



LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

Head Office
39 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

legalconsolidated.com.au

Your Reference: Company Incorporation - ASIC 201
Enquiries: Adj Professor, Dr Brett Davies
Direct Telephone: 1800 141 612
Email: brett@legalconsolidated.com.au

You can build this document here:

<https://www.legalconsolidated.com.au/>

[special-purpose-company/](https://www.legalconsolidated.com.au/special-purpose-company/)

Tuesday, 11 October 2015

Bay Nominees Pty Ltd
Fourth Street
Ashbury NSW 2193
Australia

Dear Client,

Incorporation of Bay Nominees Pty Ltd

Thank you for instructing us to incorporate the Bay Nominees Pty Ltd company.

How to print the documents

Please check the attached documents carefully.

When you are satisfied that the attached documents are according to your instructions please:

1. Download the PDF (Don't print directly from the browser.)
2. Print the PDF Printer settings: A4 paper
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document
(However, do not staple the covering letter to the document.)

Your Tax Invoice has been emailed to you.

I attach the consents required to incorporate the Company with the Australian Securities & Investments Commission (**ASIC**), including:

- Consents for Director, Secretary and Public Officer; and
- Applications for Shares.

Sign and date these documents, especially the consents, immediately.

Neither the law firm nor ASIC require copies of these documents. Instead retain them as part of the Company's statutory records.

The law firm does not check the information you have provided to ASIC

The law firm does not check the information you have supplied. We do not review your answers to the questions to incorporate the company. The information that you have supplied goes directly to ASIC. However, if ASIC advises us that your company name is not available or any other issues, we will contact you on:

Your email address: fred@fredsmith.com.au

Email me if they are not your best contact details.

If we need to speak or meet with ASIC regarding your company, we can only do so during its working hours which is 8:30 am to 7:00 pm (EST) Monday to Friday.

Legal Consolidated only acts for the company, not the directors and shareholders

Legal Consolidated is the Australian law firm with the conduct of incorporating the company with ASIC and providing the Company Constitution.

Legal Consolidated only acts for the company. And only in the company's personal capacity. The law firm does not act for the company in its capacity of any trustee positions it may hold from time to time. Further, the law firm does not act for any other parties such as directors and shareholders. Such other parties should seek their own independent legal advice.

Legal Consolidated is not privy to the purpose of the company. Legal Consolidated has not given and does not give advice on what the company can be or not be used for.

Legal Consolidated is providing no other advice

Further, Legal Consolidated is not providing any taxation, corporate, ASIC, accounting, financial, financial planning, superannuation or any other advice or legal advice.

What slows up the incorporation of the company?

Because the law firm has direct contact with ASIC, normally the incorporation of the company is within 30 minutes. At that point you receive from us the Company Constitution and the all-important ASIC certification of incorporation.

However, the issues below slow up the incorporation or require ASIC to do a 'Manual Review'. ASIC claim these issues can delay an incorporation by up to 'two working days'. However, the law firm normally finds that these issues are often dealt with by ASIC within 2- 4 business hours:

- The Company name:
 - is similar to another name registered with ASIC
 - is 'offensive' or not in keeping with the prevailing WOKE morals of the Federal government in power
 - does not appear as a 'standard' work in the dictionary that ASIC uses (an example of this may be the initials of someone's name. E.g. ABBA. Or a 'mash up' of names.
- An address is not in the ASIC list of addresses.

What happens now?

If ASIC accepts the information you have provided, ASIC incorporates your company. We then email fred@fredsmith.com.au the following:

1. Certificate of Incorporation (which has your ACN on it)
2. Company Constitution
3. Minutes and all other documents

When you get them sign what is required. And provide scan copies to your accountant, as your accountant requests.

What if the company name, you have chosen, is not available?

We will email you at fred@fredsmith.com.au if the name you want is not available. You can give us other names.

Why is the company name all in CAPITALS?

Your company name is only accepted by ASIC all in uppercase. While the Certificate of Incorporation will have your company name all in uppercase, you can use it with upper case and lower case. This is as you see fit.

Your company appearing on the ASIC records is always in capitals. E.g. "SMITH AND WESTON PTY LTD". But on your letterhead and other documents you may refer to the company and "Smith and Weston Pty Ltd".

How do a get a Tax File Number for free?

As required, you can apply for a Tax File Number (TFN) from the ATO, for free.

If you're applying for an Australian business number (ABN), you can also apply for a business name and register for secure online authentication and taxes, like GST and PAYG withholding, at the same time. You start here:

<https://www.ato.gov.au/business/registration/work-out-which-registrations-you-need/business-or-company-registrations/>

But check with your accountant as to whether you need a TFN. Or register for GST.

How do I get my Australian Business Number for free?

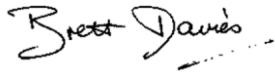
If required you can apply for an Australian Business Number (ABN), for free, here:

<https://abr.gov.au/For-Business,-Super-funds---Charities/Applying-for-an-ABN/Apply-for-an-ABN/>

The government does not charge to provide a TFN and ABN. They are free.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LLB, LLM, MBA, SJD
National Taxation Partner
LEGAL CONSOLIDATED BARRISTERS & SOLICITOR

This is a sample of the document you are building on our law firm's website.

Depending how you answer the questions the document and our letter may be different.

We have a 100% money back guarantee. For any reason you can return the document to us for a full refund.

Dr Brett Davies

Partner

Legal Consolidated Barristers & Solicitors

<https://www.legalconsolidated.com.au/special-purpose-company/>



LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

Head Office
39 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

legalconsolidated.com.au

Build the legal document at

legalconsolidated.com.au – telephone us.

We can help you answer the questions.

On our law firm's website, you:

- 1. Retain legal professional privilege*
- 2. Receive legal advice*
- 3. Get a signed letter on our law firm's letterhead with the legal document*
- 4. We take responsibility for the legal document*

Only a law firm provides the above. We also offer a 100% money back guarantee on every document you build.

Adj Professor, Dr Brett Davies – Partner

Officeholder Consents for Bay Nominees Pty Ltd

To: Bay Nominees Pty Ltd
Fourth Street
Ashbury NSW 2193
Australia

I consent to act in the following roles: Director
Secretary
Public Officer (ATO)

Full Name: **Bob Dylan Bay**
Place of Birth: Sydney, Australia
Date of Birth: 15 April 1954
Address: 23 King Street
Richmond VIC 3121
Australia

Signed: Bob Dylan Bay

Dated:

(To be signed and provided to Company before the application to register the Company is submitted to ASIC)

To: Bay Nominees Pty Ltd
Fourth Street
Ashbury NSW 2193
Australia

Application for Shares

I apply to become a member of the Company on incorporation and for the allotment to me of the following Shares in the capital of the Company:

Share Class	Number of Shares	Payable per share	Unpaid per share	Beneficial owner
ORD	10	\$1.00	\$0.00	Yes

I will accept the Shares allotted to me and will be bound by the Company's constitution. I authorise the Company to place my name on the Register of Members in respect of the Shares.

Full Name: **Bob Dylan Bay**

Address: 23 King Street
Richmond VIC 3121
Australia

Signed: _____
Bob Dylan Bay

Date:

To: Bay Nominees Pty Ltd
Fourth Street
Ashbury NSW 2193
Australia

Application for Shares

I apply to become a member of the Company on incorporation and for the allotment to me of the following Shares in the capital of the Company:

Share Class	Number of Shares	Payable per share	Unpaid per share	Beneficial owner
ORD	10	\$1.00	\$0.00	Yes

I will accept the Shares allotted to me and will be bound by the Company's constitution. I authorise the Company to place my name on the Register of Members in respect of the Shares.

Full Name: **Alice Anna Bay**

Address: 3 South Street
Ipswich QLD 4305
Australia

Signed: _____
Alice Anna Bay

Date:

Your Reference: Company Incorporation - ASIC 201
Enquiries: Adj Professor, Dr Brett Davies
Direct Telephone: 1800 141 612
Email: brett@legalconsolidated.com



LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

Head Office
39 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

legalconsolidated.com.au

Tuesday, 11 October 2015

Bay Nominees Pty Ltd
Fourth Street
Ashbury NSW 2193
Australia

Dear Chairperson,

*Build this legal document at
legalconsolidated.com.au – telephone us,
we can help you complete the questions.*

Adj Professor, Dr Brett Davies – Partner

Bay Nominees Pty Ltd

A.C.N. 165987536

Congratulations. Attached is the Australian Securities and Investments Commission (**ASIC**) Certificate of Incorporation, Company Constitution and other necessary documents.

How to print the company documents

When you are satisfied that the documents are according to your instructions, please:

1. Download the PDF (Do not print directly from the browser.)
2. Print the PDF Printer settings: A4 paper
100% scale (turn off 'fit to page')
3. Print single sided (NOT duplex).
4. Once signed keep this covering letter with the document.
(However, do not staple the covering letter to the document)

Do I need to print out the Company Constitution?

The Company Constitution is long. It does not need to be signed.

Therefore, you are welcome to merely keep an electronic copy only of the Constitution. This is in your electronic company secretary file.

But you do need to print out and sign all documents that require signing.

Can an Australian Company Secretary file be held electronic?

