

Constitution of AustralianSuper PtyLtd

12 August 2021

Dated 12 August 2021

Constitution of AustralianSuper Pty Ltd

Contents

Introduction	1
1. Replaceable rules excluded	1
2. Constitution Subject to Relevant Requirements	1
3. Exercise of Power	2
4. Definitions and interpretation	2
Proprietary company.....	6
5. Restrictions	6
Appointment of directors	6
6. Number of directors	6
7. Directors' qualifications	7
8. Appointment of directors	7
9. Insufficient directors	15
Alternate directors.....	15
10. Appointment	15
11. No alternate director in sole director company	18
12. Rights and powers of alternate director.....	18
13. Suspension or revocation of appointment	18
14. Form of appointment, suspension or revocation.....	19
15. Termination of appointment	19
16. Appointment as alternate for more than 1 director	19
Powers of directors	19
17. Validation of acts of directors and secretaries	19
18. General business management	20
19. Borrowing powers	20
20. Appointment of attorney.....	20
21. Negotiable instruments	21
22. Delegation of Board Powers	21
23. Composition of Committees	22
24. Conduct of Committee Business	24
Directors' interests and conflicting duties.....	25
25. Conflict of Interest Policy	25
26. Director to disclose interests	25
27. Effect of interest in contract or conflicting duty	25
28. Standing notice of interest.....	26

29.	Other interests	26
30.	Extension of meaning of “Company”	26
31.	Other directorships and shareholdings.....	26
	Remuneration of directors	27
32.	Payment of remuneration.....	27
33.	Payment of expenses	28
34.	Information about directors’ remuneration.....	28
35.	Cancellation, suspension, reduction or postponement	29
	Secretary	29
36.	Secretary	29
37.	Terms of office of secretary.....	29
	Indemnity and insurance.....	29
38.	Protection under Act and Relevant Requirements.....	29
39.	Indemnity	30
40.	Insurance.....	31
41.	Director voting on contract of indemnity or insurance.....	32
42.	Meaning of “officer”	32
	Inspection of records	32
43.	Rights of inspection.....	32
44.	Confidential information	32
	Directors’ meetings	33
45.	Circulating resolutions.....	33
46.	Meetings of directors.....	33
47.	Calling directors’ meetings	33
48.	Notice of meeting	33
49.	Waiver of notice	34
50.	Technology meeting of directors	34
51.	Chairing Board meetings	34
52.	Quorum.....	35
53.	Passing of directors’ resolutions.....	36
54.	Restriction on votes of alternate directors	37
	Meetings of shareholders	37
55.	Circulating resolutions – more than 1 member	37
56.	Calling of general meeting	37
57.	Amount of notice of meeting	38
58.	Persons entitled to notice of general meeting.....	38
59.	How notice is given	38

60.	When notice is given.....	39
61.	Contents of notice.....	40
62.	Constructive notice	40
63.	Notice of adjourned meeting	40
64.	Accidental omission to give notice	41
65.	Postponement of general meeting	41
66.	Technology	41
67.	Quorum.....	41
68.	Chair at general meetings	42
69.	Business at adjourned meetings	42
	Proxies and body corporate representatives	43
70.	Who can appoint a proxy	43
71.	Rights of proxies	43
72.	When proxy form must be sent to all members	43
73.	Appointing a proxy	44
74.	Form of proxy sent out by Company	45
75.	Receipt of proxy documents.....	46
76.	Validity of proxy vote.....	47
77.	Body corporate representative	47
78.	Attorney of Shareholder	48
	Voting at meetings of shareholders	48
79.	How many votes a member has.....	48
80.	Jointly held shares	48
81.	Objections to right to vote	49
82.	Votes need not all be cast in the same way	49
83.	How voting is carried out.....	49
84.	Matters on which a poll may be demanded	49
85.	When a poll is effectively demanded.....	49
86.	When and how polls must be taken	50
87.	Chair's casting vote.....	50
88.	Voting rights of persons entitled under transmission rule	50
89.	Resolutions proposed by shareholders	51
	Meetings of shareholders holding shares in a class	51
90.	Variation of class rights.....	51
	Minutes	52
91.	Minutes to be kept	52
92.	Requirements under Relevant Regulations.....	53

Shares	53
93. Control of issue of shares	53
94. Classes of shares	54
95. Conversion of shares, Reduction of share capital, capital redemption reserve and share premium account.....	54
96. Joint holders	55
Title to and transfer of shares	55
97. Entitlement to share certificates	55
98. Replacement of certificates	56
99. Recognition of ownership.....	56
100. Transfer of shares.....	56
101. Pre-emptive rights.....	57
102. Registration of transfers – directors’ discretion.....	57
103. Registration of transfers – procedure	57
104. Transmission of shares.....	58
Execution of documents	58
105. Common seal.....	58
106. Use of common seal	58
107. Execution of documents without common seal.....	59
108. Execution of document as a deed	59
109. Execution – general	59
Inadvertent omissions	60
110. Formalities omitted.....	60
Notices.....	60
111. Notices other than notices of meeting	60
Winding up.....	60
112. Shareholders’ rights on distribution of assets.....	60
Alteration to constitution	61
113. Shareholders’ right to alter constitution	61
Signing.....	61
114. Signing.....	61

Corporations Act 2001 (Cth)

Company limited by shares

Constitution

of

AustralianSuper Pty Ltd

Introduction

1. Replaceable rules excluded

- 1.1 The replaceable rules contained in the Act do not apply to the Company.
- 1.2 A provision that is expressly set out in this constitution is called a **Rule**.
- 1.3 If a Rule states that other provisions that are not contained in this constitution are included in it, those other provisions will be taken to form part of this constitution but only to the extent and for the purposes (if any) expressly stated in that Rule.

2. Constitution Subject to Relevant Requirements

- 2.1 If at any time the Relevant Requirements say that this constitution must have particular provisions in it for:
 - (1) the Fund to be a Complying Superannuation Fund; or
 - (2) the Company to:
 - (a) hold an RSE Licence or any other licence (including an AFS Licence) necessary to conduct its business;
 - (b) operate the Fund as a public offer fund;
 - (c) offer a MySuper product; or
 - (d) otherwise be compliant with the Relevant Requirements,and those provisions are not contained in the Rules, those provisions are taken to be included in and form part of this constitution from the time required under the Relevant Requirements.

In this constitution, such provisions are called **Deemed Rules**.

2.2 Despite anything else to the contrary:

- (1) a Deemed Rule is included in this constitution only to the extent that:
 - (a) it is not expressly contained in this constitution;
 - (b) it is necessary for the Company and the Fund to comply with the Relevant Requirements; and
 - (c) its inclusion will not cause the Company or this constitution to contravene the Act; and
- (2) if there is any inconsistency between a Rule and a Deemed Rule (other than the Rule that incorporates the Deemed Rule into this constitution), the Deemed Rule will prevail but only to the extent of the inconsistency.

3. Exercise of Power

3.1 The Company is to act as trustee of the Fund but nothing in this Rule shall be taken to restrict or limit in any way the powers of the Company (whether acting in a personal or trustee capacity), other than as provided in this constitution and the Trust Deed and to ensure compliance with the Relevant Requirements.

4. Definitions and interpretation

4.1 Definitions

In this constitution:

- (1) **“A” Class Directors** mean those directors appointed by the Class A Shareholder.
- (2) **Act** means the *Corporations Act 2001* (Cth) and includes any amendment or re-enactment of it or any legislation passed in substitution for it.
- (3) **ACTU** means the Australian Council of Trade Unions.
- (4) **AFS Licence** means an Australian Financial Services Licence.
- (5) **“B” Class Directors** mean those directors appointed by the Class B Shareholder.

- (6) **Board** means the directors of the Company (including any independent directors) for the time being acting as a board.
- (7) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office.
- (8) **Chair** means the chair of the Board appointed pursuant to Rule 51.2.
- (9) **Class A Shareholder** means the holder for the time being of an “A” class share.
- (10) **Class B Shareholder** means the holder for the time being of a “B” class share.
- (11) **Committee** means a committee set up pursuant to Rule 22.1.
- (12) **Company** means AustralianSuper Pty Ltd ACN 006 457 987.
- (13) **Company Policy** means a policy that is adopted by the Board in accordance with Rule 4.4.
- (14) **Company Secretary** means the company secretary of the Company for the time being and if there is more than one company secretary at any time, means each of those persons to the extent of their respective secretarial functions within the Company.
- (15) **Complying Superannuation Fund** in relation to a year of income means a fund which is a complying superannuation fund within the meaning of that term in the SIS Act.
- (16) **Deputy Chair** means the deputy chair of the Board appointed pursuant to Rule 51.2.
- (17) **director** means a director for the time being of the Company and includes an independent director (if any).
- (18) **Employer** has the meaning given to that term in the SIS Act.
- (19) **Employer Body** means from time to time:
- (a) the Australian Industry Group; or
 - (b) any other organisation representing the interests of an Employer or Employers that succeeds the Australian Industry Group as an organisation that represents the interests of Employers.

- (20) **Equal Representation** means an equal number of “A” Class Directors and “B” Class Directors as directors of the company or as members of a Committee.
- (21) **Fund** means the superannuation fund established under the Trust Deed and presently known as AustralianSuper.
- (22) **Fund Member** means a person who has been admitted to membership of the Fund and has not ceased to be a member of the Fund in accordance with the Trust Deed.
- (23) **Fund Member Body** means from time to time:
- (a) ACTU Super Shareholding Pty Ltd ACN 120 148 263; or
 - (b) any other person that ACTU Super Shareholding Pty Ltd nominates as the fund member body in place of or in addition to ACTU Super Shareholding Pty Ltd; or
 - (c) any other body that succeeds ACTU Super Shareholding Pty Ltd as an organisation that represents Fund Members.
- (24) **Relevant Requirements** means any one or more of the Relevant Requirements as defined in the Trust Deed.
- (25) **RSE Licence** has the same meaning as given in section 10 of the SIS Act.
- (26) **seal** means the common seal of the Company and includes any official seal of the Company.
- (27) **Shareholders** mean the shareholders of the Company who are entitled to vote on a resolution of the shareholders when they act:
- (a) in general meeting;
 - (b) by circulating resolution; or
 - (c) by any other means that this constitution or the Act recognizes as a valid act of the shareholders in general meeting.
- (28) **SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth) and includes any amendment or re-enactment of it or any legislation passed in substitution for it.
- (29) **Technology Meeting** has the meaning given to it in Rule 50.2.
- (30) **Trust Deed** means the declaration of trust by the Company including schedules dated 13 December, 1985 as amended from time to time pursuant to which the Fund was established.

