercises the director's powers, the exercise of the powers is just as effective as if the powers were exercised by the director.
- (4) The appointing director may terminate the alternate's appointment at any time.
- (5) An appointment or its termination must be in writing. A copy must be given to the company.

### 1.8 Remuneration of Directors (s202A)

- (1) The directors of a company are to be paid the remuneration that the company determines by resolution.
- (2) The company may also pay the directors' travelling and other expenses that they properly incur:
  - (a) in attending directors' meetings or any meetings of committees of directors; and
  - (b) in attending any general meetings of the company; and
  - (c) in connection with the company's business.

### 1.9 Resignation of a Director (s203A)

- (1) A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office.

### 1.10 Removal of a Director (s203C)

- (1) A proprietary company:
  - (a) may by resolution remove a director from office; and
  - (b) may by resolution appoint another person as a director instead.

### 1.11 Termination of appointment of managing director (s203F)

- (1) A person ceases to be managing director if they cease to be a director.
- (2) The directors may revoke or vary an appointment of a managing director.

### 1.12 Disclosure of an interest (s191)

- (1) A director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest.
- (2) The notice required by subsection (1) must:
  - (a) give details of:
    - (i) the nature and extent of the interest; and
    - (ii) the relation of the interest to the affairs of the company; and
  - (b) be given at a directors' meeting as soon as practicable after the director becomes aware of their interest in the matter.
- (3) The details must be recorded in the minutes of the meeting.
- (4) This section does not apply to a proprietary company that has only 1 director.

## 2. OFFICERS AND EMPLOYEES

This Constitution adopts the following Replaceable Rules in relation to the Company Officers and Company employees:

### 2.1 Directors to appoint Company Secretary (204D)

- (1) A secretary is to be appointed by the directors on the terms and conditions determined by the Directors.

### 2.2 Removal and resignation of auditors (s 329)

- (1) If an auditor of a company has been appointed, the auditor may only be removed from office by resolution of the company at a general meeting. For the purposes of this clause, the notice of intention to move the resolution must be given to the company at least 2 months before the meeting is to be held.
- (2) If the company calls a meeting after the notice of intention is given, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.
- (3) Despite other clauses in this Constitution, short notice of the meeting cannot be given for this resolution. Where notice of intention to move the resolution to remove an auditor is received by a company, the company must send a copy of the notice to the auditor and lodge a copy of the notice with ASIC as soon as possible.



### 3. INSPECTION OF BOOKS (s247D)

This Constitution adopts the following Replaceable Rules in relation to inspection of books.

#### 3.1 Member may inspect books

- (1) The directors of a company, or the company by a resolution passed at a general meeting, may authorise a member to inspect books of the company.

### 4. DIRECTORS MEETINGS (s 251A)

This Constitution adopts the following Replaceable Rules in relation to directors meetings.

#### 4.1 Minutes of meetings

- (1) A company must keep minute books in which it records within 1 month:
  - (a) proceedings and resolutions of meetings of the company's members; and
  - (b) proceedings and resolutions of directors' meetings (including meetings of a committee of directors); and
  - (c) resolutions passed by members without a meeting; and
  - (d) resolutions passed by directors without a meeting; and
  - (e) if the company is a proprietary company with only 1 director--the making of declarations by the director.
- (2) The company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
  - (a) the chair of the meeting;
  - (b) the chair of the next meeting.
- (3) The company must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- (4) The director of a proprietary company with only 1 director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.
- (5) A company must keep its minute books at:
  - (a) its registered office; or
  - (b) its principal place of business in this jurisdiction; or
  - (c) another place in this jurisdiction approved by ASIC.

#### 4.2 Circulating resolutions (s248A & 249B)

- (1) If there is more than one (1) director in the company, the directors may pass a resolution without a directors' meeting being held if all 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.
- (2) Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last director signs.
- (3) A company that has only one (1) member may pass a resolution by the member recording it and signing the record. If the *Corporations Act 2001* requires information or a document relating to the resolution to be lodged with ASIC, that requirement is satisfied by lodging the information or document with the resolution that is passed.
- (4) Passage of a resolution by circular must be recorded in the company's minute books in accordance with clause 4.1 and the *Corporations Act 2001*. Resolution by circular cannot be made for the removal of an auditor pursuant to s 329 of the *Corporations Act 2001*.

### 4.3 Restrictions of resolutions by circular

- (1) Circulating resolutions cannot be used for a resolution to remove a director or to appoint a director to replace a director who has been removed.