Your Legal Consolidated Constitution is drafted to take advantage of Section 1306 *Corporations Act 2001*.

When the Constitution so allows, as yours does, section 1306 permits companies to prepare and store their 'books'. This includes registers and minutes, in a 'mechanical, **electronic** and other device'.

You must be able to reproduce the paperwork 'at any time'. This is in a written form. In other words, you must be able to print it out.

Also, Pty Ltd companies must take reasonable precautions to protect its records against damage and tampering. So, 'back up' your company records.

The attached documents are part of your Company's statutory records. And must be protected for the entire life of your company.

On going company financial records and activities

A company is also obliged to keep written financial records that correctly record and explain the company's activities, financial position and performance. See section 286 Corporations Act 2001.

Speak to your accountant, but these records are kept for at least seven years. Section 288 also allows financial records to be kept electronically. But, again, this is so long as they can be converted into a hard copy on demand.

Lawyers and accountants are not required to retain any documents for you. You must keep and protect them yourself.

Special Purpose Company for your Self-Managed Super Fund

As instructed, this Company is incorporated as a Special Purpose Company. This is to satisfy the requirements of Regulation 3, *Corporations (Review Fees) Regulations 2003* (Cth).

Your new company's sole purpose is to act as the company trustee for a regulated superannuation fund. This is within the meaning of Section 19 *Superannuation Industry (Supervision) Act 1993* (Cth). In other words, a 'Self-Managed Superannuation Fund'.

Another restriction is that this Company is prohibited from distributing income or other assets of the Company to its Members. (We use the expression "Members" and "Shareholders" interchangeable.)

You can only use the new (Special Purpose) company for one purpose. That is as a trustee of the Self-Managed Superannuation Fund.

The new company cannot be used for any other purpose.

Making changes and updating the Company with ASIC from time to time

ASIC regulates the newly incorporated Pty Ltd company. In fact, ASIC is the regulator for all Australian companies.

ASIC posts you, in the mail, to your registered office address the ASIC "Corporate Key". They will not email it. And they do not give it out over the telephone.

The "Corporate Key" is a rather exotic name for what is just a password.

Armed with the ASIC "Corporate Key" you can make many changes to the company. This is on the ASIC website. Often for free.

ASIC, generally, only allows you to update a company online. So, the ASIC "Corporate Key" is important. Keep it safe and private.

Common changes to company details

With the ASIC "Corporate Key" you can update:

- company addresses

- appoint and cease company officeholders
- change the share structure
- transfer shares
- appoint or cease members (shareholders)

There may be taxation and stamp duty issues in doing so. So speak to your accountant first.

How does ASIC contact me?

ASIC correspondence is, generally, sent to you electronically. This is once you have registered for ASIC's online services. You register using the ASIC "Corporate Key".

You receive an email alert when ASIC correspondence is available. You then log into ASIC to see what it wants.

This includes your company 'annual statement'.

When do I pay the companies' annual ASIC fee?

Just before the company's birthday (date of incorporation), each year, ASIC usually emails you. ASIC reminds you is to log back into ASIC's website.

There you find the 'annual statement' that ASIC has prepared for the company. It contains the yearly ASIC fee for the company. ASIC politely calls it an annual 'review fee'. But it is just another tax from the federal government.

What does the ASIC 'annual statement' contain?

The company's 'annual statement' contains:

- a statement of your company's current details (update for any changes)
- an invoice for your company annual "review" fee
- your company's "Corporate Key" (this is quite handy if you have lost the "Corporate Key")

If you need more help speak with your accountant.

The Legal Consolidated Company Constitution

Your Legal Consolidated Constitution sets out the company's internal rules and procedures. The additional advantages of a Legal Consolidated Constitution include:

Technology

Technology has changed how a company board communicates with employees and shareholders. Your Constitution reflects how changes in technology affect company operations. Board decisions no longer need to be physical posted or provided to shareholders.

Email is a faster form of communication that is used by many companies to correspond with shareholders. Your Constitution takes into consideration how instantaneous communication affects your shareholders. Further, your Constitution outlines how technology can be used in meetings.

Dividends

'Dividends' are payments to the shareholders. Even if the company is making a 'profit' the company may not be allowed to declare dividends. The rules are complex. Speak with your accountant before declaring company dividends.

Section 254 *Corporations Act* sets out the rules on if and how dividends are paid. Section 254 governs how dividends are paid.

Legal Consolidated is providing no tax or operational advice, your accountant helps you. But generally, a company is not allowed to declare a dividend unless:

- the company's assets exceed its liabilities; and
- the payment is fair and reasonable; and
- the payment does not materially prejudice the company's ability to pay its creditors.

Direct voting

The Shareholders 'own' the company. They are the ultimately controllers. (In contrast, the Director(s) merely look after the day to day affairs of the company.)

Shareholders can cast a vote regarding a meeting. Thanks to the Legal Consolidated Constitution this can now be either online or through personalised voting forms.

Members do not need to attend the meeting and can appoint a proxy. Your Legal Consolidated Constitution improves the efficiency of how meetings are conducted through direct voting.

Share buy backs

Share 'buy backs' allow companies to buy back its shares from the shareholders.

Examples of share buy backs include: equal access, on-market, employee share scheme, selective buy-back and minimum holding. Your Constitution ensures that such a share buyback is permitted.

There are tax issues in doing this. Speak with your accountant first.

Preference shares

Under the Legal Consolidated Company Constitution the company has the power to issue preference shares. However, rights attached with these preference shares should be outlined in the Constitution. Your Constitution ensures that the preference shares are clear.

Allowing for a single director

The Legal Consolidated Company Constitution entitles you to have only one director. You can have more.

Having two directors (or more) may be a problem from an asset protection perspective.

Directors are at risk of going down with the company. This is if the company ever fails or goes insolvent. Rather than one director, both directors are at risk of bankruptcy along with the insolvent company.

Similarly, if money is owed, by the company, to the Australian Tax Office for such things as PAYG and superannuation all the directors are usually liable automatically for such unpaid debts.

Asset protection at a basic level is having no assets in a risky person's name. But rather having all the assets in a safe person name. Legal Consolidated calls this the 'man of straw and the woman of substance' strategy.

Your Constitution allows you to have a single director.

Division 7A Loan Agreement

Your Constitution contains a Division 7A Loan agreement. It generally works for each Member (Shareholder) and for any new Member. It, however, does not operate for non-members like a spouse, children or Family Trust when they are not shareholders of the company.

This is because the Constitution is a contract between the shareholder and the company. If a person or a trust is not a shareholder (and the Company lends, is deemed or may lend them money) then speak to your accountant about preparing a separate Division 7A Loan Deed.

Does my company need an ABN?

"ABN" stand for Australian Business Number. They are issued for free by the Australian Taxation Office (ATO).

An ABN is not compulsory if the company is earning under \$75,000 per year.

If the company is earning over \$75,000 (itself, rather than a trust it is the trustee of) you are generally required to register an ABN.

Without an ABN, businesses buying your goods and services may have to withhold 47% of your purchase price and pay this directly to the ATO.

If you're applying for an ABN, you can also apply for a business name and register for secure online authentication and taxes, like GST and PAYG withholding, at the same time. You do that for free here: <https://www.ato.gov.au/business/registration/work-out-which-registrations-you-need/business-or-company-registrations/>

However, this is general information only. We do not know your individual circumstances. Speak with your accountant.

ACN v ABN

Your ACN identifies the company, itself. In contrast, the ABN identifies the business of the company, to other businesses, consumers, the ATO and various government agencies.

The company ABN is based on its ACN. The ABN is the ACN with an additional two digits at the end.

If your company is acting as a trustee for a trust, and does not trade in its own right, then it may not need to get an ABN. Check with your accountant. We are not accountants. We do not give advice on these matters.

Does my company need a business name?

You will only need to register business names if you trade under a name different to the company name.

For example, if your company name is Jones Services Pty Ltd and you merely trade and advertise as Jones Services Pty Ltd, you do not need a business name.

But, if you trade or advertise as Jones & Sons or any other name, you will need to register a business name.

Your accountants can help you apply for a business name, if required.

Do I need a Shareholders Agreement?

Speak to your accountant about preparing a Shareholders Agreement. This is if you have two or more shareholders.

The company constitution is a 'contract' between the company and the shareholders. In contrast, a Shareholders Agreement is a binding contract between the shareholders themselves.

Do I need a Company Power of Attorney?

Generally, all companies should have a Company POA.

Speak to your accountant about preparing and signing a Company POA. All companies should have a Company POA. But it is even more important where your company:

- has a single director
- exactly two directors
- is acting as a trustee of a Self-Managed Superannuation Fund
- is acting as a trustee of a Family Trust or Unit Trust

Fixing mistakes in a new company. ASIC Form 492 – Request for correction

If you make a mistake on a form that you have already lodged with ASIC, you can lodge an amendment. This is by preparing and lodging a Form 492 – Request for correction. Use this form if you or your adviser find a mistake on the form, and want to notify ASIC to correct the mistake.

For example, use a Form 492 if you have newly incorporated a company: Form 201 "Application for Registration as an Australian Company". But find:

- that you put in the incorrect information on your application from a new company;
- ASIC has not understood what you wanted; or
- ASIC made a mistake.