4.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the other;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
 - (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) “Including” and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

4.3 Resolution

Where a Rule provides for the doing of something by the passage of a resolution, the required resolution is an ordinary resolution unless that Rule, the Act or the Relevant Requirements say otherwise.

4.4 Company Policies

- (1) The Board may from time to time formulate and adopt by resolution of the Board such policies that it considers necessary or appropriate to:
 - (a) regulate the internal affairs of the Company including by establishing procedures for specific actions or activities that may be undertaken by the Company, its officers, employees and agents or providing guidance that must be taken into account; or
 - (b) otherwise comply with any requirements under the Relevant Requirements for the Company to have policies governing any aspect of its affairs.

- (2) Despite anything to the contrary in this constitution, the Board may not establish or adopt any policy that regulates or governs the:
- (a) appointment, removal or resignation of directors; or
 - (b) the conditions, requirements or qualifications for a person to qualify as an independent director,
- unless that policy is approved by special resolution of the Shareholders.

Proprietary company

5. Restrictions

[compare section 113]

- 5.1 The Company must not have more than 50 non-employee shareholders. For this purpose:
- (1) joint holders of a particular parcel of shares are counted as 1 person; and
 - (2) an employee shareholder is:
 - (a) a shareholder who is an employee of the Company or of a subsidiary of the Company; or
 - (b) a shareholder who was an employee of the Company, or of a subsidiary of the Company, when they became a shareholder.
- 5.2 The Company must not engage in any activity that would require the lodgement of a disclosure document under Chapter 6D of the Act.
- 5.3 Rule 5.2 does not apply to an offer of shares to:
- (1) existing shareholders of the Company; or
 - (2) employees of the Company or a subsidiary of the Company.

Appointment of directors

6. Number of directors

[compare section 201A]

- 6.1 Unless and until the Shareholders decide otherwise, the minimum number of directors that the Company must have is 2.

6.2 The minimum number of directors may be increased or decreased at any time by a resolution of the Shareholders (of their own volition or upon recommendation by the Board to the Shareholders) but any such resolution will not be effective if:

- (1) it would cause the Company to contravene the Act; or
- (2) while the Company is the trustee of a Complying Superannuation Fund, it would cause the Company or the superannuation fund to be in breach of the Relevant Requirements or the Company's RSE Licence.

7. Directors' qualifications

7.1 A person does not have to hold any shares in the Company in order to be a director but the Shareholders may at any time determine by a resolution to apply a share qualification for new appointments or the reappointment of directors on or after the date on which that resolution takes effect.

7.2 Despite anything else to the contrary in this constitution, no person may hold office as a director of the Company unless he or she satisfies:

- (1) the requirements and standards (if any) for that office that are prescribed under any Company Policy from time to time; and
- (2) for as long as the Company is the trustee of a Complying Superannuation Fund:
 - (a) the fitness and propriety standards under the SIS Act as they apply to the directors of a Complying Superannuation Fund; and
 - (b) any other qualifications prescribed under the Relevant Requirements that must be met for office as a director.

8. Appointment of directors

[compare section 120, and replaceable rules 201G and 201H]

8.1 Equal Representation

- (1) The Company must have an equal number of "A" Class Directors and "B" Class Directors.
- (2) The total number of "A" Class Directors and "B" Class Directors will be the number that the Shareholders determine from time to time provided that the resulting number is consistent with Equal Representation and the Relevant Requirements.

- (3) Equal Representation must be maintained at all times. If a vacancy in the office of a director occurs and:
- (a) immediately before the vacancy occurred there was Equal Representation;
 - (b) the vacancy is filled within 90 days after it occurred; and
 - (c) immediately after the vacancy is filled, there is Equal Representation,

then the Company is taken to have maintained Equal Representation at all times during the period of the vacancy.

8.2 “A” Class Directors and “B” Class Directors

- (1) Despite anything to the contrary in this constitution:
- (a) no person may be appointed as an “A” Class Director or “B” Class Director (including to fill any casual vacancy) except as provided for in this Rule 8;
 - (b) unless the Shareholders have determined a different number of “A” Class Directors and “B” Class Directors (in which case that number shall apply):
 - (i) the Class A Shareholder is entitled to appoint:
 - (A) one person as an “A” Class Director for each “A” class share that the Class A Shareholder holds; and
 - (B) a replacement for any “A” Class Director that it has appointed in the event of a vacancy that occurs for any reason; and
 - (ii) the Class B Shareholder is entitled to appoint:
 - (A) one person as a “B” Class Director for each “B” class share that the Class B Shareholder holds; and
 - (B) a replacement for any “B” Class Director that it has appointed in the event of a vacancy that occurs for any reason; and
 - (c) the appointment of each “A” Class Director and “B” Class Director (including to fill a vacancy) will take effect from a date determined by the Board in accordance with Rule 8.3.

- (2) The appointment of a director by a Class A Shareholder or a Class B Shareholder (as the case may be) must:
 - (a) be made in writing to the Company Secretary no later than 30 days after the Company has notified that shareholder of a vacancy in the office of any director that it appointed; and
 - (b) include all the information and documentation (if any) that the Relevant Requirements and any Company Policy requires the Company to collect in respect of the appointment of a director.
- (3) Except as stated otherwise in either this constitution, the Relevant Requirements or a Company Policy:
 - (a) only the shareholder who appointed a particular “A” Class Director or a “B” Class Director can remove that director and appoint a replacement for that director;
 - (b) if such a shareholder wishes to remove an “A” Class Director or a “B” Class Director (as the case may be), it must give a written direction to that effect to the Company Secretary but is not required to give any reasons for that direction; and
 - (c) the removal of an “A” Class Director or a “B” Class Director:
 - (i) will take effect on the earlier of:
 - (A) the date specified in the shareholder’s direction; and
 - (B) a date determined by the Board in accordance with Rule 8.3; and
 - (ii) will create a vacancy in that office from the date the removal takes effect.

8.3 Ratification

- (1) The appointment and removal of “A” Class Directors and “B” Class Directors must be ratified by the Board and will take effect from a date determined by the Board.
- (2) Except as provided in Rule 8.3(3), the Board must ratify:
 - (a) the appointment of each “A” Class Director and “B” Class Director (as the case may be); and

- (b) removal of any “A” Class Director or “B” Class Director when the Company is requested in writing to do so by the shareholder who appointed that director,

at the earliest meeting of the Board at which it is able to table, consider and determine those matters,

- (3) The Board must not ratify the appointment of an “A” Class Director or “B” Class Director (as the case may be) of the Company unless:
 - (a) all formalities under the Act, the Relevant Requirements and any applicable Company Policy have either been satisfied or the Board has a reasonable expectation that it will be satisfied in due course in respect of the appointee;
 - (b) the Company has undertaken and completed all necessary enquiries, searches and due diligence investigations regarding the appointee’s suitability to act as a director of the Company or the Board has a reasonable expectation that those enquiries, searches and investigations when completed in due course will not indicate any unsuitability; and
 - (c) the Board is satisfied or the Board has a reasonable expectation that it will be satisfied in due course that the appointee is not or will not be disqualified from acting as a director pursuant to the requirements of the Act, the Relevant Requirements and any applicable Company Policy (as the case may be).
- (4) If the Board determines that it is not permitted by this constitution to ratify the appointment of an “A” Class Director or a “B” Class Director (as the case may be), the Company Secretary must:
 - (a) give the shareholder who appointed that director written notice of the Board’s decision including the reasons for that decision; and
 - (b) invite the shareholder to appoint another person to fill that vacancy.

In such a case, the shareholder may, without being obliged to do so, provide additional information about its original appointee to the Company Secretary in which case, the Board must reconsider its decision based on the new information as soon as practicable. The shareholder retains its right to appoint another person to fill the vacancy if the Board reaffirms its original decision. In deciding whether to either ask the Board to reconsider its decision or appoint another director to fill the vacancy, the shareholder must act promptly so that the Company can ensure that Equal Representation is maintained at all times.

8.4 Independent Directors

- (1) The Class A Shareholder and Class B Shareholder may, when acting collectively and by unanimous determination, appoint one or more persons to hold office as an independent director on such terms and conditions as those shareholders decide.
- (2) The total number of independent directors must not be more than one third of the total number of directors of the Company unless one or more of the Act, the Relevant Requirements or a Company Policy state that the Company must have a greater number of independent directors.
- (3) For the purposes of this Rule, a person will be eligible for:
 - (a) appointment; and
 - (b) to remain in office,as an independent director if and for so long as that person will be taken to be an independent director under either:
 - (c) an applicable Company Policy that applies additional qualifications or requirements to those provided in the SIS Act for a director to be considered an independent director; or
 - (d) the SIS Act, if there is no applicable Company Policy or a Company Policy applies a lesser standard of independence than the definition of an independent director under the SIS Act.
- (4) Unless the Relevant Requirements or a Company Policy provide otherwise, an independent director may only be removed with the unanimous approval of the “A” Class Directors and “B” Class Directors.
- (5) The appointment of an independent director must be ratified by the Board and will take effect on and from a date determined by the Board. For the purposes of this Rule, any such ratification by the Board must be in accordance with Rule 8.3 as if a reference in that Rule to:
 - (a) an “A” Class Director” or a “B” Class Director is to an independent director; and
 - (b) a shareholder is to both the Class A Shareholder and the Class B Shareholder.

