

As adopted by the  
members of Prime Super Pty Limited  
on 5 December 2018

**Prime Super Pty Limited**  
(ABN 81 067 241 016)

## **Constitution**

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# 1 Definitions and interpretation

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## 1.1 Definitions

(a) In this constitution:

<b>Term</b>	<b>Meaning</b>
<b>AWU</b>	The Australian Workers' Union ABN 28 853 022 982.
<b>Commonwealth</b>	the Commonwealth of Australia and its external territories.
<b>company</b>	Prime Super Pty Limited (formerly known as Farm Plan Pty Limited).
<b>Corporations Law</b>	the <i>Corporations Act 2001</i> (Cth).
<b>NFF</b>	National Farmers' Federation Limited ABN 77 097 140 166.
<b>power</b>	includes any function, remedy, duty, discretion, right and authority.
<b>representative</b>	in relation to a body corporate, means a representative of the body corporate authorised under section 250D of the Corporations Law.
<b>SIS</b>	the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).

- (b) A shareholder is to be taken to be present at a general meeting if the shareholder is present in person or by proxy, attorney or representative.
- (c) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (d) Unless the contrary intention appears, in this constitution:
- (1) words importing the singular include the plural and vice versa;
  - (2) words importing a gender include every other gender;
  - (3) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  - (4) a reference to a person includes that person's successors and legal personal representatives;
  - (5) a reference to any statute, regulation, proclamation, ordinance or by law includes any statute, regulation, proclamation, ordinance or by law varying, consolidating or replacing it and a reference to a statute includes any regulation, proclamation, ordinance and by law issued under that statute;

- (6) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
  - (7) specifying any thing after the words 'include' or 'for example' or similar expressions does not limit what else is included.
- (e) In this constitution, headings and bold type are for convenience only and do not affect the interpretation of this constitution.

## 1.2 Application of the Corporations Law

- (a) This constitution is to be interpreted subject to the Corporations Law. However, the rules that apply as replaceable rules to companies under the Corporations Law do not apply to the company.
- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Law has the same meaning as in that provision of the Corporations Law.
- (c) Subject to rule 1.2(b), unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Law has the same meaning as in that section.

## 1.3 Exercise of powers

- (a) The company may, in any manner permitted by the Corporations Law:
  - (1) exercise any power;
  - (2) take any action; or
  - (3) engage in any conduct or procedure,

which under the Corporations Law a company limited by shares may exercise, take or engage in if authorised by its constitution.
- (b) Where this constitution provides that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
  - (1) to appoint a person to act in the office or position until a person is appointed to the office or position;
  - (2) to remove or suspend any person appointed; and

- (3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (e) Where this constitution confers power on a person or body to delegate a function or power:
- (1) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
  - (2) the delegation may be either general or limited in any manner provided in the terms of delegation;
  - (3) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
  - (4) the delegation may include the function or power to delegate;
  - (5) where the performance or exercise of that function or power is dependent on the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate on the opinion, belief or state of mind of the delegate in relation to that matter; and
  - (6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

#### **1.4 Table A not to apply except in certain circumstances**

The regulations contained in Table A in Schedule 1 to the former statute known as the 'Corporations Law' (as it existed as at 30 June 1998) do not apply to the company except for regulations 8 to 18 and 26 to 32 which regulations are regarded as incorporated in, and form part of, this constitution.

#### **1.5 Proprietary company restrictions**

The company is a proprietary company and:

- (a) the right to transfer shares is restricted in the manner set out in this constitution;
- (b) the number of shareholders (counting joint holders of shares as one shareholder and not counting any person who is employed by the company or any of its subsidiaries or a person who was, while so employed, and thereafter has continued to be, a shareholder of the company) must not exceed 50;
- (c) any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any shares in, or debentures of, the company is prohibited; and
- (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.

#### **1.6 Single shareholder company**

If at any time the company has only one shareholder then, unless the contrary intention appears:

- (a) a reference in a rule to the 'shareholders' is a reference to that shareholder;
- (b) without limiting rule 1.6(a), a rule which confers a power or imposes an obligation on the shareholders to do a particular act or thing confers that power or imposes that obligation on that shareholder;
- (c) the company may pass a resolution by the shareholder recording it and signing the record; and
- (d) the shareholder must give the company notice in writing of any resolution passed under rule 1.6(c) within 14 days of the passing of that resolution.

## **1.7 Liability of shareholders**

The liability of the shareholders is limited.

## **2 Share Capital**

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### **2.1 Shares and Options**

Without prejudice to any special rights conferred on the holders of any shares or class of shares, the directors may issue, allot or grant options in respect of, or otherwise dispose of, shares to such persons, for such price, on such conditions, at such times and with such preferred, deferred or other special rights or special restrictions, whether with regard to dividend, voting, return of capital, participation in the property of the company on a winding up or otherwise, as the directors think fit.

### **2.2 Variation of class rights**

Unless otherwise provided by the terms of issue of a class of shares:

- (a) all or any of the rights or privileges attaching to the class may be varied, whether or not the company is being wound up, only with the consent in writing of the holders of three quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class;
- (b) the provisions of this constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the holders of the issued shares of that class; and
- (c) the rights conferred on the holders of the shares of that class are to be taken as not having been varied by the creation or issue of further shares ranking equally with them.