Telephone ASIC and correct a mistake in a new company?

If you notice a mistake in your new company within 24 hours of its registration, you may be able to fix the mistake by calling ASIC on 1300 300 630 or 61 3 5177 5407 (outside of Australia).

But, in most cases, a Form 492 – Mistake Correction form is required.

Further, generally only typographical errors or misspelled words are accepted over the telephone. In particular, corrections to dates are not accepted over the telephone. This is because they require supporting documents.

Fixing a spelling error in the new company name

Telephone ASIC, and find out the best way to proceed. ASIC may allow a Form 492 to be lodged to correct this.

However, usually, an ASIC Change of Name form is required and you may need to pay additional money to change a company name.

Company as a beneficiary of a family trust?

If you intend to use the company as a beneficiary of a family trust, you should check before your accountant prepares the Trust Distribution Statement that the classes of beneficiaries include the buck company is going to act as trustee of another family trust and that the second family trust is also a beneficiary under the trust deed.

If you are unsure then check with the lawyer that prepares the trust deed. Legal Consolidated does not review or give advice on family trust deeds.

This now concludes the matter. Thank you for your instructions.

Yours sincerely,



Adj Professor, Dr Brett Davies, CTA, AIAMA, BJuris, LL.M.
National Taxation Partner
LEGAL CONSOLIDATED BARRISTERS & SOLICITOR

Build the legal document at
<https://www.legalconsolidated.com.au/special-purpose-company/> –
telephone us. We can help you answer
the questions.

On our law firm's website, you:

1. Retain legal professional privilege
2. Receive legal advice
3. Get a signed letter on our law firm's letterhead with the legal document
4. We take responsibility for the legal document

Only a law firm provides the above.
We also offer a 100% money back
guarantee on every document you
build.

Adj Professor, Dr Brett Davies-



LEGAL
CONSOLIDATED
BARRISTERS & SOLICITORS

National Law Firm

Head Office
39 Stirling Highway
Nedlands WA 6009

T: 1800 141 612

legalconsolidated.com.au

**Constitution for
Bay Nominees Pty Ltd
A.C.N. 165987536**

Table of Contents

Article	Page
1. PREAMBLE	3
2. NAME AND LIMITATION OF LIABILITY	3
3. REPLACEABLE RULES.....	3
4. SPECIAL PURPOSE COMPANY – SMSF TRUSTEE	3
5. PROPRIETARY COMPANY	4
6. SHARE CAPITAL	4
7. SPECIFIED SHARE RIGHTS AND CLASSES	5
8. OFFERS OF SHARES.....	6
9. TRANSFER OF SHARES.....	8
9.4 PRE-EMPTION RIGHTS	9
10. MEMBER WARRANTIES	17
11. DUTY OF GOOD FAITH & DISCLOSURE OF CONFLICT OF INTEREST.....	18
12. MEMBER DEFAULT.....	18
13. CALLS ON SHARES AND FORFEITURE	20
14. GENERAL MEETINGS	21
15. MEMBER PROXIES	25
16. MEMBER DIRECT VOTING	27
17. MEETINGS OF A CLASS OF SHARES	28
18. APPOINTMENT AND REMOVAL OF DIRECTORS	28
19. POWERS AND DUTIES OF DIRECTORS	31
20. PROCEEDINGS OF DIRECTORS	32
21. COMMITTEES OF THE BOARD	35
22. ALTERNATE DIRECTORS.....	35
23. ASSOCIATE DIRECTORS.....	36
24. SECRETARY.....	37
25. DEALINGS BETWEEN COMPANY AND OFFICERS	37
26. OPERATION OF COMPANY BANK ACCOUNTS	38
27. DEALING WITH COMPANY PROFITS	38
28. ALTERATIONS TO CAPITAL.....	39

29. CONTROL OVER SUBSIDIARIES..... 39

30. INSPECTION OF RECORDS 39

31. CONFIDENTIALITY 39

32. COMMON SEAL 39

33. WINDING UP 40

34. GENERAL OPERATIVE PROVISIONS 40

35. DEFINITIONS AND INTERPRETATION 43

SCHEDULE A - SHARE CLASSES 48

SCHEDULE B - PRO-FORMA PROXY FORM..... 48

1. PREAMBLE

The purpose of this Constitution is to:

- Provide a point of reference for the due administration of the affairs of the Company;
- Regulate the dealings between the Company and its Members; and
- Regulate the dealings between the Members themselves with respect to their participation in the Company.

This Company has been formed as a Special Purpose Company in order to satisfy the requirements of regulation 3, *Corporations (Review Fees) Regulations 2003* (Cth) for the sole purpose of acting as the company trustee for a regulated superannuation fund within the meaning of section 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth).

Accordingly, this Company is prohibited from distributing income or other assets of the Company to its Members.

THIS CONSTITUTION provides as follows:

2. NAME AND LIMITATION OF LIABILITY

The name of the Company is:

BAY NOMINEES PTY LTD

The liability of its members is limited to any amount owing on their Shares.

3. REPLACEABLE RULES

The Replaceable Rules of the Law do not apply to the Company.

This Constitution sets out the basis for the administration and management of the Company.

Nothing in this Constitution is intended to derogate from the Law, and the mandatory provisions of the Law prevail over anything in this Constitution to the extent they are inconsistent.

Unless otherwise specifically stated, words used in this Constitution have the same meaning as those terms have under the Law.

4. SPECIAL PURPOSE COMPANY – SMSF TRUSTEE

The Company is a special purpose company as defined in paragraph (f) of the definition of 'special purpose company' in regulation 3 of the *Corporations (Review Fees) Regulations 2003* (Cth).

Notwithstanding any other provision of this Constitution:

- The Company may not distribute any of the Company's income or property to any of its Members;
- The sole purpose of the Company is to act as the trustee of a regulated superannuation fund within the meaning of section 19 Superannuation Industry (Supervision) Act 1993 (Cth), and the Company may not carry on any activity that is inconsistent with this sole purpose; and
- Any provision of this Constitution that would otherwise cause the Company to fail to qualify as a 'special purpose company' for the purpose of acting as the company trustee for a regulated superannuation fund as defined in paragraph (f) of the definition of 'special purpose company' in regulation 3 Corporations (Review Fees) Regulations 2003 (Cth) is hereby deemed to have no force or effect.

5. PROPRIETARY COMPANY

The Company is registered as a proprietary company limited by shares under the Law. As such, the Company must **not**:

- Have a membership in excess of 50 persons (counting joint holders of Shares as one person, and not counting any person in the employment of the Company or of its subsidiary who was and has continued to be a Member of the Company); and
- Engage in any activity that would require the lodgement of a regulated product disclosure statement or prospectus under the capital raising provision of the Law.

The Company has all the powers of a natural person. Without limiting this authority, the Company may:

Issue and cancel shares;

Borrow money;

Give security by charging uncalled capital of the Company;

Grant a fixed or floating charge over Company property;

Open and operate a bank account; and

Obtain the registration or recognition of the Company as a body corporate in any jurisdiction.

The Company may in the capacity as a trustee carry on any business if (and only if) the effect of doing so would not infringe any provision of the Law or the sole purpose set out in clause .

6. SHARE CAPITAL

6.1 Member Consents

Each Member consents to its, their name being entered in the Company's register of members for the Shares held, acquired or subscribed by the Member, and agrees to take such Shares with the benefit of the rights and subject to the restrictions contained in this Constitution from time to time.

Each Member consents to the subscriptions for and transfers of the Shares that have taken place prior to the Effective Date. Each Member irrevocably waives (and agrees to procure the waiver of) any rights or restrictions which may exist in this Constitution or otherwise which might prevent or invalidate any such subscriptions or transfers.

The Company acknowledges that each Member has consented to the subscriptions for and transfers of the Shares that have taken place prior to the Effective Date.

6.2 Issue Of Shares

The Directors may issue Shares to whom and as they think fit, subject only to this Constitution and the Law and to the limitations set out in this Constitution.

6.3 Unissued Shares

Subject to this Constitution, the Law and to the limitations set out in the Constitution, and to any special rights attached to any Shares for the time being on issue:

All unissued Shares are under the absolute control of the Directors;

The Directors may determine the price of any Shares they issue;

The Directors must preserve any special rights conferred on the holders of existing Shares;

The Directors may classify, allot, grant options over or otherwise dispose of or deal with unissued Shares:

- to the persons;
- on the terms and conditions;
- for the consideration, and subject or not to the payment of any part of the amount thereof in cash; and
- with full power to give to any person the call of any Shares
- as the Directors may determine in their absolute discretion; and

Any Shares may be issued as a class with:

- preferential, deferred, qualified or special rights, privileges or conditions; or
- restrictions including (but not limited to) regarding Dividends, voting or the return of capital
- as the Directors may from time to time determine.

7. Specified Share Rights and Classes

Without limiting the above clause, Shares issued by the Directors may be of a class described or as otherwise authorised by this Constitution including in any Schedule.

The rights attaching to each class of Shares are subject to the rights, privileges and conditions attached to each other class of Shares provided for in, or that may be validly issued pursuant to this Constitution.