8.5 Term of Office

- (1) A director may only be appointed for a term not exceeding 3 years.
- (2) At the end of a director's term of appointment, the shareholder who appointed that director (and in the case of an independent director, the Class A Shareholder and the Class B Shareholder acting collectively and unanimously) may reappoint that director or choose to appoint someone else in his or her place for a further term that does not exceed 3 years if:
 - (a) the reappointment is permitted under the Relevant Requirements and any applicable Company Policy; and
 - (b) in the case of an independent director, that director continues to satisfy the requirements under Rule 8.4(3).
- (3) Despite anything to the contrary in this constitution:
 - (a) the reappointment of a director is subject to the terms of this Rule 8 that govern appointments of directors generally; and
 - (b) the Company Secretary must give the shareholder or shareholders (as the case may be) who are entitled to reappoint a director written notice of the date on which the director's term will expire at least 6 months before the expiry date;
 - (c) the relevant shareholder or shareholders (as the case may be) must consider whether the reappointment of that director is appropriate having regard to the requirements for office under this constitution, the Relevant Requirements and any applicable Company Policy and notify the director and the Company Secretary in writing at least 3 months before the expiry date whether the shareholder will reappoint that director; and
 - (d) any reappointment of a director must be ratified by the Board in accordance with Rule 8.3.

8.6 Non-Compliant Directors

- (1) In this Rule 8.6:

Non-Compliant in relation to a director means that he or she does not satisfy the requirements under this constitution, the Relevant Requirements or an applicable Company Policy for ratification or appointment as a director; and

Non-Compliant Director means a director who is the subject of a Board resolution that the director is Non-Compliant.

- (2) If all the “A” Class Directors and “B” Class Directors (other than a director who is the subject of a resolution that he or she is Non-Compliant) resolve at any time that a director is Non-Compliant, the Board must:
- (a) where the Non-Compliant Director is an independent director:
 - (i) take such action as is prescribed under a Company Policy; or
 - (ii) if no action is prescribed under a Company Policy:
 - (A) remove that director from office as soon as practicable;
 - (B) give written notice of the Board’s decision to both the Class A Shareholder and Class B Shareholder; and
 - (C) invite those shareholders (acting collectively) to either provide information as to why the Non-Compliant Director should be reappointed or appoint another person in accordance with Rule 8.4 to fill the vacancy created by the removal of the Non-Compliant Director; and
 - (b) where the Non-Compliant Director is an “A” Class Director or a “B” Class Director:
 - (i) take such action as is prescribed under a Company Policy; or
 - (ii) if no action is prescribed under a Company Policy:
 - (A) remove that director from office as soon as practicable;
 - (B) give written notice of the Board’s decision to the shareholder who appointed that director; and
 - (C) invite that shareholder to either provide information as to why the Non-Compliant Director should be reappointed or appoint another person in accordance with Rule 8.2

to fill the vacancy created by the removal of the Non-Compliant Director.

8.7 Resignation of director

[replaceable rule 203A]

Unless the Relevant Requirements or a Company Policy provides otherwise:

- (1) a director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office; and
- (2) the resignation of a director shall take effect from the date (if any) stated in the notice of resignation and if no effective date is stated, from a date determined by the Board.

8.8 Vacation of office of director

[compare section 203B and Part 2D.6, being sections 206A to 206H]

In addition to any other circumstances in which the office of a director becomes vacant under the Act, the office of a director becomes vacant if the director:

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (3) is not present (either personally or by an alternate director) at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
- (4) being an executive director ceases to be employed full-time by the Company or a subsidiary or related body corporate;
- (5) becomes disqualified from being a director under the Act or the Relevant Requirements or any order made under the Act or any of the Relevant Requirements;
- (6) is removed from office in accordance with this Rule 8; or
- (7) resigns from office in accordance with this Rule 8.

9. Insufficient directors

[compare replaceable rule 201H]

Unless the Relevant Requirements or a Company Policy provides otherwise, any vacancy in the office of a director that needs to be filled to maintain Equal Representation as required by Rule 8 shall be filled by the shareholder who is entitled, under Rule 8, to appoint a director to fill that vacancy as soon as practicable, but in any case no more than 90 days after that vacancy occurred. If a shareholder fails to act as required by this Rule 9, the remaining directors may act notwithstanding the absence of a quorum.

Alternate directors

[compare replaceable rule 201K]

10. Appointment

10.1 Subject to Rule 10.3:

- (1) and subject to Rule 10.2(1), each director appointed by the Class A Shareholder or the Class B Shareholder is deemed to be appointed by the Class A Shareholder or the Class B Shareholder respectively to act as an alternate director in a meeting of the Board or a Committee in the place of any other director appointed by that shareholder. The appointment as alternate director takes effect from their appointment as a director and the person will remain an alternate director until he or she resigns, is removed or otherwise becomes ineligible to act as a director;
- (2) and without limiting Rule 10.1(1), the Class A Shareholder and Class B Shareholder may each from time to time appoint one or more persons who are not directors appointed by that shareholder to act as an alternate director in a meeting of the Board or a Committee in the place of a director appointed by that shareholder provided that he or she may only be appointed as an alternate director for a specified director; and
- (3) the Class A Shareholder and Class B Shareholder, acting collectively and unanimously, may appoint one or more persons to act as an alternate director for the independent directors if and for so long as the person appointed as an alternate director would be eligible for appointment as an independent director under Rule 8.4.

10.2 Unless the Relevant Requirements or a Company Policy provide otherwise, an alternate director may only be removed:

- (1) in the case of an alternate director appointed by the Class A Shareholder or the Class B Shareholder (or deemed to be appointed under Rule 10.1(1)), with the approval of the

shareholder who appointed or is deemed to have appointed that alternate director; and

- (2) in the case of an alternate director appointed for an independent director, with the unanimous approval of the Class A Shareholder and Class B Shareholder.

10.3 Other than any deemed appointment under Rule 10.1(1), the appointment of any alternate director must be ratified by the Board if that person would be eligible for appointment as a director under this constitution and will take effect from a date determined by the Board. The Board must ratify the removal of an alternate director in accordance with the applicable shareholder determination under Rule 10.2.

10.4 If the Board determines that a person is ineligible for appointment as an alternate director, the Company Secretary must:

- (1) give the shareholder or the shareholders (as the case may be) who appointed that person as an alternate director, written notice of and the reasons given for the Board's determination; and
- (2) invite the shareholder or shareholders (as the case may be) to appoint another person as an alternate director.

In such a case, the shareholder or shareholders (as the case may be) may, without being obliged to do so, provide additional information about the original appointee to the Company Secretary in which case, the Board must reconsider its decision based on the new information as soon as practicable. The shareholder or shareholders (as the case may be) retain the right to appoint another person as an alternate director if the Board reaffirms its original decision.

10.5 Other than an alternate director appointed under Rule 10.1(1), an alternate director will be appointed for the period or purpose or other contingency specified by the shareholder who is entitled to appoint the alternate director and if no period, purpose or other contingency is specified, will remain an alternate director until he or she resigns, is removed or otherwise becomes ineligible to act as an alternate director.

10.6 Where an alternate director is appointed in respect of the "A" Class Directors, "B" Class Directors or independent directors (as the case may be):

- (1) a director who is unable to attend all or part of any Board or Committee meeting (the **absentee director**) must:
 - (a) choose any one of:
 - (i) one alternate director out of the alternate directors appointed for the class of director to which the absentee director belongs under Rule 10.1(1) (and

for this purpose, the independent directors (if any) will count as a class); or

- (ii) an alternate director (if any) who has been appointed specifically as an alternate director for that director under Rule 10.1(2),

to attend all or part of the meeting or meetings in his or her place; and

- (b) notify the Chair or Deputy Chair for the Board or the relevant Committee (as the case may be) of which alternate director will act at all or part of a particular meeting or meetings and the minutes of meeting for the relevant meeting must record the entitlement of the alternate director to act,

but nothing in this Rule permits an alternate director who is appointed to act in place of a specific director to act for anyone other than that particular director; and

- (2) only the nominated alternate director may:

- (a) act in the place of the absentee director; and
- (b) count for the purposes of a quorum,

at all or part of the meeting or meetings that the absentee director cannot attend,

but if no notice is given in accordance with Rule 10.6(1) or more than one alternate director is named in that notice, or the part of the meeting (including, the relevant resolutions upon which they are entitled to vote) for which the alternate is to act is not clear, the alternate director for the absentee director shall not be recognized at the relevant meeting or meetings or part of the meeting.

- 10.7 Despite anything to the contrary in this constitution, if an absentee director is present at:

- (1) a meeting in respect of which he or she nominated an alternate director to attend for all of the meeting, the absentee director shall act and count for the purposes of a quorum and the alternate director will not have any standing at that meeting for any part of the meeting in which the absentee director is present; and
- (2) part of a meeting in respect of which he or she nominated an alternate director to attend for that part of the meeting, the absentee director shall act at that part of the meeting and count for the purposes of a quorum at that part of the meeting and the

alternate director will not have any standing at that part of the meeting

10.8 Nothing in this constitution prevents an alternate director from being present at a Board or Committee meeting for the purposes only of being informed of the matters and deliberations that are before the Board or Committee if the Board or Committee (as the case may be) consents to the alternate director's presence.

10.9 An alternate director is not required to have any share qualification.

10.10 An alternate director is not taken into account for the purpose of Rule 6.

11. No alternate director in sole director company

11.1 While the Company has only 1 director the provisions of this constitution for the appointment of alternate directors do not apply.

12. Rights and powers of alternate director

12.1 An alternate director is entitled to all notices of meetings that the director in relation to whom the alternate director has been appointed is entitled to receive.

12.2 When an alternate director who is entitled under Rule 10 to act for an absentee director, exercises that director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.

12.3 An alternate director may exercise all the powers and, subject to the Act, perform all the duties of the director in whose place the alternate director has been appointed to act insofar as the latter has not exercised or performed them.

12.4 An alternate director whilst acting as a director is responsible to the Company for his or her own acts and defaults and the director in whose place the alternate director has been appointed to act is not responsible for them.

13. Suspension or revocation of appointment

13.1 A Class A Shareholder or Class B Shareholder may suspend or revoke the appointment of an alternate director appointed by that shareholder by giving written notice to that effect to the Company Secretary.

14. Form of appointment, suspension or revocation

- 14.1 Subject to the Relevant Requirements and any applicable Company Policy, the appointment, suspension or revocation under Rule 10 or Rule 13 takes effect from a date determined by the Board at the time of the ratification under Rule 10.3 following delivery of the instrument of appointment, suspension or revocation at the registered office of the Company. The instrument may be delivered by facsimile, but in that case it is not treated as delivered unless the facsimile is received at the registered office in a reasonably legible form.