### **2.3 Joint holders of shares**

Where 2 or more persons are registered as the holders of a share they hold it as joint tenants with rights of survivorship subject to the following provisions:

- (a) they and their respective legal personal representatives are liable separately as well as jointly for all payments, including calls, which ought to be made in respect of the share;
- (b) the company is not bound to issue more than one certificate in respect of the share; and
- (c) delivery of a certificate for the share to any one of them is sufficient delivery to all of them.

## 2.4 Equitable and other claims

- (a) Except as otherwise required by law or provided by this constitution, the company is entitled to treat the registered holder of a share as the absolute owner of that share and is not:
  - (1) compelled in any way to recognise a person as holding a share on any trust, even if the company has notice of that trust; or
  - (2) compelled in any way to recognise, or bound by, any equitable, contingent, future or partial claim to or interest in a share on the part of any other person except an absolute right of ownership in the registered holder, even if the company has notice of that claim or interest.
- (b) With the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust, but this rule 2.4(b) does not limit the operation of rule 2.4(a).

## 2.5 Preference shares

- (a) The company may issue preference shares including preference shares which are, or at the option of the company are, liable to be redeemed.
- (b) The certificate issued by the company for each preference share must specify or provide for the determination of:
  - (1) the rate of dividend applicable to the share and the times at which dividends are to be paid;
  - (2) the amount paid or payable on the issue of the share and, if that amount is not payable on issue, the amount unpaid on the share;
  - (3) the number of votes that may be exercised by the holder in respect of the share on a poll;
  - (4) in the case of a redeemable preference share, the time and place for redemption of the share; and
  - (5) any restrictions on the right to transfer the share.
- (c) The dividend payable in respect of a preference share:
  - (1) may be at a fixed or variable rate;
  - (2) unless otherwise stated in the certificate for the share, will be taken to accrue from day to day; and



- (3) unless otherwise stated in the certificate for the share, is payable in respect of the amount for the time being paid on the preference share.
- (d) Each preference share confers on its holder:
  - (1) the right to payment out of the profits of the company of a cumulative preferential dividend at the rate and at the times specified in, or determined in accordance with, the certificate for the share in priority to the payment of any dividend on any other class of shares; and
  - (2) the right in a winding up or reduction of capital and, in the case of a redeemable preference share, on redemption to payment in cash in priority to any other class of shares of:
    - (A) the amount of any dividend accrued but unpaid on the share at the date of winding up or reduction of capital or, in the case of a redeemable preference share, the date of redemption; and
    - (B) any amount paid on the share.
- (e) A preference share does not confer on its holder any right to participate in the profits or property of the company, whether on a winding up, reduction of capital or otherwise, except as set out in rule 2.5(d).
- (f) The holder of a preference share has the same right as the holder of an ordinary share to receive notice of and to attend a general meeting and to receive a copy of any documents to be laid before that meeting.
- (g) A preference share does not entitle its holder to vote at any general meeting of the company except in the following circumstances:
  - (1) on a proposal:
    - (A) to reduce the share capital of the company;
    - (B) that affects rights attached to the share;
    - (C) to wind up the company; or
    - (D) for the disposal of the whole of the property, business and undertaking of the company;
  - (2) during a period during which a dividend or part of a dividend on the share is in arrears; or
  - (3) during the winding up of the company.
- (h) The holder of a preference share who is entitled to vote in respect of that share under rule 2.5(g) is, on a poll, entitled to the number of votes specified in, or determined in accordance with, the certificate for the share.
- (i) In the case of a redeemable preference share, the company must, at the time and place for redemption specified in, or determined in accordance with, the certificate for the share, redeem the share and, on receiving the certificate for the share, pay to or at the direction of the holder the amount payable on redemption of the share.

- (j) A holder of a preference share must not transfer or purport to transfer, and the directors must not register a transfer of, the share if the transfer would contravene any restrictions on the right to transfer the share set out in the certificate for the share.

## 3 Transfer of shares

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### 3.1 Transfer of shares

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, a shareholder may transfer all or any of the shareholder's shares by an instrument in writing in any usual form or in any other form that the directors approve.
- (b) An instrument of transfer referred to in rule 3.1(a) must:
- (1) be signed by or on behalf of both the transferor and the transferee unless the instrument of transfer relates only to fully paid shares and the signature by the transferee has been dispensed with by the directors, or the transfer of the shares is effected by a document which is, or documents which together are, a proper transfer of those shares under the Corporations Law;
  - (2) if required by law to be stamped, be duly stamped; and
  - (3) be left for registration at the registered office of the company, or at such other place as the directors determine, accompanied by the certificate for the shares to which it relates (if any) and such other evidence as the directors may require to prove the title of the transferor or the transferor's right to the shares and to prove the right of the transferee to be registered as the owner of the shares.
- (c) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.
- (d) The directors may decline to register a transfer of shares.
- (e) The directors may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as they think fit.
- (f) If a director is a shareholder and that shareholder ceases to be a director, then the shareholder must transfer all the shares in the company held by the shareholder to any person nominated by the directors against payment to the relevant person of the market value of the shares.
- (g) If a shareholder:
- (1) dies;
  - (2) becomes an insolvent under administration (as that term is defined in SIS);
  - (3) is liable to be dealt with in any way under a law relating to mental health; or
  - (4) which is a body corporate, is dissolved or another body corporate succeeds to the assets and liabilities of the shareholder,

then the shareholder, or the shareholder's legal representative or guardian, must transfer all the shares in the company held by the shareholder to any person nominated by the directors against payment to the shareholder of the market value of the shares.