Without limiting the authority conferred on the Directors to issue Shares of different classes, and subject to the Law, and to the limitations set out in clause 4, the Directors may issue preference shares that are:

- redeemable or non-redeemable; and
- liable to be redeemed, or preference shares that are liable to be redeemed at the option of the Company.

7.1 Re-Designation Of Shares

Subject to the Law and to the limitations set out above, at any time, and with:

the consent in writing of the holders of no less than 75% of the issued Shares of that class (unless a different percentage is specified for that class); or

the sanction of a Special Majority Vote passed at a separate meeting of the holders of the Shares of that class

the Directors may re-classify or re-designate all or some of the Shares of that class to be:

- a new class of Shares; or
- part of an existing class of Shares.

Subject to the Law and to the limitations set out in Clause 4, Shares subject to a re-classification or re-designation under Clause 0 may (if re-classified or re-designated to be a new class of Shares) be issued with:

- preferential, deferred, qualified or special rights, privileges or conditions; or

- restrictions including (but not limited to) regarding Dividends, voting or the return of capital
- as the Directors may from time to time determine.

7.2 Variation Of Class Rights

Subject to the Law and to the limitations set out in above, if at any time the Share capital is divided into different classes of Shares, the rights attached to any class may, whether or not the Company is being wound up, be varied with:

the consent in writing of the holders of no less than 75% of the issued Shares of that class (unless a different percentage is specified for that class); or

the sanction of a Special Majority Vote passed at a separate meeting of the holders of the Shares of that class.

7.3 Share Certificates

A person whose name is entered as a Member receive a certificate for the Share according to

For jointly held Shares:

- the Company is not bound to issue more than one certificate for a Share to one of the joint holders first named in the register of Members;
- delivery of a certificate for a Share to one of the joint holders.

7.4 Shares Held on Trust

Shares held by a Member as trustee of a trust for the benefit of other Members of the Company in such a way as to indicate that the Shares are held on trust:

- no liability is created by that marking; and
- the Company is not affected with notice of a trust;
- Notwithstanding the provisions of the Constitution, the Company is not compelled in any way to recognise or to investigate the existence of a trust;
- any equitable, contingent, future or partial interest in a Share;
- the holding of any Share on trust;
- any dealing by a trustee for Shares; or
- (except as expressly provided by the Law of the State of New South Wales) the holding of a Share
- except an absolute right of ownership in the Share.

8. OFFERS OF SHARES

8.1 Pre-Emption On Issue Of New Shares

Subject to any direction to the contrary given by the Members of the Company by way of a Special Majority Vote in a general meeting, before issuing new Shares (or options over Shares) to any person, all un-issued Shares of a particular class must, before being issued to a person who is not a Member, be offered to the existing Members in accordance with this clause.

Why is an SMSF corporate constitution important?

The SMSF company constitution is vital.

The Constitution is the rules as to what the SMSF corporate trust does:

- *power to appoint and remove directors (who are also the SMSF members)*
- *decide on meetings and resolutions*
- *shareholders and director's power*

If you opt to just have mum and dad as the SMSF trustees then these issues are dealt with under the governing rules of the SMSF Fund Deed.

But, when you have a Legal Consolidated SMSF corporate trustee the constitution controls these issues.

The offer must be made by notice specifying the number and class of Shares being offered (**Issue Shares**).

The notice must specify that the Member has a period of at least 10 Business Days from the date of such notice within which to apply for some or all of the Issue Shares.

It must be a term of the offer under this clause that, if Members of more than one class apply for some or all of the Issue Shares, the Issue Shares are treated as having been offered:

- first, to all persons holding Shares of the same class as the Issue Shares, in priority to the remaining classes of Members; and
- thereafter, to the extent that all of the Issue Shares have not been applied for by such class of Members, the Issue Shares are to be treated as having been offered to all of the Members holding the remaining classes of Shares.

It must be a further term of the offer that, if there is competition within any class of Members for the Issue Shares treated as having been offered to that class, such Issue Shares are treated as offered among such class of Members in proportion (as nearly as may be, ignoring fractions of Shares) to their existing holdings of Shares of the class to which the offer is treated as having been made (**Proportionate Allocation**). However, in their application for Issue Shares a Member may, if they so desire, indicate that they would be willing to purchase a particular number of Shares in excess of his Proportionate Allocation (**Extra Shares**).

For each of the categories of offeree, the Company must allocate the Issue Shares as follows:

- If the total number of Issue Shares applied for is equal to or less than the available number of Issue Shares, each Member must be allocated the number applied for in accordance with his application; or
- If the total number of Issue Shares applied for is greater than the available number of Issue Shares, each Member must be allocated his Proportionate Allocation, or such lesser number of Issue Shares for which he has applied, and applications for Extra Shares must be allocated according to such applications or, if competition, among those Members applying for Extra Shares in such proportions as equal (as nearly as may be) the proportions of all the Shares of the same class held by such Members.

Allocations of Issue Shares made by the Company for this clause constitutes the acceptance by the persons to whom they are allocated of the offer to subscribe for those Issue Shares on the terms offered to them, provided that no person is obliged to take more than the maximum number of Issue Shares that they has indicated to the Company they are willing to subscribe for.

The Company must forthwith on allocating any Issue Shares give notice in writing (an **Allocation Notice**) to each person to whom Issue Shares have been so allocated of the number of Issue Shares so allocated and the aggregate subscription price payable. Completion of the issue of those Issue Shares in accordance with the Allocation Notice must take place no later than within 20 Business Days after the date of the Allocation Notice, whereupon the Company must, upon payment by the offeree of the subscription price due in

respect thereof, issue those Issue Shares specified in the Allocation Notice to the persons to whom they have been allocated and deliver the relevant Share certificates.

The Directors may issue any Issue Shares that are not otherwise subject to an Allocation Notice (**Residual Shares**) as they think fit, subject only to this Constitution and the Law

PROVIDED THAT any Residual Shares must not be offered to any person on terms that are more favourable than those terms on which such Shares were first offered to Members for this clause. Without limiting the above, the Directors may issue the Residual Shares to one or more third parties who are not an existing Member of the Company.

All persons to whom new Shares are to be issued must sign a form of application as the Company may from time to time prescribe, including an undertaking to be bound by the terms of this Constitution.

8.2 Limited Application of Pre-Emption on Issue of New Shares

The provisions of this clause do not apply to:

- An issue of Shares for the exercise of an option duly granted by the Company for this Constitution over one or more un-issued Share in the Company; or
- Offers of unissued Shares where the Company has only one Member who is also the sole Director.

8.3 Waiver of Pre-Emption Right

The Members of the Company may by unanimous written agreement waive compliance with the pre-emption on issue procedures set out in this clause, either for one or more issues of Shares, or for one or more periods of time.

9. TRANSFER OF SHARES

9.1 Transfers and Encumbrances

No transfer of the beneficial interest in any Share may be made if this Constitution would not permit a transfer of the legal ownership of such Share.

Any dealing with any Share in violation of any of the provisions of this Constitution is void.

Each Member agrees with the Company and the other Members that, in addition to the requirements of this Constitution, he or she will not create or allow to be created any claim, charge, lien, encumbrance or equity on or over or affecting any of his Shares unless:

- the Board gives its written consent; and
- the proposed holder of the encumbrance expressly agrees in writing that its security is subject to the rights of the other Members under this Constitution.

9.2 Permitted Transfers

The restriction on transfers of Shares provided for in this Constitution does not apply to a *bona fide* transfer of Shares:

- to the Spouse of a Member;
- to the Personal Representative of a Member for this clause;
- to any nominee who, immediately after the transfer, will hold the Shares only as a bare nominee for the Member;

- merely for the purpose of effectuating the appointment or retirement of a trustee of an existing trust on which the Shares are held;
- if the Member is a company, to any Related Body Corporate of the Member, or to the shareholders of the Member in proportion to their shareholdings in the Member;
- to a beneficiary (or beneficiaries) of a superannuation fund (for which the beneficiary is a trustee or a director of the trustee company);
- next of kin of a deceased Member; or
- where the transfer is approved by a Special Majority Vote of the Board.

For the purposes of this Constitution:

- the recipient of the Shares for a transfer under this clause is a **Permitted Transferee**; and
- subject to clause (Compliance), the Company is obliged to register any transfer made for a Permitted Transfer described in this clause.

9.3 Transmission of Shares

In the case of the death of a Member, the survivor (where he was a joint holder), or the Personal Representative (where he was a sole holder) is the only persons recognised by the Company as having any title or interest in the Share.

Notwithstanding this clause, the estate of a deceased joint holder is not released from any liability for a Share that had been jointly held by them.

Subject to this Constitution (and in particular the provisions of this clause) and to the *Bankruptcy Act 1966* (Cth), a person becoming entitled to a Share in consequence of the death or bankruptcy or mental incapacity of a Member may upon giving evidence of this to the Directors' reasonable satisfaction, elect to register the Share in his own name or that of a nominee. This election must be in writing and executed by the person taking transfer of the Share.