15. Termination of appointment

- 15.1 The appointment of an alternate director automatically terminates:

- (1) if the alternate director resigns from that position by written notice left at the registered office of the Company;
- (2) if the alternate director has been appointed to act in place of a specified director and that director ceases to hold office as director; or
- (3) on any event which causes a director to vacate the office of director.

- 15.2 Despite anything to the contrary in this constitution, if an alternate director who has been appointed to a Committee in his or her own right ceases to be an alternate director, that alternate director may remain as a Committee member if requested to do so by the Board.

16. Appointment as alternate for more than 1 director

Unless the Relevant Requirements or a Company Policy or this constitution provide otherwise, an alternate director will be appointed to act in place of any of the directors in the class or category of directors for whom the alternate director is appointed to act (and for these purposes, the independent directors (if any) will count as a class).

Powers of directors

17. Validation of acts of directors and secretaries

[compare sections 201M and 204E]

- 17.1 An act done by a director or the Company Secretary is effective even if his or her appointment, or the continuance of his or her appointment, is invalid because the Company, the director or the Company Secretary did not comply with this constitution or any provision of the Act.

17.2 Rule 17.1 does not deal with the question of whether an effective act by a director or the Company Secretary:

- (1) binds the Company in its dealings with other people; or
- (2) makes the Company liable to another person.

18. General business management

[compare replaceable rule 198A]

18.1 The business of the Company is to be managed by or under the direction of the Board.

18.2 The Board may exercise all the powers of the Company except any powers that the Act or this constitution requires the Shareholders to exercise in general meeting.

18.3 A Rule made or resolution passed by the Shareholders in general meeting does not invalidate any prior act of the Board which would have been valid if that Rule or resolution had not been made or passed.

18.4 Any sale or transfer of the Company's main undertaking may only be made subject to unanimous approval or ratification by the Shareholders in a general meeting and in accordance with the Relevant Requirements and in a manner that enables the Fund to continue to operate as a public offer fund and to qualify as a Complying Superannuation Fund.

19. Borrowing powers

19.1 Without limiting the generality of Rule 18, but subject to Rule 5, the Board may exercise all the powers of the Company to borrow 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, but only if to do so shall not breach the Relevant Requirements or any applicable Company Policy.

20. Appointment of attorney

20.1 The Board may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Board), for the period and subject to the conditions they see fit.

20.2 Unless the Relevant Requirements or a Company Policy provide otherwise, a power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney that the Board sees

fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

21. Negotiable instruments

[compare replaceable rule 198B]

21.1 Any 2 directors, if the Company has 2 or more directors, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

21.2 The Board may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

22. Delegation of Board Powers

[compare replaceable rule 198D]

22.1 Power to Delegate

The Board may delegate any of its powers to:

- (a) a Committee;
- (b) a director;
- (c) an employee of the Company; or
- (d) any other person,

to the extent that it is permitted to do so under the Relevant Requirements and any applicable Company Policy.

22.2 Terms of Delegation

- (1) A delegation of the Board's powers may be made:
 - (a) on such terms and subject to any restrictions that the Board decides;
 - (b) for a specified period or an indefinite period; and
 - (c) for a particular purpose.
- (2) A delegation of any of the Board's powers does not include the power to delegate further unless expressly provided under the terms of the delegation.

22.3 Subject to Direction

- (1) A delegate must exercise the powers delegated to it in accordance with any directions of the Board.

- (2) The exercise of the power by the delegate is as effective as if the Board had exercised it.

22.4 Revocation of Delegation

- (1) Unless the Relevant Requirements or an applicable Company Policy provide otherwise, the Board may revoke any delegation that it has made whether or not the delegation was made for a specified period.
- (2) Without limiting the generality of Rule 22.4(1), if the Relevant Requirements require the Company to have a Committee of a particular kind, a delegation of the Board's powers that is necessary to give effect to that requirement may not be revoked unless the Relevant Requirements permit that revocation.

23. Composition of Committees

- (1) The Board must establish in accordance with this Rule 23 such Committee or Committees as:
 - (a) it considers appropriate;
 - (b) are prescribed under the Relevant Requirements or a Company Policy; or
 - (c) the Shareholders determine by special resolution that the Company should have.
- (2) Unless the Relevant Requirements, a Company Policy or any applicable laws provide otherwise:
 - (a) each Committee may only consist of any combination of the following persons:
 - (i) an equal number of "A" Class Directors and "B" Class Directors;
 - (ii) subject to Rule 23(2)(d), any alternate director (who will be appointed in his or her own right and not in his or her capacity as an alternate director);
 - (iii) any independent directors;
 - (iv) any employee; or
 - (v) any other person,as would be consistent with Equal Representation on the Committee;

- (b) for the purposes of determining Equal Representation on a Committee, an alternate director shall be counted as if he or she is a director of the same kind (that is, an “A” Class Director”, a “B” Class Director or an independent director) as the director for whom he or she is eligible to act as an alternate director even though an alternate director:
 - (i) who is appointed to a Committee does not act on the Committee as an alternate director for any other director; or
 - (ii) has, subsequent to his or her appointment to a Committee member, ceased to be an alternate director;
 - (c) an alternate director who is appointed to a Committee and subsequently ceases to be an alternate director of the Company, may only continue as a member of that Committee if the Board requests him or her to do so;
 - (d) from 30 April 2021, an alternate director must not be appointed to a Committee and any alternate director previously appointed to a Committee must not be reappointed; and
 - (e) nothing in Rule 23(2)(d) prohibits an alternate director from attending a Committee meeting in place of an absentee director pursuant to Rule 10.6.
- (3) Despite anything to the contrary in this constitution:
- (a) the members of each Committee will be appointed by the Board provided that:
 - (i) the “A” Class Directors, “B” Class Directors and any alternate director appointed shall be nominated by the Class A Shareholder and Class B Shareholder respectively;
 - (ii) any appointee who is an independent director or other person (not being an employee of the Company) must be nominated or, if proposed by the Board, approved, by the unanimous determination of the Class A Shareholder and the Class B Shareholder;
 - (iii) any employee appointed to a Committee shall be appointed at the Board’s discretion; and

- (iv) no person may be appointed if that appointment would mean that the Committee does not have Equal Representation; and
- (b) in deciding whether to appoint a particular nominee of the Class A Shareholder and Class B Shareholder (whether acting individually or unanimously), the Board must:
 - (i) consider whether those nominees have the requisite skills and experience required by the Committee; and
 - (ii) if the Board decides that a particular nominee does not have the necessary skills or experience or that other skills and experience are required, ask the Class A Shareholder and/or the Class B Shareholder (as the case may be) to nominate other directors who have the desired skills and experience.

24. Conduct of Committee Business

- 24.1 The Board must appoint a chair for each Committee provided that where the Board has not done so before the first meeting of a Committee, the members of that Committee may elect one of their number as chair of their meetings until the Board appoints a chair.
- 24.2 Where a Committee meeting is held and the appointed chair is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act, the members of the Committee who are present and constitute a quorum, may elect one of themselves to be chair of that particular meeting.
- 24.3 A Committee may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.
- 24.4 Questions arising at a meeting of a Committee shall be determined by a resolution of the Committee members present and no such resolution shall be effective unless carried by at least two thirds of the total number of committee members who are entitled to vote.
- 24.5 The chair of a Committee shall not have a casting vote.
- 24.6 Subject to this Rule, the meetings and proceedings of any Committee consisting of 2 or more members are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.
- 24.7 The directors may determine the remuneration (if any) to be paid to a member of a Committee other than a Committee member who is an employee of the Company.

Directors' interests and conflicting duties

25. Conflict of Interest Policy

- 25.1 Rules 26, 27, 28, 29, 30 and 31 are subject to the Company's conflicts of interest policy as it applies from time to time.

26. Director to disclose interests

[compare section 191]

- 26.1 A director 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.
- 26.2 The requirements of Rule 26.1 are subject to the limitations and qualifications set out in section 191 of the Act.

27. Effect of interest in contract or conflicting duty

[compare replaceable rule 194]

- 27.1 If a director has a material personal interest in, or a conflicting duty regarding, a matter that relates to the affairs of the Company then, subject to Rule 27.2:
- (1) the director may not vote on matters that relate to the interest or duty;
 - (2) any transactions that relate to the interest or duty may proceed;
 - (3) the director may retain benefits under the transaction even though the director has the interest or duty; and
 - (4) the Company cannot avoid the transaction merely because of the existence of the interest or duty.

If disclosure is required under Rule 26, Rules 27.1(3) and 27.1(4) apply only if the disclosure is made before the transaction is entered into.

- 27.2 Despite the fact that a director has a material personal interest in, or a conflicting duty regarding, a matter that relates to the affairs of the Company, the director may vote on matters that relate to the interest if:
- (1) the directors who do not have a material personal interest in, or conflicting duty regarding, the matter resolve that the director may vote on those matters; or
 - (2) in the case of a material personal interest, it does not need to be disclosed under section 191 of the Act.

28. Standing notice of interest

[compare section 192]

- 28.1 A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- 28.2 A notice under Rule 28.1 may be given:
- (1) at a directors' meeting (either orally or in writing); or
 - (2) to the other directors individually in writing.
- 28.3 If the standing notice is given to the other directors individually in writing:
- (1) the notice is effective when it has been given to every director; and
 - (2) the notice must be tabled at the next directors' meeting after it is given.
- 28.4 The director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

29. Other interests

- 29.1 Without limiting Rules 26 or 27, a director may to the extent permitted by the Act:
- (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director; and
 - (2) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

30. Extension of meaning of "Company"

- 30.1 For the purposes of Rules 26, 27 and 28, **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

31. Other directorships and shareholdings

- 31.1 A director of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the

Company may be interested as a vendor, shareholder or otherwise and is accountable for any benefits, or part of, received as a director, officer, employee or member of the other company unless otherwise resolved by the Company.

31.2 Subject to the Act:

- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (2) any director of the Company may vote at a meeting of directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that director as a director or other officer of the other company;
- (3) any director of the Company may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that director as a director or other officer of the other company; and
- (4) a director of the Company who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the director to any other office in the other company and a resolution appointing any other directors of the Company as directors or other officers of the other company.