### 4.4 Calling director's meetings (S248C)

- (1) A directors' meeting may be called by a director giving reasonable notice individually to every other director. A director who has appointed an alternate director may ask for the notice to be sent to the alternate director.

### 4.5 Chairing director's meetings (s248E)

- (1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.
- (2) The directors must elect a director present to chair a meeting, or part of it, if:
  - (a) a director has not already been elected to chair the meeting; or
  - (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

### 4.6 Quorum at directors' meeting (s248F AND 248B)

- (1) Unless the directors determine otherwise, the quorum for a directors' meeting is two (2) directors and the quorum must be present at all times during the meeting. No resolutions must be passed unless a quorum is present.
- (2) If the company only has one (1) director, the director may pass a resolution by recording it and signing the record.
- (3) If the company only has one (1) director, the director may make a declaration by recording it and signing the record.
- (4) The passage of a resolution or the making of a declaration must be recorded in the company's minutes book in accordance with Clause 4.1 of this Constitution and the *Corporations Act 2001*.

### 4.7 Passing of Directors' resolutions (s248G)

- (1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution. The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.
- (2) The chair may be precluded from voting, for example, by a conflict of interest.

### 4.8 Director may vote despite interest

- (1) If the director has complied with Clause 1.13 and the *Corporations Act 2001* in relation to disclosing their material personal interest, they may vote on matters that relate to the interest, and any transactions that relate to the interest may proceed.
- (2) If a disclosure is given after the transaction has been entered into, the director may retain benefits under the transaction even though the director has the interest, and the company cannot avoid the transaction merely because of the existence of the interest.

## 5. MEETINGS OF MEMBERS

This Constitution adopts the following Replaceable Rules in relation to the meetings of members of the company.

### 5.1 Calling of meetings of members by a director

- (1) A director may call a meeting of the company's members.

### 5.2 Notice of meetings of members

- (1) Written notice of a meeting of a company's members must be given individually to each member entitled to vote at the meeting and to each director. Notice need only be given to one (1) member of a joint membership. Notice to joint members must be given to the joint member named first in the register of members.
- (2) Notice may be given in the following ways:
  - (a) personally ; or
  - (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member ; or
  - (c) by sending it to the fax number or electronic address (if any) nominated by the member ; or
  - (d) by sending it to the member by other electronic means (if any) nominated by the member

### 5.3 Notice by post or fax (s249J(4))

- (1) A notice of meeting sent by post is taken to be given three (3) days after it is posted.
- (2) A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

### 5.4 Amount of notice of meetings (s 249H)

- (1) At least 21 days notice must be given of a meeting of a company's members, unless consent is given for shorter notice in accordance with the s 249H *Corporations Act 2001*.

### 5.5 Contents of notice of meetings (249L)

- (1) A notice of a meeting of a company's members must contain each of the following:
  - (a) the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this)
  - (b) the general nature of the meeting's business
  - (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution
  - (d) if a member is entitled to appoint a proxy, contain a statement setting out:
    - (i) that the member has a right to appoint a proxy
    - (ii) whether or not the proxy needs to be a member of the company
    - (iii) that a member who is entitled to cast two (2) or more votes may appoint two (2) proxies and may specify the proportion or number of votes each proxy is appointed to exercise

### 5.6 Notice of adjourned meetings (s 249M)

- (1) When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one (1) month or more.
- (2)

### 5.7 Quorum (s248T & 249B)

- (1) The quorum for a meeting of the company's members is two (2) members and the quorum must be present at all times during the meeting.
- (2) No resolutions must be passed unless a quorum is present.
- (3) In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are counted. However, if a member has appointed more than one (1) proxy or representative, only one (1) of them is counted.
- (4) If an individual is attending both as a member and as a proxy or body corporate representative, they are only to be counted once.
- (5) If the company only has 1 member, the member may pass a resolution by recording it and signing the record. Passage of such resolution must be recorded in the company's minute books.
- (6) If a meeting of the company's members is convened by a member or members, and a quorum is not present within thirty (30) minutes after the specified time for the general meeting, the meeting is automatically abandoned.
- (7) If a meeting of the company's members is convened by a director or directors, and a quorum is not present within thirty (30) minutes after the specified time for the general meeting, the meeting is automatically adjourned to the date, time and place the directors specify.
- (8) If the directors do not specify:
  - (a) the date then the date is adjourned to the same day in the next week
  - (b) the time, the time is the same time
  - (c) the place, the place is the same place.
- (9) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

### 5.8 Chairing meetings of members (248E)

- (1) The directors may elect an individual to chair meetings of the company's members. The directors at a meeting of the company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).
- (2) The members at a meeting of the company's members must elect a member present to chair the meeting (or part of it) if:
  - (a) a chair has not previously been elected by the directors to chair the meeting; or
  - (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

### 5.9 Adjourned meetings (249W)

- (1) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.
- (2) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed. Only unfinished business is to be transacted at a meeting resumed after an adjournment.