9.4 Pre-Emption Rights

Except in the case of a transfer for subclause 2 (**Permitted Transfers**) or this clause (**Come Along**), a Member who wishes to transfer any Shares (**Seller**) must give notice in writing of such wish to the Company (**Transfer Notice**).

Each Transfer Notice must:

- Relate to one class of Shares only;
- Relate to a Minimum Parcel of Shares, unless the Transfer Notice is a "deemed" transfer notice under another clause of this Constitution

AND if the transfer would otherwise result in the Member holding less than a Minimum Parcel of Shares: the transfer must relate to the whole of the Member's shareholding in the Company

in each case, unless the Board consents in writing to a lower number of Shares;

Specify the number and class of Shares which the Seller wishes to transfer (**Sale Shares**);

Specify the identity of any person to whom the Seller wishes to transfer the Sale Shares (**Proposed Transferee**);

Specify the price per Share (**Proposed Sale Price**) at which the Seller wishes to transfer the Sale Shares;

Be deemed to constitute the Company as the Seller's agent for the sale of the Sale Shares at the Sale Price in the manner prescribed by this Constitution; and

Not be varied or cancelled until the expiry of 20 Business Days from the determination of the Sale price under this clause.

The Seller may provide in the Transfer Notice that unless buyers are found for all or not less than a specified number of the Sale Shares, they are not bound to transfer any of such Shares (**Minimum Transfer Condition**), and any such provision is binding on the Company.

Notwithstanding this clause, if the Transfer Notice contains a Minimum Transfer Condition, the Company may not make any allocation of Sale Shares unless and until it has found buyers for the minimum number specified in the Minimum Transfer Condition.

The Company may within 5 Business Days of determining the Sale Price under this clause, give a notice to the Seller stating that the Company wishes to repurchase the Sale Shares, in which case the Seller will be bound on payment of the Sale Price, to transfer or redeem the Sale Shares to the Company, with settlement to occur within 30 Business Days of the determination of the Sale Price.

If the Company does not exercise the repurchase option under this clause then, subject to the application of this clause, the Company must within 10 Business Days of determining the Sale Price under this clause give notice in writing to each of the Members (other than the Seller) offering for sale the Sale Shares at the Sale Price.

If the Board considers that the provisions of this clause could mean that the offer of the Sale Shares would require a prospectus, the Board must devise such other method of offering such Sale Shares which does not require a prospectus, (including, but without limitation, offering the Sale Shares to a limited number of Members selected by such method as the Board shall determine in its absolute discretion).

The notice provided under this clause must specify that the Member has a period of 15 Business Days from the date of such notice within which to apply for some or all of the Sale Shares. It must be a term of the offer that, if Members of more than one class apply for some or all of the Sale Shares, the Sale Shares are treated as having been offered:

- first, to all persons (other than the Seller) holding Shares of the same class as the Sale Shares, in priority to the remaining class of Members; and
- thereafter, to the extent that all of the Sale Shares have not been applied for by such class of Members, the Sale Shares are treated as having been offered to all of the Members holding the remaining classes of Shares.

It must be a further term of the offer that, if there is competition within any class of Members for the Sale Shares treated as having been offered to that class, such Sale Shares are treated as offered among such class of Members in proportion (as nearly as may be) to their existing holdings of Shares of the class to which the offer is treated as having been made (**Proportionate Allocation**). However, in the application for Sale Shares a Member may, if the Member so desires, indicate they are willing to purchase a particular number of Shares in excess of their Proportionate Allocation (**Extra Shares**).

For each of the categories of offeree, the Company must allocate the Sale Shares as follows:

- If the total number of Sale Shares applied for is equal to or less than the available number of Sale Shares, each Member must be allocated the number applied for in accordance with the Member's application; or
- If the total number of Sale Shares applied for is greater than the available number of Sale Shares:
 - each Member must be allocated their Proportionate Allocation, or such lesser number of Sale Shares for which the Member has applied; and
 - applications for Extra Shares must be allocated according to such applications or, if competition, among those Members applying for Extra Shares in such proportions as equal (as nearly as may be) the proportions of all the Shares of the same class held by such Members.

Allocations of Sale Shares made by the Company for this clause constitutes the acceptance by the persons to whom they are allocated of the offer to purchase those Sale Shares on the terms offered to them, provided that no person is obliged to take more than the maximum number of Sale Shares that the Member has indicated to the Company they are willing to purchase.

The Company must forthwith on allocating any Sale Shares give notice in writing (**Sale Notice**) to the Seller and to each person to whom Sale Shares have been so allocated of:

- the number of Sale Shares so allocated; and
- the aggregate price payable.

Completion of the sale and purchase of the Sale Shares in accordance with the Sale Notice must take place within 20 Business Days after the date of the Sale Notice, whereupon the Seller must, upon payment of the price due in respect thereof, transfer the Sale Shares specified in the Sale Notice to the persons to whom they have been allocated, and deliver the relevant Share certificates.

Save in the case of an acquisition of Sale Shares by the Company, if the Seller defaults in transferring any Sale Shares for this clause:

- the Company may receive such purchase money and may nominate some person to execute an instrument of transfer of such Sale Shares in the name and on behalf of the Seller;
- when such instrument has been duly stamped, the Company must cause the name of the proposed transferee to be entered in the register of members as the holder of such Sale Shares and hold the purchase money on trust (without interest) for the Seller; and
- the receipt of the Company for the purchase money is a good discharge to the proposed transferee (who is not bound to see to the application thereof) and, after his name has been so entered in the register of members, the validity of the proceedings may not be questioned by any person.

In the case of an acquisition of Sale Shares by the Company, if the Seller defaults in transferring any Sale Shares for this clause:

- the Company may nominate some person to execute an instrument of transfer of such Sale Shares in the name and on behalf of the Seller (as the Seller's duly authorised attorney);
- when such instrument has been duly stamped, the Company must cause such Share capital to be cancelled in accordance with the Act; and
- the Company must hold the purchase money due to the Seller on trust (without interest) for the Seller.

If all the Sale Shares are not sold under the pre-emption provisions contained in these clauses, the Company shall (forthwith upon the exhaustion of such provisions):

- notify the Seller that the pre-emption provisions have been exhausted; and
- the Seller may at any time within 3 calendar months after receiving such notification, transfer to the Proposed Transferee any unsold Sale Shares at any price not less than the Sale Price, provided that:
 - if the Seller stipulated in the Transfer Notice a Minimum Transfer Condition which has not been satisfied, the Seller shall not be entitled to sell any Sale Shares unless the Seller complies with such Minimum Transfer Condition; and
 - if the Seller stipulated any other conditions in the Transfer Notice, the Seller shall not be entitled to sell any Sale Shares unless the Seller imposes conditions on the sale to the third party which are at least as onerous as those conditions; and
 - any such sale shall be a sale in good faith; and
 - the Directors may as a transfer condition require the Seller to satisfy the Directors (in such manner as the Directors may reasonably think fit) that the Sale Shares are being sold for not less than the Sale Price (without any deduction, rebate or allowance whatsoever), and otherwise on no less favourable conditions, and if the Directors are not so satisfied, the Directors may refuse to register the transfer.

9.5 Sale Price

The Sale Price for the Sale Shares is:

- the Proposed Sale Price specified by the Seller; or
- at the option of the Company:
 - where the Board does not accept that the Proposed Sale Price represents a fair value for the Sale Shares; and
 - the Seller and the Company are not able to agree on a Sale Price by negotiation within 10 Business Days of receipt of the Transfer Notice

the fair value to be fixed following this clause.

For the purposes of this clause, the fair value of the Sale Shares must be determined as follows:

- The fair value of the Sale Shares must be determined as the relevant proportion of the fair value of the Company as a whole, and on the assumption of a going concern, (unless the assumption of a going concern cannot reasonably be made);
- No allowance is to be made for any "minority discount" that would ordinarily attach to the Sale Shares (if any);
- The fair value of the Sale Shares must be determined by an independent valuer appointed jointly by the Seller and the Company, or in the absence of such agreed

appointment within 5 Business Days, a valuer appointed by the President of the *Law Society* of the State on the application of either party (**Valuer**);

- In determining the fair value of the Shares the Valuer may take into account any *bona fide* third party offer to purchase the Sale Shares that has been received by the Seller as a material but not determining factor;
- The Valuer must certify in writing the sum which, in the Valuer's opinion, is the fair value of the Sale Shares and give notice in writing to both parties of the sum so certified. In certifying as to the fair value of the Sale Shares, the Valuer acts as an expert and not an arbitrator; and
- The costs of the Valuer is borne equally by the Seller and the Company.

The fair value fixed under this this clause is binding and the Seller must complete the transfer of the Sale Shares at the fair value so fixed by the Valuer.

9.6 **Qualifying Offers (Come Along)**

In this Constitution a **Qualifying Offer** means a *bona fide* offer at arm's length in writing by or on behalf of any person (**Outside Offeror**) to the holders of all Shares in the Company to acquire all their Shares.

For the purposes of this clause, an offer from a party who is an Associate of a person holding no less than 50% of the ordinary Shares in the Company does not constitute a *bona fide* offer at arm's length.

If the holders of not less than 75% in nominal value of the fully-paid Ordinary Shares then on issue (**Accepting Members**) wish to accept the Qualifying Offer, then the provisions of this clause applies.