Remuneration of directors

[compare replaceable rule 202A]

32. Payment of remuneration

[compare replaceable rule 202A(1)]

- 32.1 The directors are to be paid the remuneration that the Committee responsible for making recommendations about remuneration to the Board (which may be called the “remuneration committee”) recommends or determines and the Board approves or ratifies by resolution.
- 32.2 Where a director being willing is called upon to perform extra services or to make any special exertions in going or residing abroad or otherwise for the Company, the Board may resolve to remunerate him or her by payment of a fixed sum determined by the Board and that remuneration may be either in addition to or in substitution for his or her remuneration as provided for in Rule 32.1.

- 32.3 The Board must determine the remuneration to be paid to an executive director.
- 32.4 Subject to Rule 24.7, an alternate director, when acting as an alternate director, is not entitled to receive any remuneration from the Company as a director except for:
- (1) special services which in the opinion of the Board are outside the scope of the ordinary duties of a director; and
 - (2) attending a meeting of the Board or a Committee if the director in whose place the alternate director has been appointed to act is not present at that meeting of the Board or the Committee and that alternate director is entitled to vote in his or her stead under Rule 10,

and such remuneration is to be determined by the Board.

33. Payment of expenses

[compare replaceable rule 202A(2)]

- 33.1 The Company may also pay the directors', alternate directors' and independent directors' travelling and other expenses that they properly incur:
- (1) in attending Board meetings or any Committee meeting;
 - (2) in attending any general meetings of the Company; and
 - (3) in connection with the Company's business.

34. Information about directors' remuneration

[compare section 202B]

- 34.1 The Board must make such disclosures about the remuneration payable to directors (whether paid to the directors in their respective capacities as directors or any other capacity) as are required to be made under the Relevant Requirements and must do so in the manner and form (if any) prescribed by the Relevant Requirements.
- 34.2 Without limiting Rule 34.1, the Board must, when requested by either the Class A Shareholder or the Class B Shareholder provide both classes of shareholders with such information as would allow those shareholders to understand the amount of remuneration paid or payable to the directors in a given financial year and how that level of remuneration was determined.
- 34.3 Unless the Relevant Requirements say otherwise, the remuneration payable to the directors will be determined by the Board in accordance with this constitution.

35. Cancellation, suspension, reduction or postponement

- 35.1 The Board may by resolution cancel, suspend, reduce or postpone payment of any remuneration of any director. Such resolution must not apply retrospectively.

Secretary

[compare Part 2D.4 being sections 204A to 204G]

36. Secretary

[compare section 204A]

- 36.1 The Board:

- (1) must appoint at least one company secretary (and, for the avoidance of doubt, may appoint more than one such secretary) and may remove him or her; and
- (2) may appoint a person to perform all or any of the duties of a company secretary (whether as acting company secretary or otherwise) and may remove him or her.

- 36.2 If at any time the Company has more than one Company Secretary:

- (1) unless a Company Policy provides otherwise or the Board determines otherwise, the respective roles and functions of each of those Company Secretaries may be determined by those Company Secretaries; and
- (2) where this constitution makes reference to the doing of anything by or the giving of notice to the Company Secretary, that act will be validly done or the notice validly given if the act is done by or the notice is given to any one or other of the Company Secretaries regardless their respective roles and functions.

37. Terms of office of secretary

[compare section 204D]

- 37.1 A Company Secretary holds office on the terms and conditions (including as to remuneration) that the Board determines.

Indemnity and insurance

38. Protection under Act and Relevant Requirements

- 38.1 Nothing contained in this constitution shall be construed to lessen or abrogate any indemnity or protection given or permitted to be given to

directors or officers of the Company by the Act or under the Relevant Requirements.

39. Indemnity

[compare section 199A]

39.1 The Company may indemnify to the full extent permitted by the Act:

- (1) every person who is or has been an officer of the Company; and
- (2) where the Board considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company,

against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be).

39.2 An officer who is indemnified by the Company must comply with any Company Policy that from time to time regulates:

- (1) the provision by the Company of any indemnity for the benefit of an officer; or
- (2) the terms on which the Company may obtain insurance cover or pay insurance premiums for insurance cover in respect of an officer of the Company.

Unless a Company Policy provides otherwise, an officer must:

- (3) give prompt written notice to the Company on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under Rule 39.1;
- (4) take such action as the Company or an insurer who has provided insurance cover either for the officer's benefit or the Company's benefit (**Insurer**) reasonably requests including action to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (5) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company or the Insurer (as the case may be);
- (6) allow the Company or the Insurer to assume the conduct, negotiation or defence of any Claim and, on request by the Company or the Insurer, render all reasonable assistance and co-operation to the Company or the Insurer in the conduct of any Claim, including giving the Company or the Insurers any document, authority or direction that the Company or its insurers

may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;

- (7) on request by the Company or the Insurer, do everything necessary or desirable which the Company or the Insurer reasonably requests to enable the Company or the Insurer (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or the Insurer for that purpose; and
- (8) notify any Claim to the Insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

39.3 In Rule 39.2 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat or fact, matter or thing that might result in commencement of any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in Rule 39.3(1) or Rule 39.3(2).

40. Insurance

[compare section 199B]

40.1 Subject to the Relevant Requirements, the Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of sections 182 or 183 of the Act.

41. Director voting on contract of indemnity or insurance

[compare section 191]

- 41.1 Despite anything in this constitution, a director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance merely because the contract indemnifies or insures or would indemnify or insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

42. Meaning of “officer”

- 42.1 For the purposes of Rules 38, 39, 40 and 41, **officer** means a director or secretary.

Inspection of records

43. Rights of inspection

[compare replaceable rule 247D and sections 173, 198F, 247A and 251B]

- 43.1 The Board, or the Shareholders by a resolution passed by the Shareholders, may authorise a shareholder to inspect books of the Company.
- 43.2 A shareholder other than in his or her capacity as a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its shareholders and for resolutions of members passed without meetings, except as provided by law or the Relevant Requirements or authorised by the Board or by the Shareholders in general meeting.
- 43.3 Directors have the rights of inspection and access provided by section 198F of the Act.

44. Confidential information

- 44.1 Except as provided by the Act, no shareholder (not being a director acting in his or her capacity as a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

Directors' meetings

[compare sections 248A to 248G]

45. Circulating resolutions

[compare replaceable rule 248A]

- 45.1 The directors may pass a resolution without a Board meeting being held if all the directors entitled to vote on the resolution (except a director absent from Australia who has not left a facsimile number or an email address at which he or she may be given notice) sign a document containing a statement that they are in favour of the resolution set out in the document.
- 45.2 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.
- 45.3 The resolution is passed when the last director signs.
- 45.4 A facsimile or email addressed to or received by the Company Secretary and purporting to be signed or sent by a director for the purpose of this Rule 45 must be treated as a document in writing signed by that director.

46. Meetings of directors

- 46.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

47. Calling directors' meetings

[compare replaceable rule 248C]

- 47.1 The Chair or a Company Secretary may at any time, and a Company Secretary must on the requisition of three directors, call a meeting of the Board.

48. Notice of meeting

[compare replaceable rule 248C]

- 48.1 Reasonable notice of every Board meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of the Board to any director who:
- (1) has been given special leave of absence; or
 - (2) is absent from Australia and has not left a facsimile number or email address at which he or she may be given notice.
- 48.2 A notice of a meeting of the Board may be given in writing or orally, by facsimile, telephone, electronic mail or any other means of communication.

49. Waiver of notice

- 49.1 All resolutions of the Board passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

50. Technology meeting of directors

[compare section 248D]

- 50.1 A Board meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent a reasonable period before the meeting.
- 50.2 If a Board meeting is held using any technology (**Technology Meeting**) and all the directors take part in the meeting without objection, they must be treated as having consented to the use of the technology for that meeting.
- 50.3 The following provisions apply to a Technology Meeting:
- (1) each of the people taking part in the meeting must be able to hear and be heard by each of the other people taking part in the meeting; and
 - (2) at the commencement of the meeting each person must announce his or her presence to all the other people taking part in the meeting.
- 50.4 If at least one Company Secretary is not present at a Technology Meeting or the Company does not have a company secretary 1 of the directors present must take minutes of the meeting.
- 50.5 A person may not leave a Technology Meeting by disconnecting his or her link to the meeting unless that person has previously notified the Chair of the meeting.
- 50.6 A person is conclusively presumed to have been present at all times during a Technology Meeting unless that person has previously obtained the express consent of the Chair to leave the meeting.

51. Chairing Board meetings

[compare replaceable rule 248E]

- 51.1 The Board must have a Chair and may have a Deputy Chair.
- 51.2 Unless the Relevant Requirements or a Company Policy provide otherwise:

- (1) the Chair and Deputy Chair shall be appointed by the Board, having regard to all necessary requirements of skill and experience including as set out in any relevant Company Policy or skills matrix from time to time;
- (2) the Chair is appointed for a three year term and may be reappointed for further three year terms;
- (3) the right to nominate the Chair for each term will alternate between the Class A Shareholder and the Class B Shareholder, with the consent of the other Shareholder being required to confirm each nomination;
- (4) the Deputy Chair is appointed for a three year term, unless the Chair is an Independent Director, in which case a Deputy Chair will be appointed for a 1.5 year term (beginning when the Chair's term begins) and a Deputy Chair will be appointed for a 1.5 year term (ending when the Chair's term ends), both such appointments being made in accordance with Rule 51.2(5);
- (5) the right to nominate the Deputy Chair for each term will alternate between the Class A Shareholder and the Class B Shareholder; and
- (6) where the Board does not approve the appointment of the nominated Chair or Deputy Chair, the relevant Class A Shareholder or Class B Shareholder may nominate an alternative candidate.

51.3 If the Chair of the Board is not present at a meeting of the Board and a Deputy Chair has been appointed, the Deputy Chair of the Board shall chair the meeting and if the Deputy Chair of the Board is not present at the meeting or no Deputy Chair has been appointed, an alternate director nominated by the Chair of Board before the scheduled time for the meeting shall chair the meeting, but if none of them is present within 30 minutes after the time appointed for the holding of a meeting the directors present shall choose one of themselves to be Chair of the meeting.

52. Quorum

[compare replaceable rule 248F]

52.1 Unless otherwise determined by special resolution of the Shareholders, the quorum for a Board meeting is at least two-thirds of the total number of directors including one "A" Class Director and one "B" Class Director. The quorum must be present at all times during the meeting. The total number of directors for the purpose of this Rule 52.1 is the number of directors appointed pursuant to Rule 8.2.