- (h) For the purposes of rules 3.1(f) and 3.1(g), each shareholder, in consideration of the issue or transfer of the share or shares to the shareholder, irrevocably appoints each director and secretary separately as the shareholder's attorney to do all things necessary, including the signing of a share transfer form, to give effect to the relevant transfer.
- (i) The directors may, to the extent permitted by law, waive all or any of the requirements of this rule 3.1.

## 4 General Meetings

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### 4.1 Convening of general meetings

- (a) The directors may, whenever they think fit, convene a general meeting.
- (b) A general meeting may be convened only as provided by this rule 4.1 or as provided by section 249F or 249G of the Corporations Law.
- (c) The directors may postpone, cancel or change the venue of a general meeting, but a general meeting convened under section 249F of the Corporations Law may not be postponed beyond the date by which section 249F requires it to be held and may not be cancelled without the consent of the requisitioning shareholder or shareholders.

### 4.2 Notice of general meetings

- (a) Subject to the Corporations Law, this constitution and any rights attaching to any shares or class of shares, at least 14 days' notice of a general meeting (exclusive of the day on which the notice is served or deemed to be served but inclusive of the day appointed for the meeting) must be given to each person who is at the time of giving the notice:
  - (1) a shareholder;
  - (2) a director; or
  - (3) an auditor of the company.
- (b) A notice of a general meeting must specify the time and place of the meeting and state the general nature of the business to be transacted at the meeting.
- (c) A person may waive notice of any general meeting by notice in writing to the company.
- (d) Failure to give notice of a general meeting or a proxy form to any person entitled to receive notice of a general meeting under this rule 4.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
  - (1) the failure occurred by accident or error; or
  - (2) before or after the meeting, the person:

- (A) has waived or waives notice of that meeting under rule 4.2(c); or
- (B) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.

### 4.3 Admission to general meetings

The chairperson of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person who is not a shareholder, director or auditor of the company.

### 4.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of shareholders is present when the meeting proceeds to business.
- (b) A quorum consists of:
  - (1) if the number of shareholders entitled to vote is 2 or more — 2 of those shareholders; or
  - (2) if only one shareholders entitled to vote — that shareholder, present personally or by proxy or attorney.
- (c) If a quorum is not present within 30 minutes after the time appointed for the general meeting:
  - (1) where the meeting was convened on the requisition of shareholders, the meeting must be dissolved; or
  - (2) in any other case:
    - (A) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
    - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

### 4.5 Chairperson of general meetings

- (a) The chairperson of directors is entitled to (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
  - (1) there is no chairperson of directors;
  - (2) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or

- (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

then the shareholders present may elect one of their number to be chairperson of the meeting.

#### **4.6 Adjournment of general meetings**

- (a) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting, but otherwise it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### **4.7 Decisions at general meetings**

- (a) Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting are to be decided by a majority of votes cast by the shareholders present at the meeting and any such decision is for all purposes a decision of the shareholders.
- (b) In the case of an equality of votes on any proposed resolution:
- (1) the chairperson of the meeting will not have a second or casting vote; and
  - (2) the proposed resolution is to be taken as having been lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before or immediately after the declaration of the result of the show of hands:
- (1) by the chairperson of the meeting; or
  - (2) by any shareholder present at the meeting and having the right to vote on the resolution.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried 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 without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it will be taken in such manner and (subject to rule 4.7(g)) either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

- (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.

#### **4.8 Decisions without general meetings**

The company may pass a resolution (except a resolution to remove an auditor) without a general meeting being held:

- (a) if all of the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of a resolution set out in the document; and
- (b) otherwise in accordance with the Corporations Law.

If a share is held jointly, each of the joint shareholders must sign the document.

#### **4.9 Voting rights**

- (a) Subject to this constitution and to any rights or restrictions attaching to any shares or class of shares, at a general meeting:
  - (1) on a show of hands, every shareholder present has one vote; and
  - (2) on a poll, every shareholder present has one vote for each share held by the shareholder and in respect of which the shareholder is entitled to vote.
- (b) In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, attorney or representative, must be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority is to be determined by the order in which the names stand in the register of members (the shareholder whose name appears first in the register being taken to be the senior to the other or others of them).
- (c) A shareholder is not entitled to vote at a general meeting unless all calls and other sums presently payable by that shareholder in respect of shares in the company have been paid.
- (d) An objection to the qualification of a person to vote at a general meeting:
  - (1) must be raised before or at the meeting at which the vote objected to is given or tendered; and
  - (2) must be referred to the chairperson of the meeting, whose decision is final.
- (e) A vote not disallowed by the chairperson of a meeting under rule 4.9(d) is valid for all purposes.