## 6. VOTES AND PROXIES

This constitution adopts the following Replaceable Rules in relation to the voting and proxies of the company.

### 6.1 Appointment of proxy (249X)

- (1) A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
- (2) The person appointed as the member's proxy may be an individual or a body corporate.
- (3) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (4) Each member may appoint a proxy. If the member is entitled to cast two (2) or more votes at the meeting, they may appoint two (2) proxies. If the member appoints two (2) 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 the votes.
- (5) Any fractions of votes resulting from an application of the above is to be disregarded.

### 6.2 Rights of proxies (249Y)

- (1) A proxy appointed to attend and vote for a member has the same rights as the member:
  - (a) to speak at the meeting
  - (b) to vote (but only to the extent allowed by the appointment)
  - (c) join in a demand for a poll.
- (2) A proxy's authority to vote is suspended while the member is present at the meeting

### 6.3 Validity of proxy vote (250C)

- (1) A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.
- (2) Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  - (a) the appointing member dies; or
  - (b) the member is mentally incapacitated; or
  - (c) the member revokes the proxy's appointment; or
  - (d) the member revokes the authority under which the proxy was appointed by a third party; or
  - (e) the member transfers the share in respect of which the proxy was given.

### 6.4 How many votes a member has (s 250E)

- (1) Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital:
  - (a) on a show of hands, each member has 1 vote; and
  - (b) on a poll, each member has 1 vote for each share they hold.
- (2) The chair has a casting vote, and also, if they are a member, any vote they have in their capacity as a member. The chair may be precluded from voting, for example, by a conflict of interest.

### 6.5 Jointly held shares (s 250F)

- (1) If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.

### 6.6 Objections to right to vote (s 250G)

- (1) A challenge to a right to vote at a meeting of a company's members:

- (a) May only be made at the meeting; and
- (b) Must be determined by the chair, whose decision is final.

#### 6.7 How voting is carried out (250J)

- (1) Before a vote is taken, the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (2) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded.
- (3) On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the [roxies received.
- (4) Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- (5) Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll.

#### 6.8 Polls must be taken in certain situation (S 250k and s 250L)

- (1) A poll may be demanded on any resolution.
- (2) A demand for a poll may be withdrawn.
- (3) At a meeting of a company's members, a poll may be demanded by:
  - (a) at least five (5) members entitled to vote on the resolution; or
  - (b) members with at least five percent (5%) of the votes that may be cast on the resolution on a poll; or
  - (c) the chair.
- (4) The poll may be demanded:
  - (a) before a vote is taken; or
  - (b) before the voting results on a show of hands are declared; or
  - (c) immediately after the voting results on a show of hands are declared.
- (5) The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.

#### 6.9 Polls must be taken in a certain way (s 250M)

- (1) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

## 7. SHARES

This constitution adopts the following Replaceable Rules in relation to the shares of the company.

#### 7.1 Power to issue shares

- (1) The directors may issue shares in the company at any time, on any conditions they think fit subject to the *Corporations Act 2001*. In doing so, they must preserve special rights conferred on shareholders of existing shares.

- (2) Subject to the provisions of these Rules and without prejudice to any special right previously conferred on the holders of any shares or class of shares, and save as provided by any contract with the company the shares shall be under the control of the directors who may allot or otherwise dispose of shares to such persons on such terms and conditions and at such times and either at a premium at a nominal value or at a discount and with such preferred deferred or other special rights restrictions or exclusions whether in regard to dividend, voting, return of capital, or otherwise and as to belonging to a particular class or classes, as the directors may determine with full power to give any person the call of any shares either at nominal value or at a premium or at a discount and for such time and for such consideration as the directors think fit.

## 7.2 Power to issue redeemable or non-redeemable preference shares

- (1) Subject to the *Corporations Act 2001*, and without limiting clause 7.1, the directors have power to issue redeemable and/or non-redeemable preference shares.

## 7.3 Issue Price

- (1) The directors may determine the price of any shares they issue.

## 7.4 Preference shares

- (1) A preference shareholder has a right to a fixed cumulative dividend at a rate determined by the directors at the date of issue.
- (2) A preference shareholder's right to a fixed cumulative dividend is in preference to ordinary shareholders.
- (3) If the company is wound up, a preference shareholder cannot participate in the distribution of the company's surplus assets beyond their entitled dividends in arrears (if any).