52.2 For the purpose of Rule 52.1:

- (1) any alternate director of an “A” Class Director who is entitled under Rule 10 to vote at a Board meeting in place of that director is counted as an “A” Class Director; and
- (2) any alternate director of a “B” Class Director who is entitled under Rule 10 to vote at a Board meeting in place of that director is counted as a “B” Class Director.

52.3 Subject to Rule 10.1, an alternate director, while acting as an alternate director, is only counted in a quorum at a meeting or part of a meeting at which the director for whom the alternate director is entitled to act is not present.

52.4 Where an alternate director is entitled to act in respect of part of the meeting only, the quorum for the meeting will be considered continuous by the presence of the alternate director for the relevant part of the meeting, in the absence of the director for that part of the meeting.

52.5 An independent director is not to be counted in a quorum.

53. Passing of directors’ resolutions

[compare replaceable rule 248G]

53.1 Subject to Rule 53.2, a resolution of the directors must be passed by no less than two thirds of the total number of directors who are entitled to vote on that resolution.

53.2 A resolution of the directors concerning the matters stated at Rule 53.3 must be passed by a minimum of:

- (1) two thirds of the total number of directors who are entitled to vote on that resolution; and
- (2) a majority of the aggregate number of “A” Class Directors and “B” Class Directors who are entitled to vote on that resolution.

53.3 Those matters to be passed by the resolution process at Rule 53.2 are:

- (1) the appointment, reappointment or removal of a director;
- (2) the appointment, reappointment or removal of a Chair or Deputy Chair;
- (3) Subject to determination by the Board on a case by case basis, the approval of an investment which involves the strategic or material use of the Fund’s capital that would materially change the direction and/or operation of the Fund; and
- (4) subject to determination by the Board on a case by case basis, fundamental governance matters.

- 53.4 The Chair does not have a casting vote in addition to any vote he or she has as a director.
- 53.5 Subject to Rule 10 and Rule 54.1, a person who is an alternate director is entitled (in addition to any other vote he or she has in any capacity) to 1 vote on behalf of a director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

54. Restriction on votes of alternate directors

- 54.1 Despite anything else in this constitution, no person entitled to be counted in a quorum for a directors' meeting or a Committee is entitled to be counted more than twice and no person entitled to vote on a resolution of the directors or of a Committee is entitled to exercise more than 2 votes.

Meetings of shareholders

55. Circulating resolutions – more than 1 member

[compare section 249A]

- 55.1 This Rule 55 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 55.2 The Company may pass a resolution without a general meeting being held if all the Shareholders 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. If a share is held jointly, each of the joint members must sign.
- 55.3 Separate copies of a document may be used for signing by the Shareholders if the wording of the resolution and statement is identical in each copy.
- 55.4 The resolution is passed when the last Shareholder signs.
- 55.5 If the Company receives by facsimile transmission or email a copy of a document referred to in this Rule 55 it is entitled to assume that the copy is a true copy.

56. Calling of general meeting

[compare replaceable rule 249C and section 249D]

- 56.1 Subject to Rule 56.2, the Board may whenever it thinks fit convene a meeting of the Shareholders.
- 56.2 If at any time there are not sufficient directors capable of acting to form a quorum at a meeting of the Board, a director or any 2 or more

Shareholders holding not less than 5% of the issued share capital of the Company may convene a general meeting of the Company at the cost of the Company.

- 56.3 Except as provided in the Act and in Rule 56.2, no Shareholder may call a general meeting.
- 56.4 The Board must convene a general meeting at least once every financial year.

57. Amount of notice of meeting

[compare section 249H]

- 57.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

58. Persons entitled to notice of general meeting

[compare sections 249J(1) and 249K, and replaceable rule 249J(2)]

- 58.1 Written notice of a meeting of the Shareholders must be given individually to:
- (1) each Shareholder entitled to vote at the meeting;
 - (2) each director; and
 - (3) the Company's auditor.
- 58.2 No other person is entitled to receive notice of general meetings.
- 58.3 If a share is held jointly, notice need only be given to 1 of the Shareholders, being the joint shareholder named first in the register of members (except if the share is the only share in the Company).

59. How notice is given

[compare sections 249J(3) and 249J(3A)]

- 59.1 The Company may give the notice of meeting to a Shareholder:
- (1) personally;
 - (2) by sending it by post to the address for the Shareholder in the register of members or the alternative address (if any) nominated in writing by the Shareholder;
 - (3) by sending it to the facsimile number or electronic address (if any) nominated in writing by the Shareholder;

- (4) by sending it by other electronic means (if any) nominated in writing by the Shareholder; or
- (5) by notifying the Shareholder in accordance with Rule 59.2.

59.2 If the Shareholder nominates:

- (1) an electronic means (**nominated notification means**) by which the Shareholder may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the Shareholder may use to access notices of meeting,

the Company may give the Shareholder notice of the meeting by notifying the Shareholder (using the nominated notification means):

- (3) that the notice of meeting is available; and
- (4) how the Shareholder may use the nominated access means to access the notice of meeting.

60. When notice is given

[compare replaceable rules 249J(4) and 249J(5)]

60.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.

60.2 Except as provided by Rule 60.3, a notice of meeting given to a Shareholder under Rule 59.1(3) is taken to be given on the business day after it is sent.

60.3 A notice of meeting given to a Shareholder under Rule 59.1(3) is not effective if:

- (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
- (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
- (3) in either case, the addressee notifies the Company that the notice was not fully received in a legible form by 12 noon on the business day it would otherwise be taken to be given under Rule 60.2.

60.4 A notice of meeting given to a Shareholder under Rule 59.1(5) is taken to be given on the business day after the day on which the Shareholder is notified that the notice of meeting is available.

60.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this Rule 60 is conclusive evidence of the matter.

61. Contents of notice

[compare section 249L]

61.1 A notice of a general meeting must:

- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
- (2) state the general nature of the meeting's business;
- (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (4) be worded and presented in a clear, concise and effective manner; and
- (5) contain a statement setting out the following information:
 - (a) that the Shareholder has a right to appoint a proxy;
 - (b) that the proxy need not be a Shareholder of the Company; and
 - (c) that a Shareholder who is entitled to cast 2 or more votes may appoint 2 or more proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

62. Constructive notice

62.1 Every person who by operation of law, transfer or any other means becomes entitled to any share is bound by every notice in respect of the share which, before his or her name and address is entered on the register of members, has been duly given to the person from whom he or she derives title or to any previous holder of the share.

63. Notice of adjourned meeting

[replaceable rule 249M]

63.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

64. Accidental omission to give notice

[compare section 1322(3)]

64.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not automatically invalidate the proceedings at or any resolution passed at the meeting.

65. Postponement of general meeting

65.1 The Board may postpone the holding of any general meeting whenever it sees fit (other than a meeting requisitioned by the Shareholders as provided by the Act) for not more than 42 days after the date for which it was originally called.

65.2 Whenever any meeting is postponed (as distinct from being adjourned under Rule 67.3 or Rule 68.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

66. Technology

[section 249S]

66.1 The Company may hold a meeting of its Shareholders at 2 or more venues using any technology that gives the Shareholders as a whole a reasonable opportunity to participate.

67. Quorum

[compare replaceable rule 249T]

67.1 The quorum for a meeting of the Shareholders is at least two-thirds of all Shareholders including one Class A Shareholder and one Class B Shareholder and the quorum must be present at all times during the meeting.

67.2 In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate representatives are counted. However, if a Shareholder has appointed more than 1 proxy, attorney or representative, only 1 of them is counted. If an individual is attending both as a Shareholder and as a proxy, attorney or body corporate representative, the individual is counted only once.

67.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:

- (1) where the meeting was called by the Shareholders or upon the requisition of Shareholders, the meeting is dissolved; or

- (2) in any other case, the meeting is adjourned to the date, time and place the Board specifies. If the Board does not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.

67.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

68. Chair at general meetings

[compare replaceable rule 249U]

68.1 Unless provided otherwise in this constitution, the chair for a meeting of Shareholders will be the Chair for the time being of the Board or if he or she is not present, any other director that the Shareholders present at the meeting and comprising a quorum decide.

68.2 Where a general meeting is held and:

- (1) a chair has not been appointed as referred to in Rule 68.1; or
- (2) the chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the Shareholders present may appoint any one of their number to be chair of the meeting.

68.3 The chair must adjourn a meeting of the Shareholders if a resolution to adjourn the meeting is proposed by the chair or by a Shareholder, and approved at the meeting by a majority of at least two-thirds of the votes cast on the resolution.

69. Business at adjourned meetings

[replaceable rule 249W(2)]

69.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Proxies and body corporate representatives

70. Who can appoint a proxy

[compare replaceable rule 249X]

- 70.1 A Shareholder who is entitled to attend and cast a vote at a meeting of the Shareholders or at a meeting of the holders of a class of shares may appoint an individual or a body corporate as the Shareholder's proxy to attend and vote for the Shareholder at the meeting. The proxy need not be a Shareholder.
- 70.2 The appointment may specify the proportion or number of votes that the proxy may exercise.
- 70.3 If the Shareholder is entitled to cast 2 or more votes at the meeting, the Shareholder may appoint 2 or more proxies. If the Shareholder appoints 2 or more proxies and the appointment does not specify the proportion or number of the Shareholder's votes each proxy may exercise, each proxy may exercise the number of votes equal to the number of shares held by that Shareholder divided by the number of proxies appointed.
- 70.4 Any fractions of votes resulting from the application of Rule 70.2 or Rule 70.3 are disregarded.

71. Rights of proxies

[compare section 249Y]

- 71.1 A proxy appointed to attend and vote for a Shareholder has the same rights as the Shareholder:
- (1) to speak at the meeting;
 - (2) to vote (but only to the extent allowed by the appointment); and
 - (3) to join in a demand for a poll.
- 71.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.
- 71.3 A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

72. When proxy form must be sent to all members

[section 249Z]

- 72.1 Where the Company sends a Shareholder a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (1) if the Shareholder requested the form or list – the Company must send the form or list to all Shareholders who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (2) otherwise – the Company must send the form or list to all its Shareholders entitled to appoint a proxy to attend and vote at the meeting.