#### **4.10 Representation at general meetings**

- (a) Subject to this constitution, each shareholder entitled to vote at a meeting of shareholders may vote:
  - (1) in person;
  - (2) by proxy;

- (3) by attorney; or
- (4) where the shareholder is a body corporate, by its representative.
- (b) A proxy, attorney or representative may, but need not, be a shareholder of the company.
- (c) A proxy, attorney or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) An instrument appointing a proxy, attorney or representative may be in any usual form or any other form that is approved by the directors.
- (e) Unless otherwise provided in the instrument, an instrument appointing a proxy, attorney or representative will be taken to confer authority to demand or join in demanding a poll on any resolution on which the proxy, attorney or representative may vote.
- (f) Where a shareholder appoints 2 proxies or attorneys to vote in respect of the shareholder's shares at the same general meeting, the appointment is of no effect and neither of them may vote unless each proxy or attorney, as the case may be, is appointed to represent a specified proportion of the shareholder's voting rights.
- (g) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (h) A proxy or attorney may not vote at a general meeting unless the instrument appointing the proxy or attorney, and a copy of the power of attorney or other authority (if any) under which the instrument is signed, are deposited at the registered office of the company or at such other place specified for that purpose in the notice convening the meeting:
  - (1) in the case of a meeting or an adjourned meeting, before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
  - (2) in the case of a poll, before the time appointed for the taking of the poll.
- (i) The directors may waive all or any of the requirements of rule 4.10(h).
- (j) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
  - (1) the previous death, unsoundness of mind or bankruptcy of the appointer; or
  - (2) the revocation of the instrument or of the authority under which the instrument was executed,

if no notice in writing of the death, unsoundness of mind, bankruptcy or revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited under rule 4.10(h).

## 5 Directors

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### 5.1 Appointment and removal of directors

- (a) There must be:
- (1) at least 2 directors;
  - (2) from the date of adoption of this constitution to 31 December 2019, subject to rule 5.1(b), not more than 12 directors:
    - (A) one of whom may be nominated under rule 5.1(e) and appointed under rule 5.1(g); and
    - (B) one of whom may be nominated under rule 5.1(f) and appointed under rule 5.1(g).
  - (3) from 1 January 2020, subject to rule 5.1(b), not more than 12 directors:
    - (A) one of whom may be nominated under rule 5.1(e) and appointed under rule 5.1(g); and
    - (B) one of whom may be nominated under rule 5.1(f) and appointed under rule 5.1(g).
- (b) The company may by resolution:
- (1) increase or reduce the minimum or maximum number of directors; and
  - (2) appoint or remove a director.
- (c) The directors may appoint any natural person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but the total number of directors must not at any time exceed the maximum number allowed under this constitution.
- (d) Subject to rule 5.2 and to the terms of any agreement entered into between the company and the relevant director, a director holds office until the director dies or is removed from office pursuant to rule 5.1(b)(2).
- (e) The AWU has the right to nominate a person to be appointed as a director.
- (f) The NFF has the right to nominate a person to be appointed as a director.
- (g) Subject to rule 5.1(a), all applicable laws and the directors being satisfied that a person nominated under clauses 5.1(e) or 5.1(f), as applicable, will not cause the company to fail to meet:
- (1) the fit and proper standard set out in SIS; and
  - (2) the requirements prescribed under the company's fit and proper policy and governance charter,
- the directors must appoint the nominee as a director.

### 5.2 Vacation of office



The office of a director becomes vacant:

- (a) in the circumstances prescribed by the Corporations Law or SIS;
- (b) if the director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (c) if the director resigns by notice in writing to the company; or
- (d) if the company fails to meet the fit and proper standard set out in SIS by a director continuing to hold their position.

### 5.3 Remuneration of directors

- (a) Each director is entitled to such remuneration out of the funds of the company as the directors determine, but if the company in general meeting has fixed a limit on the amount of remuneration payable to the directors, the aggregate remuneration of the directors under this rule 5.3(a) must not exceed that limit.
- (b) The remuneration of a director:
  - (1) may be a stated salary or a fixed sum for attendance at each meeting of directors or both; or
  - (2) may be a share of a fixed sum determined by the company in general meeting to be the remuneration payable to all directors which is to be divided between the directors in the proportions agreed between them or, failing agreement, equally,

and if it is a stated salary under rule 5.3(b)(1) or a share of a fixed sum under rule 5.3(b)(2), will be taken to accrue from day to day.

- (c) In addition to his or her remuneration under rule 5.3(a), a director is entitled to be paid all travelling and other expenses properly incurred by that director in connection with the affairs of the company, including attending and returning from general meetings of the company or meetings of the directors or of committees of the directors.
- (d) If a director renders or is called upon to perform extra services or to make any special exertions in connection with the affairs of the company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration under rule 5.3(a).
- (e) Nothing in rule 5.3(a) restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration under rule 5.3(a).
- (f) For the purposes of this constitution, the amount fixed by the company as remuneration for a director, will not include any amount paid by the company:
  - (1) to a superannuation, retirement or pension fund for a director so that the company is not liable to pay the superannuation guarantee charge or similar statutory charge; or
  - (2) for any insurance premium paid or agreed to be paid for a director under rule 10.3.