## 7.5 Redemption of redeemable preference shares

- (1) Redeemable preference shares can only be redeemed in accordance with the *Corporations Act 2001*

## 7.6 Pre-emptive rights (s 254D)

- (1) Before issuing shares of a particular class, the directors of a proprietary company must offer them to the existing holders of shares of that class.
- (2) As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.
- (3) To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:
  - (a) the number of shares offered; and
  - (b) the period for which it will remain open.
- (4) The directors may issue shares not taken up under the offer above as they deem fit.
- (5) The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without first offering the shares to the existing holders of shares of that class.

## 7.7 Dividend rights (s 254W)

- (1) Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends as they see fit.

### 7.8 Payment of dividends

- (1) The directors may determine that a dividend is payable. If the directors so decide, they can fix:
  - (a) the amount
  - (b) the time for payment
  - (c) the method of payment
- (2) Without limiting the above, the methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets. Interest is not payable on a dividend.

## 8. TRANSFER OF SHARES

This constitution adopts the following Replaceable Rules in relation to the transfer of shares of the company.

### 8.1 Member to offer to the company prior to selling existing shares

- (1) A shareholder who wishes to dispose of his existing shares must first offer to sell the shares to the company in writing. On notification, the company must circulate the offer to sell the shares to the directors and existing shareholders at market price. The offer must specify:
  - (a) the number of shares available
  - (b) the market price
  - (c) the period for which the offer will remain open
- (2) After the specified period, the shareholder may sell any shares not taken up under the offer as he deems fit. The company may by resolution passed at a general meeting authorise the shareholder to sell the shares without first offering the shares to the company.

### 8.2 Transmission of shares on death (s1072A)

- (1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
- (2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares, the personal representative may do either of the following by giving a written and signed notice to the company;
  - (a) elect to be registered as the holder of the shares
  - (b) by giving a completed transfer form to the company, transfer the shares to another person
- (3) In addition to the above, the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder. Once an election above is received, the company must register the personal representative as the holder of the shares.
- (4) A transfer above is subject to the same rules that apply to other transfers generally.
- (5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares.
- (6) The estate of the deceased shareholder is not released from any liability in respect of the shares.



### 8.3 Transmission of shares on bankruptcy (s1072B)

- (1) If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may do either of the following by giving a written and signed notice to the company,
  - (a) elect to be registered as the holder of the shares
  - (b) by giving a completed transfer form to the company, transfer the shares to another person.
- (2) Once an election above is received, the company must register the person as the holder of the shares. A transfer above is subject to the same rules that apply to other transfers generally. This clause has effect subject to the *Bankruptcy Act 1966*.

### 8.4 Transmission of shares on mental incapacity (s1072D)

- (1) If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares, the person may do either of the following by giving a written and signed notice to the company:
  - (a) elect to be registered as the holder of the shares
  - (b) by giving a completed transfer form to the company, transfer the shares to another person
- (2) In addition to the above, the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder. Once an election above is received, the company must register the person as the holder of the shares. A transfer above is subject to the same rules that apply to other transfers generally.

### 8.5 Registration of transfers (s1072F)

- (1) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.
- (2) The directors are not required to register a transfer of shares in the Company unless:
  - (a) the transfer and any share certificate have been lodged at the company's registered office; and
  - (b) any fee payable on registration of the transfer has been paid; and
  - (c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.
- (3) The directors may refuse to register a transfer of shares in the company if the shares are not fully paid, or the company has a lien on the shares.
- (4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine.
- (5) The periods of suspension must not exceed 30 days in any one calendar year.

### 8.6 Directors' discretion to register transfers (s1072G)

- (1) The directors of a proprietary company may refuse to register a transfer of shares in the Company for any reason.

## 9. LOANS OF MEMBERS

This Constitution adopts the following Replaceable Rules in relation to loans of members of the company.

- (1) The company may make one or more loans to a member pursuant to Division 7A of the *Income Assessment Act 1936* and any other relevant legal acts and legislation.

## 10. WINDING UP

This Constitution adopts the following Replaceable Rules in relation to the Winding up of the Company.

- (1) If the company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the assets of the company (whether it consists of property of the same kind or not) and may for that purpose set such value as he or she deems fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.
- (2) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trust for the benefit of the contributors as the liquidator thinks fit but the liquidator may not compel any member to accept any shares or other securities in respect of which this is any liability.

The person/s whose signature appears below, hereby agree to the foregoing constitution of the Company.

-----  
Signature

-----  
[Signature

-----  
[Signature