The Accepting Members must give written notice (**Come Along Notice**) to the remaining Members (**Other Members**) of their wish to accept the Qualifying Offer and the Other Members are, subject to the operation of this clause, thereupon unconditionally bound to:

- accept the Qualifying Offer;
- provide to the Outside Offeror a warranty that they hold full title to their Shares; and
- transfer their Shares to the Outside Offeror (or his nominee) on the date specified by the Accepting Members.

The Other Members:

- have the right (between them in proportion to their respective holdings of Shares on the date of the relevant Come Along Notice, or in such other proportions as they agree between them and specify in that notice) to purchase all (and not only a proportion) of the Shares proposed to be sold by the Accepting Members for the relevant Qualifying Offer (**Assented Shares**) for the same price and on the same terms (save that any counter-offer must be unconditional in all respects) as the said offer, and in priority to the rights of the Outside Offeror under such offer; and
- must between them:
 - notify the Accepting Members of the exercise of that right by written notice (a Matching Notice) given within 15 Business Days of the giving of the Come Along Notice; and

- complete the purchase within the earlier of the completion date contemplated in the Qualifying Offer and 40 Business Days of the serving of the Matching Notice.

If a Matching Notice is served it obliges the Accepting Members and the Other Members who served the Matching Notice to complete the sale and purchase of the Assented Shares on the said terms, and this clause shall apply *mutatis mutandis* for that purpose.

If any Other Member does not, within 5 Business Days of being required to do so, execute and deliver transfers for the Shares held by them and deliver the certificate(s) for the same (or a suitable indemnity in lieu thereof), then any Accepting Member are entitled to:

- execute, and are entitled to authorise and instruct such person as they think fit to execute, the necessary transfer(s) and indemnities on the Other Members' behalf (as their duly appointed attorney);
- against receipt by the Company (on trust for those shareholders) of the consideration payable for the relevant Shares, deliver such transfer(s) and certificate(s) or indemnities to the Outside Offeror (or his nominee); and
- register that Outside Offeror (or his nominee) as the holder thereof

AND after such registration, the validity of such proceedings may not be questioned by any person.

9.7 Qualifying Disposals (Tag Along)

If at any time one or more Members (**Proposed Sellers**) propose to sell, in one or a series of related transactions (**Proposed Transaction**), more than 50% in nominal value of the fully-paid Ordinary Shares (**Majority Holding**) to any person, other than for this clause (**Permitted Transfers**) or this clause (**Come Along**), the Proposed Sellers may only sell the Majority Holding if they comply with the provisions of this clause.

For the avoidance of doubt, compliance with the provisions of this clause may be included as a condition precedent to completion of the Proposed Transaction.

The Proposed Sellers must give written notice (**Proposed Sale Notice**) to the other holders of the Ordinary Shares of the Proposed Transaction at least 15 Business Days prior to the date on which the Proposed Transaction becomes unconditional or otherwise terminates.

The Proposed Sale Notice must set out, to the extent not described in any accompanying documents:

- the identity of the proposed buyer (**Proposed Buyer**);
- the purchase price and other terms and conditions of payment;
- the proposed date of sale (**Proposed Sale Date**); and
- the number of Shares proposed to be purchased by the Proposed Buyer (**Proposed Sale Shares**).

Any other holder of fully-paid Ordinary Shares in the Company is entitled, by written notice given to the Proposed Sellers within 10 Business Days of receipt of the Proposed Sale Notice, to require the Proposed Sellers to procure the sale of all or some of their fully-paid

Ordinary Shares to the Proposed Buyer on the same terms and conditions as those set out in the Proposed Sale Notice.

If any other holder of Shares is not given the rights accorded that person by the provisions of this clause, the Proposed Sellers is required not to complete the Proposed Transaction, and the Company is bound to refuse to register any transfer intended to carry the Proposed Transaction into effect.

9.8 Take-Over of Member

On the date when a Change-in-Control of a Member (**Taken-Over Party**) occurs, the Taken-Over Party is deemed to have issued a notice in writing (**Transfer Notice**) to the Company and to the other Members (**Receiving Parties**) offering to sell all of the Shares held by the Taken-Over Party (**Offered Shares**) to the Receiving Parties (**Offer**) at an open market value per Share determined by an Independent Valuer appointed by the Company:

- as at the date when the change in control took place;
- at the cost of the Taken-Over Party;
- on the instructions of the Company or one or more other Members; and
- within 10 Business Days of receiving those instructions.

Any of the Receiving Parties (**Buying Parties**) may, within 20 Business Days of receiving the determination of the Independent Valuer under this clause, by notice in writing to the Taken-Over Party, accept the Offer.

Where there is more than one Buying Party, each may agree to accept all or any of the Offered Shares, but in total not less than all of the Offered Shares, and if on acceptance the demand by the Buying Parties exceeds the number of Offered Shares, the Offer is deemed to be accepted by the Buying Parties *pro-rata* to their existing shareholdings.

Completion of the sale of the Offered Shares accepted by a Buying Party must take place within 20 Business Days after the date that notice under the Constitution accepting the Offer is given to the Taken-Over Party at a time and place to be agreed by the Buying Party and the Taken-Over Party, or failing agreement, at 11.00am on the next Business Day after the 20 Business Day period at the registered office of the Company.

On completion of the sale of the Offered Shares:

- the Buying Parties must pay the purchase price to the Taken-Over Party for the Offered Shares accepted by the Buying Parties; and
- the Taken-Over Party must deliver to the Buying Parties the certificates for the Offered Shares and transfers of the Offered Shares executed by the Taken-Over Party.

If the Taken-Over Party defaults in complying with this clause, the Company is irrevocably authorised by the Taken-Over Party to receive the purchase money and to execute transfers of the Offered Shares to the Buying Parties on behalf of the Taken-Over Party. Following execution and stamping of the appropriate transfers, the Directors must register the transfers of the Offered Shares and the Company must hold the purchase money on trust for the Taken-Over Party. The receipt of the Company for the purchase money is a good discharge to the Buying Parties and after their names have been entered in the register under this

clause the validity of the actions of the Company hereunder may not be questioned by any person.

9.9 Compliance

For the purpose of ensuring compliance with the transfer provisions in this clause, the Company may require any Member to procure that:

- he or she; or
- any Proposed Transferee; or
- such other person as is reasonably believed to have information and/or evidence relevant to such purpose

provides to the Company any information and/or evidence relevant to such purpose and until such information and/or evidence is provided:

- the Company must refuse to register any relevant transfer; and/or
- the Company must refuse to recognise the bearer of any Shares, or permit such person to exercise any right as a member of the Company; and/or
- if such Member is not a Defaulting Member, such Member must forthwith be treated as being a Defaulting Member under this Constitution.

9.10 Procedures

Subject to the provisions of this Constitution:

- a Member may transfer all or any of his Shares by instrument in writing in any usual or common form, or in any other form that the Directors may from time to time approve;
- an instrument of transfer referred to in this clause must be executed by both the transferor and the transferee;
- a transferor of a Share remains the holder thereof until the transfer is registered and the name of the transferee is entered in the Register of Members for that Share;
- the instrument of transfer must be left for registration at the registered office of the Company, accompanied by the certificate (if any) of the Shares to which it relates, and such other information as the Directors reasonably require to show the right of the transferor to make the transfer;
- following satisfaction of the matters set out in this clause, the Directors must, subject in each case to the powers and discretions vested in the Directors under this Constitution, register the transferee as a Member; and
- the registration of transfers may be suspended at such times and for such periods as the Directors from time to time determine, but not exceeding in whole 60 Business Days in any calendar year.

The same terms and conditions as are set out in this clause apply in relation to the transfer of options to take up Shares.

9.11 General Discretion Not to Register a Share Transfer

Subject only to this clause, the Directors may refuse to register a transfer of Shares for any reason they think fit.

The Company must give written notice to the person who lodged the transfer within 5 Business Days after a refusal to register a transfer.

Except in the case of suspected fraud, they must return the transfer to that person.

9.12 Suspension of Share Transfers

The Directors may suspend registration of transfers for a specified period at any time, provided the total period of suspension in a calendar year is no more than 20 Business Days.

10. MEMBER WARRANTIES

10.1 General Member Warranties

Each Member warrants and represents to each of the other Members and the Company, as a condition of holding Shares in the Company that:

- the Company's register contains a complete list of the amount of cash in the form of an initial subscription of cash in a company (the company) by that Member on the acquisition of the Shares on the Effective Date;
- the acquisition and holding of Shares is properly authorised and in accordance with the action by it;
- it has full corporate power and lawful authority to acquire and perform or cause to be performed all its obligations under the terms of this Constitution do not conflict with or result in breach of any writ, order or injunction, judgment, law, rule or regulation or any other subject or by which it is bound.

10.2 Corporate Member Warranties

Each Member that is a body corporate warrants and represents to each of the other Members and the Company, as a condition of holding Shares in the Company that:

- it is a body corporate duly incorporated under the law of the place of its incorporation;
- it has power and authority to comply with the terms and conditions set out in this Constitution;
- all necessary meetings have been held and all necessary, all necessary resolutions passed and all consents obtained to authorise it to bound by this Constitution and to perform in accordance with its terms; and
- performance in accordance with the terms of this Constitution will not violate:
 - the Member's constitution or any other constituent documents; or
 - any other agreement or document which is binding on it or its assets.