## 5.4 Director need not be a shareholder

- (a) A director is not required to hold any shares in the company to qualify for appointment.
- (b) A director is entitled to attend and speak at general meetings even though that director is not a shareholder of the company.

## 5.5 Interested directors

- (a) A director may hold any other office or place of profit (other than auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office or place upon such terms as to remuneration, tenure of office and otherwise as the directors think fit.
- (b) A director of the company may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise and is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of, or from having an interest in, that body corporate.
- (c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company in such manner in all respects as the directors think fit (including voting in favour of any resolution appointing a director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officers of that body corporate) and a director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (d) A director is not disqualified merely because of being a director from contracting with the company in any respect including:
  - (1) selling any property to, or purchasing any property from, the company;
  - (2) lending any money to, or borrowing any money from, the company with or without interest and with or without security;
  - (3) guaranteeing the repayment of any money borrowed by the company for a commission or profit;
  - (4) underwriting or guaranteeing the subscription for securities in the company or in any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise, for a commission or profit; or
  - (5) being employed by the company or acting in any professional capacity (other than auditor) on behalf of the company.
- (e) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.

- (f) No director contracting with or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under any such contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (g) A director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
  - (1) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
  - (2) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
  - (3) sign any document relating to that contract or arrangement or proposed contract or arrangement the company may execute.

## 5.6 Powers and duties of directors

- (a) The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required, by the Corporations Law or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting the generality of rule 5.6(a) the directors may exercise all the powers of the company to borrow or otherwise 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.
- (c) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
  - (1) appoint or employ any person to be an officer, agent or attorney of the company for such purposes with such powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for such period and upon such conditions as they think fit;
  - (2) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.
- (f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

## 5.7 Proceedings of directors

- (a) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by telephone or other electronic means of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and the rules relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by telephone or other electronic means.
- (c) A director participating in a meeting by telephone or other electronic means is to be taken to be present in person at the meeting.
- (d) A meeting by telephone or other electronic means is to be taken to be held at the place determined by the chairperson of the meeting provided that at least 1 of the directors involved was at that place for the duration of the meeting.

## 5.8 Convening of meetings of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

## 5.9 Notice of meetings of directors

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice:
  - (1) a director, other than a director on leave of absence approved by the directors; or
  - (2) an alternate director appointed under rule 5.14 by a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting;
  - (4) may be given in person or by post or by telephone, fax or other electronic means; and
  - (5) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.
- (c) A director or alternate director may waive notice of any meeting of directors by notifying the company to that effect in person or by post or by telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:

- (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the director or an alternate director appointed by the director:
    - (A) has waived or waives notice of that meeting under rule 5.9(c); or
    - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, or by telephone, fax or other electronic means; or
  - (3) the director or an alternate director appointed by the director attended the meeting.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, an alternate director of a director on leave of absence approved by the directors does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the alternate director or the director who appointed the alternate director or another alternate director appointed by that director:
    - (A) has waived or waives notice of that meeting under rule 5.9(c); or
    - (B) has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally or by post, or by telephone, fax or other electronic means; or
  - (3) the alternate director or the director who appointed the alternate director or another alternate director appointed by that director attended the meeting.
- (f) Attendance by a person at a meeting of directors waives any objection that person and:
- (1) if the person is a director, any alternate director appointed by that person; or
  - (2) if the person is an alternate director, the director who appointed that person as alternate director and any other alternate director appointed by that director,
- may have to a failure to give notice of the meeting.

## 5.10 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum consists of:
  - (1) if the directors have fixed a number for the quorum, that number of directors; and
  - (2) in any other case 8 directors

present at the meeting of directors.

- (c) If there is a vacancy in the office of a director then, subject to rule 5.10(d), the remaining director or directors may act.
- (d) If the number of directors in office at any time is not sufficient to constitute a quorum at a meeting of directors or is less than the minimum number of directors fixed under this constitution, the remaining director or directors must act as soon as possible:
  - (1) to increase the number of directors to a number sufficient to constitute a quorum and to satisfy the minimum number of directors required under this constitution; or
  - (2) to convene a general meeting of the company for that purpose,
 and, until that has happened, must only act if and to the extent that there is an emergency requiring them to act.

### **5.11 Chairperson of directors**

- (a) The directors may elect 1 of the directors to the office of chairperson of directors and may determine the period for which that director is to be chairperson of directors.
- (b) The office of chairperson of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the director holding that office for the purposes of rule 5.3(d).
- (c) The chairperson of directors must (if present within 10 minutes after the time appointed for the holding of the meeting and willing to act) preside as chairperson at each meeting of directors.
- (d) If at a meeting of directors:
  - (1) there is no chairperson of directors;
  - (2) the chairperson of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
  - (3) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,

the directors present must elect 1 of themselves to be chairperson of the meeting.

### **5.12 Decisions of directors**

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution. However, if the company has only 1 director, the director may pass a resolution and make a declaration by recording it and signing the record.
- (b) Questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and any such decision is for all purposes a determination of the directors.