73. Appointing a proxy

[compare section 250A and Corporations Regulations 2001 reg 2G.2.01]

73.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001*, and in Rules 73.2 and 73.3) by the Shareholder making the appointment and contains the following information:

- (1) the Shareholder's name and address;
- (2) the Company's name;
- (3) the proxy's name or the name of the office held by the proxy; and
- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

73.2 An electronically authenticated appointment of a proxy must in addition to Rule 77.1:

- (1) include a method of identifying the Shareholder; and
- (2) include an indication of the Shareholder's approval of the information communicated.

73.3 If the electronically authenticated appointment of a proxy is done through either email or internet-based voting:

- (1) the Shareholder must be identified by personal details such as the Shareholder's name, personal address and date of birth; and
- (2) the Shareholder's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

73.4 An undated appointment is taken to have been dated on the day it is given to the Company.

73.5 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
- (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
- (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a Shareholder, this Rule 73.5 does not affect the way that the person can cast any votes the person holds as a Shareholder.

73.6 An appointment does not have to be witnessed.

73.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

74. Form of proxy sent out by Company

74.1 A form of proxy sent out by the Company may be in a form determined by the Board but must:

- (1) enable the Shareholder to specify the manner in which the proxy must vote in respect of a particular resolution; and
- (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.

74.2 The form may provide that if the Shareholder leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.

74.3 Despite Rule 74.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

AustralianSuper Pty Ltd
ACN 006 457 987

I/We, _____ of _____, being a shareholder/shareholders of the abovenamed company, appoint _____ of _____ or, in his or her absence, _____ of _____ as my/our proxy to vote for me/us on my/our behalf at the *annual general/*general meeting of the company to be held on _____ and at any adjournment of that meeting.

† This form is to be used *in favour of/*against the resolution.

Signed on .

* Strike out whichever is not desired.

† To be inserted if desired.

75. Receipt of proxy documents

[compare section 250B]

75.1 For an appointment of a proxy for a meeting of the Shareholders to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

- (1) the proxy's appointment; and
- (2) if the appointment is signed or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.

75.2 If a meeting of the Shareholders has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

75.3 The Company receives an appointment or authority:

- (1) when it is received at any of the following:
 - (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for the purpose in the notice of meeting; or
- (2) if the notice of meeting specifies other electronic means by which a Shareholder may give the document – when the document given by those means is received by the Company and complies with Rules 73.2 and 73.3.

75.4 An appointment of a proxy is ineffective if:

- (1) the Company receives either or both the appointment or authority at a facsimile number or electronic address; and
- (2) a requirement (if any) in the notice of meeting that:
 - (a) the transmission be verified in a way specified in the notice; or

- (b) the proxy produce the appointment and authority (if any) at the meeting,

is not complied with.

76. Validity of proxy vote

[section 250C(1) and replaceable rule 250C(2)]

76.1 A proxy who is not entitled to vote on a resolution as a Shareholder may vote as a proxy for another Shareholder who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

76.2 A vote cast by a proxy is valid although, before the proxy votes:

- (1) the appointing Shareholder dies;
- (2) the Shareholder is mentally incapacitated;
- (3) the Shareholder revokes the proxy's appointment;
- (4) the Shareholder revokes the authority under which the proxy was appointed by a 3rd party; or
- (5) the Shareholder transfers the share in respect of which the proxy was given,

unless the Company receives written notice of that event before the start or resumption of the meeting at which the proxy votes.

77. Body corporate representative

[section 250D]

77.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (1) at meetings of the Shareholders;
- (2) at meetings of creditors or debenture holders;
- (3) relating to resolutions to be passed without meetings; or
- (4) in the capacity of a Shareholder's proxy appointed under Rule 70.

The appointment may be a standing one.

77.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

- 77.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.
- 77.4 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

78. Attorney of Shareholder

- 78.1 An attorney for a Shareholder may do whatever the Shareholder could do personally as a Shareholder, but if the attorney is to vote at a meeting of Shareholders or a class of Shareholders the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

Voting at meetings of shareholders

79. How many votes a member has

[compare replaceable rule 250E]

- 79.1 Subject to any rights or restrictions attached to any class of shares, at a meeting of Shareholders:
- (1) on a show of hands, each Shareholder has 1 vote; and
 - (2) on a poll, each member has 1 vote for each share the Shareholder holds.
- 79.2 The vote may be exercised in person or by proxy, body corporate representative or attorney.
- 79.3 A Shareholder is not entitled to vote at a general meeting in respect of shares on which any calls or other sums presently payable are unpaid.

80. Jointly held shares

[replaceable rule 250F]

- 80.1 If a share is held jointly and more than 1 Shareholder votes in respect of that share, only the vote of the Shareholder whose name appears first in the register of members counts.
- 80.2 Rule 80.1 applies whether the vote is cast in person or by proxy or by attorney.
- 80.3 Several executors or administrators of a deceased Shareholder are treated, for the purposes of Rule 80.1, as joint holders.

81. Objections to right to vote

[compare replaceable rule 250G]

81.1 A challenge to a right to vote at a meeting of Shareholders:

- (1) may only be made at the meeting; and
- (2) must be determined by the chair, whose decision is final.

81.2 A vote not disallowed following the challenge is valid for all purposes.

82. Votes need not all be cast in the same way

[section 250H]

82.1 On a poll a person voting who is entitled to 2 or more votes:

- (1) need not cast all the votes; and
- (2) may cast the votes in different ways.

83. How voting is carried out

[compare replaceable rule 250J and section 251A]

83.1 A resolution put to the vote at a meeting of the Shareholders must be decided on a show of hands unless a poll is demanded.

83.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

83.3 No ordinary resolution or special resolution of the Company shall be passed at a meeting of Shareholders unless by a majority of not less than two-thirds of the total number of votes entitled to be cast by holders of shares issued by the Company (whether holders of the shares are present at the meeting or not).

84. Matters on which a poll may be demanded

[compare section 250K]

84.1 A poll may be demanded on any resolution.

84.2 A demand for a poll may be withdrawn.

85. When a poll is effectively demanded

[compare section 250L]

85.1 At a meeting of the Shareholders, a poll may be demanded by:

- (1) at least 5 Shareholders entitled to vote on the resolution;

- (2) a Shareholder or Shareholders with at least 5% of the votes that may be cast on the resolution on a poll; or
- (3) the chair.

85.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or
- (3) immediately after the voting results on a show of hands are declared.

85.3 The percentage of votes that Shareholders have is to be worked out as at the midnight before the poll is demanded.

86. When and how polls must be taken

[compare replaceable rule 250M]

- 86.1 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.
- 86.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 86.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 86.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

87. Chair's casting vote

[compare replaceable rule 250E(3)]

- 87.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting does not have a casting vote.

88. Voting rights of persons entitled under transmission rule

- 88.1 A person entitled under the transmission rule (Rule 104) to any shares may not vote at a meeting or adjourned meeting in respect of the shares unless:
 - (1) 48 hours at least before the time of holding the meeting or adjourned meeting there is lodged at the registered office of the

Company documentation of entitlement which satisfies the chair of the meeting or adjourned meeting of the entitlement; or

- (2) the Board has previously admitted the person's right to vote at the meeting in respect of the shares.

89. Resolutions proposed by shareholders

[compare sections 249N and 249O]

89.1 A shareholder may not at any meeting move any resolution relating to special business unless:

- (1) Shareholders with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and 2 months has elapsed since the notice was given; or
- (2) the resolution has previously been approved by the Board.

Meetings of shareholders holding shares in a class

90. Variation of class rights

[compare sections 246B and 246C]

90.1 Rights attached to shares in a class of shares may be varied or cancelled only:

- (1) by special resolution of the Shareholders; and
- (2) either:
 - (a) by a resolution passed at a meeting of the Shareholders holding shares in that class by a majority of not less than two-thirds of the total number of votes entitled to be cast by holders of shares issued by the Company in that class (whether holders of shares in that class are present at the meeting or not); or
 - (b) with the written consent of Shareholders holding shares in that class that have attached to them at least two-thirds of the total number of votes attaching to all shares in that class.

90.2 Rule 90.1 applies whether or not the Company is being wound up.

90.3 The Company must give a notice in writing of the variation or cancellation of shares to Shareholders of the class affected within 7 days after the variation or cancellation is made.

- 90.4 The provisions of this constitution relating to general meetings apply to every meeting of Shareholders holding shares in a class except that:
- (1) a quorum is constituted by not less than 2 Shareholders who, between them, hold or represent 25% of the shares of the class; and
 - (2) any Shareholder who holds or represents shares of the class may demand a poll.

Minutes

91. Minutes to be kept

[compare section 251A]

- 91.1 The Board must keep or cause to be kept minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Shareholders;
 - (2) proceedings and resolutions of directors' meetings;
 - (3) proceedings and resolutions of meetings of all Committees;
 - (4) resolutions passed by the Shareholders without a meeting;
 - (5) resolutions passed by directors without a meeting; and
 - (6) if the Company has only 1 director – the making of declarations by the director.
- 91.2 The Board must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
 - (2) the chair of the next meeting.
- 91.3 The Board 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.
- 91.4 If the Company has only 1 director, the director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.
- 91.5 Without limiting Rule 91.1 the Board must record in the minute books:
- (1) all appointments of officers;

- (2) the names of the directors and alternate directors and directors' proxies present at all meetings of directors and the Company;
- (3) in the case of a Technology Meeting, the nature of the technology; and
- (4) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest.

92. Requirements under Relevant Regulations

- 92.1 The Board must ensure that the Company retains copies of all minutes affecting the Fund and other records required to be kept and notices given by the Company under or pursuant to the Relevant Requirements for such periods as may be required under the Relevant Requirements.