10.3 Trustee Member Warranties

If any Member (**Trustee Member**) acquires Shares in the capacity as trustee for a trust (**Trust**), whether or not the other parties have notice of this fact, the Trustee Member agrees with the Company and each other Member that:

- the Trustee Member is liable both personally and in their capacity as trustee of the Trust;
- the Trustee Member will not retire or resign as trustee or appoint a new or additional trustee for the Trust without the written consent of the Company. Such consent must not be unreasonably withheld, provided that the Trustee Member ensures that any new or additional trustee executes a document (in a form reasonably satisfactory to the Board)

Minimum requirements for an Australian company:

- *at least one director/secretary living in Australia (for asset protection best to have only one director)*
- *a physical Australian address for the registered office*
- *at least one shareholder*

agreeing to be bound by the terms of this Constitution as though it were the original Trustee Member;

- the Trustee Member has become bound by this Constitution as part of the due and proper administration of the Trust and for the benefit of the beneficiaries or unit holders (as the case may be) of the Trust;
- the Trustee Member has power under the document establishing the Trust to execute and perform the Trustee Partner's obligations under this Constitution, and all necessary action has been taken to authorise performance in accordance with this Constitution under that document;
- the Trustee Member has an unrestricted and unlimited right to be fully indemnified out of the assets of the Trust; and
- the Trustee Member will not in any way vary the terms of the Trust without the written consent of the Company.

11. DUTY OF GOOD FAITH & DISCLOSURE OF CONFLICT OF INTEREST

Each Member agrees to at all times to:

act in good faith towards each other Member and the Company, and give to each other full information and truthful explanation of all matters relating to the affairs of the Company;

act in the best interests of the Company;

deal with the Company on open market and arm's length terms; and

otherwise perform and observe all of the obligations of the Member to be performed or observed under this Constitution.

Each Member must make a full and complete disclosure in writing to the other Members of the existence, nature and extent of any conflict of interest or any fact or circumstance likely to result in a conflict of interest that it may have with its duties and obligations under this Constitution or with the affairs and aspirations of the Company forthwith upon becoming aware of such conflict, fact or circumstance.

12. MEMBER DEFAULT

12.1 Defaulting Members

If a Member (**Defaulting Member**) fails to comply with any material condition or obligation which must be complied with by a Member under this Constitution (**Act of Default**), another Member or other Members (in each case holding Ordinary Shares) may give the Defaulting Member a notice (**First Default Notice**) requiring that Act of Default to be remedied within not less than 10 Business Days from the date of service of the First Default Notice.

If the Act of Default referred to in this clause is not remedied within the period specified in the First Default Notice, another Member or other Members (in each case holding Ordinary Shares) may give the Defaulting Member a further notice (**Second Default Notice**) to remedy the Act of Default.

The Second Default Notice must be given within 60 Business Days of the service of the First Default Notice.

The Second Default Notice must give notice to the Defaulting Member that, if the Act of Default is not remedied within not less than 10 Business Days from the date of service of the Second Default Notice:

The Defaulting Member is deemed to have served a Transfer Notice under and for this clause;

The deemed Transfer Notice is deemed:

- to be complete in all respects;
- not to impose any Minimum Transfer Conditions; and
- to specify a Proposed Sale Price equal the fair Market Value of the relevant Shares as determined in accordance with this clause.

If the Act of Default is not remedied within the period specified in the Second Default Notice then:

- The Defaulting Member is deemed to have served a Transfer Notice; and
- The deemed Transfer Notice is deemed:
 - to be complete in all respects;
 - not to impose any Minimum Transfer Conditions; and
 - to specify a Proposed Sale Price equal to the fair value of the relevant Shares as determined in accordance with this clause.

Each Member covenants with each other Member that a Proposed Sale Price equal to the fair value of the relevant Shares as determined in accordance with this clause is fair and reasonable, given the context in which the Proposed Sale Price would be set.

A transfer of Shares for a Transfer Notice given under this clause is without prejudice to any other remedies that may be available to a Member or the Company as a result of the Defaulting Member's Act of Default.

12.2 Power of Attorney in Event of Default

Each Defaulting Member under the above sub-clause, upon failing to remedy an Act of Default within the time specified in that clause, irrevocably appoint each of the other Members, jointly and severally its attorney:

- To sign any instrument on its behalf;
- To pay any monies due to be paid by it under this Constitution, on its behalf;
- To do any act on its behalf;
- To use its name; and
- To give effect to this Constitution.

A certificate signed by the other Member or Members that an instrument or act falls within this power of attorney, is sufficient evidence of that matter unless proved incorrect.

The power of attorney is granted to secure the performance of the obligations of the Members owed under this Constitution.

A Member may exercise the power of attorney notwithstanding that the exercise of the power constitutes a conflict of interest or duty.

Each Member must ratify any exercise of a power by an attorney.

13. CALLS ON SHARES AND FORFEITURE

13.1 Calls on Shares

Subject to the terms on which a Share is issued to a Member:

- The Directors may from time to time make calls on the Members for any money that remains unpaid for the issue of any one or more Shares; and
- Each Member must, within 10 Business Days of the issue of a notice specifying the place and maximum time for payment, pay to the Company the amount called on that Member's Share or Shares under this clause.

The Directors may at any time:

- extend the time allowed to pay; or
- revoke a call

by issue of a notice in writing to the relevant Members.

No call is payable within 20 Business Days after the date fixed for payment under any preceding call in relation to the same Share.

13.2 Forfeiture of Shares

In the event that a Member fails to pay any call within the time allowed under this clause, or fails to pay any instalment towards the subscription price of any Share as agreed at the time of application and subscription:

- The Directors may (until the call or instalment is paid in full) serve a notice on that Member requiring the Member to pay the call or instalment together with:
 - any interest accrued thereon at the rate per annum (if any) agreed at the time of application and subscription (**Call Rate**) (unless waived); and
 - all reasonable expenses of the Company arising from the failure to pay and the process of extracting payment
 - (collectively, **Call Default Fees**);

The notice must set out:

- a time and place (at least 10 Business Days after the date of that notice) for payment;
- the amount of the call or instalment; and
- the amount of interest and expenses (if any) to be paid
- and state that a failure to pay that amount renders the Share subject to the unpaid call or instalment liable to be forfeited;

For non-compliance by the Member with the terms of the notice:

the relevant Share may be forfeited by a Simple Majority Vote of the Directors; and

an entry of the forfeiture and the date thereof must thereafter be entered into the register of Members;

A forfeited Share is deemed to be the property of the Company, and the Directors may deal with that Share as they think fit;

- Any Member whose Share has been forfeited remains liable for the payment of all calls and instalments, interest and expenses owing for that Share, and the outstanding amount accrues interest at a rate per annum agreed at the time of application and subscription (if any), and in the absence of such agreement, at the Standard Rate (Call Default Rate) until payment in full of those amounts. The Directors may enforce the payment of this amount but are not under any obligation so to do; and
- Subject to the Law, the forfeiture of a Share results in the complete extinction of all interests and claims and demands against the Company for that Share, and all other rights provided for herein for that Share.

13.3 LIEN OVER SHARES

Subject to this clause and the Law, the Company has a first lien on:

- Every Share of a Member (not being a fully paid Share) for all money called or payable for that Share; and
- All Shares (other than a fully paid Share) registered in the name of a single person for all money presently payable by that person or that person's estate to the Company.

The Directors may at any time and from time to time declare any Share to be wholly or in part exempt from the provisions of this clause.

14. GENERAL MEETINGS

14.1 Convening Of General Meeting

The Directors:

- May, whenever they think fit, convene a general meeting of the Members of the Company; and
- Must on the requisition of Members representing not less than 20% of the total voting rights in the Company at the date of that requisition forthwith proceed to convene a general meeting of the Members of the Company.

The following provisions have effect in relation to each requisition made under this clause:

- The requisition must:
 - state the objects of the meeting and must be signed by the persons calling the meeting and be deposited at the registered office of the Company; and
 - may consist of several documents in like form, each signed by one or more of the persons calling the meeting;
- If the Directors do not within 15 Business Days after receipt of the requisition proceed to convene the meeting, the persons calling the meeting may convene the meeting. However, the meeting must be held not later than 60 Business Days from the date of the requisition;

If a resolution is to be proposed as a Special Majority Vote, the Directors are deemed not to have duly convened the meeting if they do not give the notice required by the Law; and

So far as possible, every meeting convened under this clause by the persons calling the meeting must be convened in the same manner as general meetings are convened by the Directors.

14.2 Cancellation of General Meetings

The Directors may cancel a general meeting convened by them.

The Directors may cancel a general meeting convened by a Member or Members in accordance with the Law if they have received from that Member or Members a signed notice withdrawing their request for the meeting.

14.3 Notice of General Meetings

In every notice calling a general meeting of the Company there must appear, with reasonable prominence, a statement that a Member entitled to attend and vote is entitled to:

- appoint one or more proxies to attend and vote instead of that person and that a proxy need not also be a Member; or
- submit a Direct Vote.