- (c) In the case of an equality of votes upon any proposed resolution:
  - (1) the chairperson of the meeting will not have a second or casting vote; and
  - (2) the proposed resolution is to be taken as having been lost.

### 5.13 Written resolutions

- (a) If:
  - (1) all of the directors, other than:
    - (A) any director on leave of absence approved by the directors;
    - (B) any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
    - (C) any director who the directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,

assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
  - (2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.
- (b) For the purposes of rule 5.13(a):
  - (1) the meeting is to be taken as having been held:
    - (A) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
    - (B) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
  - (2) 2 or more separate documents in identical terms, each of which is assented to by 1 or more directors, are to be taken as constituting 1 document; and
  - (3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, telephone, fax or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

## 5.14 Alternate directors

- (a) A director may appoint, with approval of a majority of the other directors:
  - (1) a person to be the director's alternate director for such period as the director thinks fit; and
  - (2) another person to be the director's alternate director in the absence of any alternate director appointed under rule 5.14(a)(1).
- (b) An alternate director may, but need not, be a shareholder or a director of the company.
- (c) One person may act as alternate director to more than 1 director.
- (d) An alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
- (e) An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (f) In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise and the exercise of any such power by the alternate director is to be taken to be the exercise of the power by the appointer.
- (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- (h) The appointment of an alternate director may be terminated at any time by the appointer even though the period of the appointment of the alternate director has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take effect unless and until the company has received notice in writing of the appointment or termination.
- (j) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this constitution.
- (k) In determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
- (l) An alternate director is entitled to be paid such remuneration as the directors think fit, either in addition to or in reduction of the remuneration payable to the director for whom the alternate director acts as alternate.
- (m) An alternate director is not entitled to be remunerated by the company for his or her services as an alternate director except as provided in rule 5.14(a)(1).
- (n) An alternate director, while acting as a director, is responsible to the company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.

## 5.15 Committees of directors



- (a) The directors may delegate any of their powers to a committee or committees consisting of such number of directors as they think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The rules applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the shareholders for the purposes of rule 5.3(d).

### **5.16 Delegation to individual directors**

- (a) The directors may delegate any of their powers to 1 director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) Acceptance of such a delegation may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 5.3(d).

### **5.17 Validity of acts**

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as the case may be) when the act was done.

## **6 Secretary**

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### **6.1 Secretaries**

- (a) The directors must appoint at least one secretary and may appoint additional secretaries.
- (b) A secretary holds office on such terms and conditions (including remuneration) as the directors determine.

## 7 Execution of documents

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### 7.1 Manner of execution

The company may execute a document if the document is signed by:

- (a) 2 directors;
- (b) a director and a secretary; or
- (c) a director and another person appointed by the directors to countersign that document or a class of documents in which that document is included.

### 7.2 Common seal

The company may have a common seal. If the company has a common seal, rules 7.3 to 7.5 will apply.

### 7.3 Safe custody of seal

The directors must provide for the safe custody of the common seal in such manner as they think fit.

### 7.4 Use of seal

- (a) The common seal must be used only by the authority of the directors or of a committee of the directors authorised by the directors to authorise the use of the seal.
- (b) The authority to use the seal may be given before or after the seal is used.
- (c) Every document to which the seal is affixed must be signed by a director and 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.

### 7.5 Seal register

- (a) The company may keep a seal register. If the company does keep a seal register, the company must enter in the register particulars of any document on which the common seal is affixed (other than a certificate for securities of the company), giving in each case the date of the document, the names of the parties to the document, a short description of the document and the initials of the persons signing and countersigning the document under rule 7.4(c).
- (b) The register must be produced at meetings of directors for confirmation of the use of the seal since confirmation was last given under this rule 7.5.
- (c) Failure to comply with rule 7.5(a) or 7.5(b) does not invalidate any document to which the common seal is properly affixed.

## 8 Profits and reserves

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### 8.1 Dividends

- (a) The directors may pay any interim and final dividends as, in their judgment, the financial position of the company justifies.
- (b) The directors may pay any dividend required to be paid under the terms of issue of a share.
- (c) The payment of a dividend does not require any confirmation by a general meeting.
- (d) Subject to any rights or restrictions attached to any shares or class of shares:
  - (1) all dividends in respect of shares must be paid in proportion to the number of shares held by a shareholder but where shares are partly paid all dividends must be apportioned and paid proportionately to the amounts paid or credited on the partly paid shares;
  - (2) all dividends must be apportioned and paid proportionately to the amounts so paid or credited during any portion or portions of the period in respect of which the dividend is paid;
  - (3) for the purposes of rules 8.1(d)(1) and (2), an amount paid or credited as paid on a share in advance of a call is to be ignored; and
  - (4) interest is not payable by the company in respect of any dividend.
- (e) The directors may fix a record date in respect of a dividend, with or without suspending the registration of transfers from that date under rule 3.1(e).
- (f) A dividend in respect of a share must be paid to the person who is registered as the holder of the share:
  - (1) where the directors have fixed a record date in respect of the dividend, on that date; or
  - (2) where the directors have not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend,

and a transfer of a share that is not registered, or left with the company for registration in accordance with rule 3.1(b), on or before that date is not effective, as against the company, to pass any right to the dividend.
- (g) The directors when determining a dividend is payable may:
  - (1) direct payment of the dividend wholly or partly by the distribution of specific assets, including paid-up shares or other securities of the company or of another body corporate, either generally or to specific shareholders; and
  - (2) direct that the dividend be paid to particular shareholders wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining shareholders wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.