Shares

93. Control of issue of shares

[compare sections 254A and 254B]

- 93.1 Subject to the Act and Rule 93.2, the Board may issue shares to persons at any time the Board sees fit on the following terms and conditions:
- (1) each holder of an "A" class share must be a Fund Member Body whose membership is in accordance with the Relevant Requirements; and
 - (2) each holder of a "B" class share must be an Employer Body whose membership is in accordance with the Relevant Requirements.
- 93.2 The Board may only issue fully paid shares and any such shares so issued shall be issued on the following basis:
- (1) no issue of "A" class shares shall be made unless an issue of an equal number of "B" class shares is made and no issue of "B" class shares shall be made unless an issue of an equal number of "A" class shares is made, so that at all times the number of "A" class shares on issue must equal the number of "B" class shares on issue;
 - (2) on the occasion of each issue of "A" class shares and "B" class shares, such shares shall be issued at the same price (not being at a discount) and on the same terms;

- (3) no shares of any class shall be issued without the prior written consent of all the holders of the "A" Shares and all the holders of the "B" Shares;
- (4) no shares of any class shall be issued otherwise than to members holding shares of the same class without the prior written consent of all the holders of the "A" Shares and all the holders of the "B" Shares; and
- (5) as between holders of shares of the same class the shares of that class being issued shall be issued in proportion to such holders' then existing holdings of shares of the class or in such other proportions between them as all the members holding shares of the same class shall agree in writing.

94. Classes of shares

94.1 The Board may issue shares in any of the following classes:

- (1) "A" class shares and "B" class shares which confer on the holders:
 - (a) the right to attend and vote at meetings of the Shareholders and on a show of hands to 1 vote and on a poll to 1 vote for each share held; and
 - (b) no right to any dividends; and
- (2) ordinary shares which confer on the holders:
 - (a) the right to attend but no right to vote at meetings of the Shareholders; and
 - (b) no right to any dividends.

95. Conversion of shares, Reduction of share capital, capital redemption reserve and share premium account

[compare section 254H]

95.1 The Board may convert all or any of the Company's shares into a larger or smaller number of shares by resolution passed by the Shareholders.

95.2 Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

95.3 The Shareholders may by special resolution reduce the Company's share capital, any capital redemption reserve or any share premium account in the manner authorised by the Act but not so as to breach the Relevant Requirements.

96. Joint holders

- 96.1 Where 2 or more persons are registered as the holders of a share, they must be treated as holding the share as joint tenants with benefits of survivorship subject to Rule 96.2 and to the following:
- (1) the Company is not bound to register more than 3 persons as the holder of the share;
 - (2) the joint holders of the share are liable severally as well as jointly in respect of all payments which ought to be made in respect of the share;
 - (3) any 1 of the joint holders may give effective receipts for any bonus or return of capital payable to the joint holders; and
 - (4) only the person whose name stands first in the register of members as 1 of the joint holders of the share is entitled to delivery of the certificate relating to the share or to receive notices from the Company and a notice given to that person must be treated as notice to all the joint holders.
- 96.2 Where 3 or more persons are registered holders of a share in the register of members (or a request is made to register more than 3 persons) only the first 3 named persons are regarded as holders of the share and all other named persons must be disregarded for all purposes.

Title to and transfer of shares

97. Entitlement to share certificates

[compare sections 1070B and 1070C]

- 97.1 A person whose name is entered as a member in the register of members is entitled without payment to 1 certificate for the shares registered in the member's name or to several certificates in reasonable denominations.
- 97.2 Where shares are held jointly by several persons the Company is not bound to issue more than 1 certificate and delivery of a certificate to 1 of several joint holders is sufficient delivery to all of them.
- 97.3 A certificate must state:
- (1) the name of the Company and the fact that it is registered under the Act;
 - (2) the number of the certificate;
 - (3) the number and class of shares for which the certificate is issued; and

- (4) the extent to which the shares are paid up.

98. Replacement of certificates

[compare section 1070D]

- 98.1 If any certificate or other document of title to shares is worn out or defaced the Board may, upon production of the certificate or document, order it to be cancelled and issue a new certificate in its place upon the conditions prescribed by the Act.
- 98.2 If any certificate or other document of title to shares is stolen, lost or destroyed then the Board must issue a duplicate of the certificate or document upon the conditions prescribed by the Act.

99. Recognition of ownership

- 99.1 Except as required by law, the Company is not bound to recognise a person as holding a share upon any trust.
- 99.2 The Company is not bound to recognise any equitable, contingent, future or partial interest or any other right in respect of a share except an absolute right of ownership in the registered holder.
- 99.3 Rule 99.2:
- (1) applies whether or not the Company has notice of the interest or right; but
 - (2) does not apply where the Company is bound to recognise the interest or right by another provision of this constitution or by law.

100. Transfer of shares

[compare section 1071B]

- 100.1 Subject to this constitution, a Shareholder may transfer all or any of the Shareholder's shares by instrument in writing in any form that the directors approve.
- 100.2 Should a Class A Shareholder or Class B Shareholder cease to be a Fund Member Body or an Employer Body respectively, that shareholder must transfer its share or shares to another organisation or person which or who the Board acknowledges to be a Fund Member Body or an Employer Body as the case may be and which or who the Board accepts, acting reasonably, is suitable to be a Shareholder of the Company.

101. Pre-emptive rights

101.1 In relation to any transfer of shares, the provisions of Rule 101.2 must be observed.

101.2 No transfer of shares shall be permitted unless:

- (1) all the other Shareholders consent to the transfer, such consent not to be unreasonably withheld;
- (2) in relation to a proposed transfer of "A" class shares, the shares are transferred to a Fund Member Body and in relation to a proposed transfer of "B" class shares, the shares are transferred to an Employer Body; and
- (3) the shares are transferred at a value of no more than \$1 per share.

101.3 For the purposes of this Rule, the Shareholders must, in determining whether to give or withhold consent, take into account the mutual nature of the association between the Shareholders and must give regard to the interests, goals and objectives of the Shareholders individually and collectively.

102. Registration of transfers – directors' discretion

[compare replaceable rule 1072G]

102.1 The Board may only register a transfer of shares where it complies with Rule 101.

103. Registration of transfers – procedure

[compare replaceable rule 1072F]

103.1 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.

103.2 Before a transfer of shares is registered:

- (1) the transfer and any share certificate must be lodged at the Company's registered office or any other place the Board allows;
- (2) any fee payable on registration of the transfer must be paid; and
- (3) the Board must be given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

103.3 The Board may suspend the registration of transfers of shares in the Company for any periods they determine, not exceeding a total of 30 days in any 1 calendar year.

- 103.4 The Board may in its discretion dispense with any of the requirements of Rule 103.2.
- 103.5 The instrument of transfer must be executed by or on behalf of both the transferor and the transferee.
- 103.6 All powers of attorney granted by Shareholders which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company are deemed as between the Company and the grantor of the powers to remain in full force and may be acted upon until express notice in writing of their revocation is lodged at the registered office of the Company.

104. Transmission of shares

[compare replaceable rules 1072A, 1072B and 1072D and section 1072C]

- 104.1 In the case of insolvency or other incapacity of a Shareholder, that Shareholder shall be deemed to have offered his or her shares for transfer to a person nominated by the directors who is a person eligible to be a shareholder under Rule 93.1(1) or 93.1(2) respectively on the day before insolvency or other incapacity of the member. The provisions of Rule 103 will apply accordingly.
- 104.2 This Rule 104 does not release the legal personal representative of an insolvent or incapacitated Shareholder from any liability in respect of the share attributable to the period of membership in the Company prior to the insolvency or other incapacity of the Shareholder.

Execution of documents

105. Common seal

- 105.1 The Company may, but need not, have a common seal.

106. Use of common seal

[compare sections 127(2) and 129(6)]

- 106.1 If the Company has a common seal the Board must provide for its safe custody.
- 106.2 The common seal may not be fixed to any document except by the authority of a resolution of the Board or of a Committee that is duly authorised by the Board.
- 106.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) 2 directors of the Company;

- (2) a director and a company secretary of the Company;
- (3) if the Company has a sole director who is also the sole company secretary – that director; or
- (4) if the Company has a sole director and does not have a secretary – that director,

and the form of execution complies with Rule 109.

107. Execution of documents without common seal

[compare sections 127(1) and 129(5)]

107.1 The Company may execute a document without using a common seal if the document is signed by:

- (1) 2 directors of the Company;
- (2) a director and a company secretary of the Company;
- (3) if the Company has a sole director who is also the sole company secretary – that director; or
- (4) if the Company has a sole director and does not have a secretary – that director,

and the form of execution complies with Rule 109.

108. Execution of document as a deed

[section 127(3)]

108.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Rule 106 or Rule 107.

109. Execution – general

[compare sections 129(5), 129(6) and 127(4)]

109.1 Except if the Company has a sole director who is also the sole company secretary, the same person may not sign in the dual capacities of director and secretary.

109.2 A person who signs as sole director and sole company secretary must state next to his or her signature that he or she is the sole director and sole company secretary of the Company.

109.3 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature

complies with the requirements of this constitution as to execution despite his or her interest.

- 109.4 Rules 106 and 107 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

Inadvertent omissions

110. Formalities omitted

[compare section 1322]

- 110.1 If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any member financially. The decision of the directors is final and binding on all members.

Notices

111. Notices other than notices of meeting

- 111.1 Any notice by the Company to a Shareholder may be given in the same way as a notice of meeting may be given under Rule 59, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by Rule 60.
- 111.2 Any notice required to be given to the Company will be validly given if it is in writing and delivered to the Company Secretary at the Company's registered office.

Winding up

112. Shareholders' rights on distribution of assets

- 112.1 If the Company is wound up, the liquidator must vest the whole or any part of any property vested in the Company upon trusts in a new trustee upon trusts identical to those existing prior to the liquidation of the Company.
- 112.2 If, on the winding up of the Company, there remain any assets after the satisfaction of all debts and liabilities, any such assets:
- (1) must not be paid or distributed among the Shareholders of the Company; and

- (2) must be paid or applied into the Fund or its successor fund (as defined in the Relevant Requirements), as the Shareholders or the liquidator determine.

Alteration to constitution

113. Shareholders' right to alter constitution

- 113.1 Subject to Rule 113.2 and without limiting Rule 90, the Shareholders may, by special resolution, alter this constitution but not so as to breach the Relevant Requirements.
- 113.2 A special resolution made pursuant to Rule 113.1 that alters the dividend rights attaching to any class of shares and/or Rule 112.2 in any way will be effective only if the Board has first recommended the particular alteration.

Signing

114. Signing

- 114.1 Signed for the purpose of identification by the chair on the date on which this constitution was adopted,

Name of chair

Dr Don Russell

Signature



Dated

12 August 2021