- (h) The directors may deduct from any dividend payable to a shareholder all sums of money presently payable by the shareholder to the company and apply the amount deducted in or towards satisfaction of the money owing.
- (i) Where a person is entitled to a share as a result of a transmission event, the directors may, but are not obliged to, retain any dividends payable in respect of that share until that person becomes registered as the holder of the share or transfers it.
- (j) Without prejudice to any other method of payment the directors may adopt, any dividend, interest or other money payable in cash in respect of shares may be paid by cheque and sent by post:
  - (1) to the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register; or
  - (2) to such other address as the holder or joint holders in writing directs or direct.
- (k) A cheque sent under rule 8.1(j) may be made payable to bearer or to the order of the shareholder to whom it is sent or such other person as the shareholder may direct and is sent at the shareholder's risk.

## 8.2 Capitalisation of profits

- (a) Subject to any rights or restrictions attached to any shares or class of shares, the directors may capitalise and distribute among such of the shareholders as would be entitled to receive dividends and in the same proportions, any amount:
  - (1) forming part of the undivided profits of the company;
  - (2) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the company;
  - (3) arising from the realisation of any assets of the company; or
  - (4) otherwise available for distribution as a dividend.
- (b) The directors may resolve that all or any part of the capitalised amount is to be applied:
  - (1) in paying up in full shares in or other securities of the company to be issued to shareholders;
  - (2) in paying up any amounts unpaid on shares in or other securities of the company held by the shareholders; or
  - (3) partly as specified in rule 8.2(b)(1) and partly as specified in rule 8.2(b)(2),

and such an application must be accepted by the shareholders entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.
- (c) Rules 8.1(e) and 8.1(f) apply, so far as they can and with such changes as are necessary, to a capitalisation of an amount under this rule 8.2 as if references in those rules to a dividend and to the date a dividend is declared were references to

a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this rule 8.2.

### 8.3 Ancillary powers

- (a) For the purpose of giving effect to any resolution for the satisfaction of a dividend in the manner set out in rule 8.1(g)(1) or by the capitalisation of any amount under rule 8.2, the directors may:
- (1) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation;
  - (2) fix the value for distribution of any specific assets;
  - (3) pay cash or issue shares or other securities to any shareholders in order to adjust the rights of all parties;
  - (4) vest any such specific assets, cash, shares or other securities in any trustee upon such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the directors; and
  - (5) authorise any person to make, on behalf of all the shareholders entitled to any further shares or other securities as a result of the distribution or capitalisation, an agreement with the company or another body corporate providing, as appropriate:
    - (A) for the issue to them of such further shares or other securities credited as fully paid up; or
    - (B) for the payment by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in this rule 8.3(a)(5) is effective and binding on all shareholders concerned.
- (b) If the company distributes to shareholders (either generally or to specific shareholders) securities in the company or in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those shareholders appoints the company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a shareholder of that other body corporate.

### 8.4 Reserves

- (a) Subject to this constitution, the directors may set aside out of the profits of the company such reserves or provisions for such purposes as they think fit.
- (b) The directors may appropriate to the profits of the company any amount previously set aside as a reserve or provision.
- (c) The setting aside of any amount as a reserve or provision does not require the directors to keep the amount separate from the other assets of the company or prevent the amount being used in the business of the company or being invested in such investments as the directors think fit.

## 8.5 Carry forward of profits

The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends or capitalised without transferring those profits to a reserve or provision.

## 9 Winding up

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### 9.1 Distribution of surplus

Subject to this constitution and to the rights or restrictions attached to any shares or class of shares:

- (a) if the company is wound up and the property of the company is more than sufficient:
  - (1) to pay all of the debts and liabilities of the company; and
  - (2) the costs, charges and expenses of the winding up,

the excess must be divided among the shareholders in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in rule 9.1(a), any amount unpaid on a share is to be treated as property of the company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under rule 9.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under rule 9.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the company.

### 9.2 Division of property

- (a) If the company is wound up, the liquidator may, with the sanction of a special resolution:
  - (1) divide among the shareholders the whole or any part of the property of the company; and
  - (2) determine how the division is to be carried out as between the shareholders or different classes of shareholders.
- (b) Any division under rule 9.2(a) may be otherwise than in accordance with the legal rights of the shareholders and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under rule 9.2(a) is otherwise than in accordance with the legal rights of the shareholders, a shareholder is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Law.

- (d) If any of the property to be divided under rule 9.2(a) includes securities with a liability to calls, any person entitled under the division to any of the securities may within 10 days after the passing of the special resolution referred to in that rule, by notice in writing direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds and the liquidator must, if practicable, act accordingly.
- (e) Nothing in this rule 9.2 derogates from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (f) Rule 8.3 applies, so far as it can and with such changes as are necessary, to a division by a liquidator under rule 9.2(a) as if references in rule 8.3 to the directors and to a distribution or capitalisation were references to the liquidator and to the division under rule 9.2(a) respectively.

## 10 Protection of certain officers

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### 10.1 Officers to whom this part 10 applies

This part 10 applies:

- (a) to each person who is or has been a director, alternate director or secretary of the company; and
- (b) to such other officers or former officers of the company as the directors in each case determine,

(each an **Officer** for the purposes of this rule).

### 10.2 Indemnity

The company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all losses, liabilities, costs, charges and expenses (**Liabilities**) incurred by the Officer as an officer of the company.

### 10.3 Extent of indemnity

The indemnity in rule 10.2:

- (a) is enforceable without the Officer having to first incur any expense or make any payment;
- (b) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an officer of the company;
- (c) applies to Liabilities incurred both before and after the date of this constitution; and
- (d) operates only to the extent that the Liability is not covered by insurance.

### 10.4 Insurance

To the extent permitted by law, the company may:

- (a) purchase and maintain insurance; or

- (b) pay or agree to pay a premium for insurance,

for any Officer against a Liability incurred by the Officer acting as an officer of the company, including a Liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal, and whatever their outcome.

## 10.5 Savings

Nothing in rule 10.2 or 10.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply.

## 10.6 Deed

The company may enter into a deed with any Officer to give effect to the rights conferred by this part 10 or the exercise of a discretion under this part 10 on such terms as the directors think fit which are not inconsistent with this part 10.

# 11 Access to documents

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## 11.1 Access to documents

- (a) A person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the company, except as provided by law or this constitution, or as authorised by the directors or by a resolution of the shareholders.
- (b) The company may enter into contracts with its directors agreeing to provide continuing access for a specified period after they cease to be a director to board papers, books, records and documents of the company which relate to the period during which the director was a director on such terms and conditions as the directors think fit and which are not inconsistent with this rule 11.1.

# 12 Notices

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## 12.1 Notices by the company to shareholders

- (a) A notice may be given by the company to a shareholder by:
  - (1) serving it personally at, or by sending it by post in a prepaid envelope to, the shareholder's address as shown in the register of members or such other address as the shareholder has supplied to the company for the giving of notices;
  - (2) facsimile transmission to such facsimile number as the shareholder has supplied to the company for the giving of notices; or
  - (3) if a secretary reasonably believes that the means of service set out in rule 12.1(a)(1) or 12.1(a)(2) is not the best means of giving a notice to a shareholder, such other means as the secretary reasonably determines.



- (b) A notice may be given by the company to the joint holders of a share by giving the notice in the manner authorised by rule 12.1(a) to the joint holder first named in the register of members in respect of the share.

## **12.2 Notices by the company to directors**

Subject to this constitution, a notice may be given by the company to any director or alternate director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's or alternate director's usual residential or business address, or by sending it to the fax number or electronic address, or such other address as the director or alternate director has supplied to the company for the giving of notices.

## **12.3 Notices posted to addresses outside the Commonwealth**

A notice sent by post to an address outside the Commonwealth must be sent by airmail if airmail post is available to that address.

## **12.4 Time of service**

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
  - (1) in the case of a notice of a general meeting, on the day after the date of its posting; or
  - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by facsimile transmission, service of the notice is to be taken to be effected if the correct facsimile number appears on the facsimile transmission report generated by the sender's facsimile machine and to have been effected at the time the facsimile transmission is sent.

## **12.5 Other communications and documents**

Rules 12.1 to 12.4 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document.

## **12.6 Notices in writing**

A reference in this constitution to a notice in writing includes a notice given by facsimile transmission or electronic means.

## 13 General

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### 13.1 Submission to jurisdiction

Each shareholder submits to the non exclusive jurisdiction of the Supreme Court of the State or Territory in which the registered office of the company is located, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

### 13.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

## 14 Amendment of constitution

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### 14.1 Amendment

- (a) Subject to rule 14.1(b), the company may, at any time, alter this constitution in accordance with the Corporations Law by special resolution but only with the prior consent by resolution of the directors.
- (b) Any alteration to:
  - (1) rule 5.1(e) requires the written consent of the AWU; and
  - (2) rule 5.1(f) requires the written consent of the NFF.

## 15 Transitional provisions

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### 15.1 Transitional provisions

This constitution must be interpreted in such a way that:

- (a) every director, managing director and secretary in office in that capacity immediately before this constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this constitution;
- (b) any register maintained by the company immediately before this constitution is adopted is taken to be a register maintained under this constitution;
- (c) any seal adopted by the company immediately before this constitution is adopted is taken to be a seal which the company has under a relevant authority given by this constitution;
- (d) unless a contrary intention appears in this constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the company in force before this constitution is adopted, continue to have the same status, operation and effect after this constitution is adopted; and

- (e) except where expressly stated to the contrary, the adoption of this constitution does not alter the rights attaching to any class of shares which exist at the date this constitution is adopted.

Dated: 5 December 2018