All notices and other communications relating to a general meeting that any Member is entitled to receive must also be sent to the auditors of the Company for the time being (if there is one).

14.4 Proceedings at General Meetings

No business may be transacted at any meeting unless a **quorum** is present.

A quorum is constituted by Members holding not less than 20% of the total voting rights in the Company that may be cast at that meeting (whether in person, by proxy, by Direct Vote or by a duly authorised representative of a corporation).

14.5 Right of Non-Members to Attend General Meeting

The Chair may invite any person who is not a Member to attend and address a general meeting, including a Director, auditor or Secretary.

14.6 Technology

The Company may hold a meeting of members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate in the meeting.

14.7 Chair of General Meetings

The Chair of meetings of Directors is also the Chair of a general meeting.

If:

- there is no Chair;
- the Chair is unwilling to act as chair; or
- the Chair is not present within 30 minutes after the time appointed for the general meeting to be held,
- the Directors may choose another Director to be chair of the meeting. If the Directors fail to do so, or all Directors present decline to be Chair, the Members who are present may choose one of them to be Chair of the Meeting.

The Chair's rulings on any matter relating to the order of business, procedure and conduct of the general meeting are, if made in good faith, final. No motion of dissent from a ruling by the Chair will be accepted.

14.8 Business at General Meetings

All business must be considered and resolved by way of Unanimous Decision under a term of this Constitution.

Subject to this Constitution and the requirements of the Constitution, all business may be carried if the requisite number of qualifying votes is in favour.

14.9 Voting at General Meetings

Subject to the rights attaching to any particular class of Shares, the rights attaching to each Share are as set out in this clause:

- **On a show of hands**, every Member holding one or more Shares (as an individual) is present in person, by proxy or by duly authorised representative, by proxy or by Direct Vote.
- On a poll, every Member holding one or more Shares is present in person, by proxy or by Direct Vote or by duly authorised representative, by proxy or by Direct Vote of which he is the holder.

Unless a poll is demanded by the Chair, or by a Member holding at least 10% of the Shares (before or on the declaration of the result of a show of hands), a resolution put to vote is decided on a show of hands.

- A resolution put to vote is decided on a show of hands.
- The Chair must make a declaration that a resolution has been carried by a particular majority or lost or not carried by a particular majority.
- An entry to that effect in the record of proceedings is evidence of the fact, without proof of the number of votes in favour of or against the resolution.

In the case of joint holders:

- The vote of the senior holder who tenders a vote in person or by proxy, must be accepted to the exclusion of the other joint holders for this purpose, seniority is to be determined by the order of names in the register of Members; and
- Several executors or administrators of a deceased person are, for the purpose of this clause, deemed to be joint holders.

Before taking a vote on a resolution at a general meeting, the Chair must ascertain whether any proxy votes or Direct Votes have been cast and all Direct Votes are to be cast.

A Member who is of unsound mind or whose personal affairs are being managed by a committee relating to mental health or insolvency may vote with the committee or by the Public Trustee or by the person managing his affairs or estate. Any committee, Public Trustee, proxy or attorney.

A Member is not entitled to be present or to vote at a general meeting unless all calls and other amounts payable at the time of the meeting for Shares held by the Member have been paid in full.

What you get in the Legal Consolidated bucket company

A Legal Consolidated company includes:

- 1. start building your company for free. The hints and training videos guide you. Telephone us for legal advice on how to answer the questions*
- 2. the law firm oversees the incorporation process with ASIC*
- 3. the law firm meets and speaks with ASIC regarding your company name, as required*
- 4. includes:*
 - o all ASIC incorporation fees*
 - o Certificate of Incorporation*
 - o Australian Company Number (ACN)*
- 5. comes with the law firm letter:*
 - o confirms a law firm prepared your company*
 - o show you how to get a free ABN, TFN and GST*
- 6. Cutting edge Company Constitution contains:*
 - o allows for electronic meetings and signatures*
 - o no need for annual meetings*
 - o allows single directors*
 - o no company seal required*
 - o personalised Share certificates*
- 7. All minutes, registers and consents, including:*
 - o Company Officer registers*
 - o Company Officer consent forms*
 - o Application of shares*

A challenge to a person's entitlement to vote at a general meeting or to the validity of a vote made at that meeting may only be raised at that meeting. The Chair must determine any dispute as to the admission or rejection of a vote and if made in good faith that determination is final and conclusive.

In the event of an equality of votes cast for and against a question the Chair does not have a second or casting vote.

14.10 Taking of Polls

A demand of 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;
- May be withdrawn before the poll is taken; and
- On a question of adjournment must be taken at the meeting without adjournment.

A poll properly demanded must be taken:

- In the manner and at the time and place that the Chair of the meeting directs; and
- Either at once or after an interval or adjournment.

The result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.

14.11 Adjournment of Meetings

If a quorum is not present within 30 minutes after the time appointed for the meeting:

- If the meeting has been called upon a requisition of Members – the meeting must be dissolved; or
- In any other case – the meeting must stand adjourned to:
 - the same day in the next week at the same time and place; or
 - the other day and time and place (if any) that the Directors decide and notify the Members of at that adjourned meeting (as the case may be) and a quorum of any two Members present at the adjourned meeting (in person or by proxy) constitutes a quorum and may transact the business for which the meeting was called.

The Chair of a general meeting may, with the sanction of the meeting, adjourn the meeting from time to time and from place to place. However, no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

14.12 Failure to Send Notice of Meeting

An accidental omission to send a notice of a general meeting (including a proxy appointment form) or the postponement of a general meeting to any Member, or the non-receipt of a notice (or form) by any Member, does not invalidate the proceedings at or any resolution passed at the general meeting.

14.13 Chair may Refuse Admission

The Chair of a general meeting may refuse admission to a person, or require a person to leave and not return to, a meeting if the person causes, or is likely to cause (in the reasonable opinion of the Chair) any disruption to the meeting.

14.14 **Written Resolutions**

The Company may pass a resolution without a general meeting being called or held if the resolution is set out in a document if the Company has:

- only 1 member, signed in the manner set out in section 249B of the Law; or
- more than 1 member, signed in the manner set out in section 249A of the Law.

The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a member in a manner satisfactory to the Board as being signed by that member.

15. **MEMBER PROXIES**

15.1 **Appointment of Proxy**

A Member may appoint a proxy or attorney.

The Member, the Member's attorney or the corporation Member's representative must sign the appointment of a proxy.

The appointment of a proxy is valid if it is in the form of the Pro-forma Proxy Form contained in the Schedule or it contains the information which the Law requires it to contain. This may include:

- the name and address of the Member;
- the name of the Company;
- the proxy's name or the name of the proxy's office; and
- the meetings (or meetings) at which the proxy is to be used.

A Member who is entitled to cast 2 or more votes may appoint no more than 2 proxies. A proxy does not have to be a Member of the Company. If a Member appoints 2 proxies, neither can vote on a show of hands. If the appointment does not specify what proportion of votes each is to be proxy for, each may exercise one half of the Member's voting rights. A fraction of a vote is to be disregarded.

An appointment is not invalid merely because it does not specify all this information.

An appointment may be a standing appointment.

An appointment for a meeting is valid for an adjournment of that meeting.

15.2 **Revocation of Appointment**

A Member who has appointed a proxy may revoke the appointment at any time by giving the Company written notice.

An appointment is not revoked by the Member attending and taking part in a general meeting. However, if the Member votes on a resolution, the proxy or other person appointed to exercise a Member's voting rights is unable to vote.

15.3 **Form of Proxy**

Schedule B contains a valid form of proxy as at the Effective Date.

15.4 Lodgement of Proxies

Unless otherwise approved by the Chair of Directors, a proxy, power of attorney or other authority to exercise a Member's voting rights at a general meeting is not to be treated as valid unless notice of it is received by the Company at its registered office (or another place specified in the notice of meeting) at least 24 hours before the time the meeting (or adjourned meeting) at which it is to be exercised is due to commence.

The proxy or power of attorney must be accompanied by the authority under which the proxy was signed or a certified copy of the power of attorney. Faxed documents are acceptable.

15.5 Rights of Proxies

A proxy or other person appointed to exercise a Member's voting rights has the same rights as the Member to speak and vote at a general meeting. Those rights are suspended while the Member is personally present at the meeting.

The proxy or other person must vote on a resolution in accordance with any direction in the appointment.

If there is no direction, and the person is separately entitled to vote on the resolution, the person may vote on it for the Member as he or she thinks fit.

If there is no direction, and the person is *not* separately entitled to vote on the resolution, he or she must abstain from voting on it.

A proxy or other person appointed to exercise a Member's voting rights may demand or join in a demand for a poll.

15.6 Votes by Proxy Remain Valid

A vote by proxy, power of attorney or other authority is valid despite any of the following:

- the death of the Member or the Member ceasing to have mental capacity;
- the bankruptcy or liquidation of the Member;
- the revocation of the proxy, power of attorney or other authority;
- the transfer of the Share for which the vote was cast.

This does not apply if the Company receives notice of the relevant fact at its registered office at least 24 hours before the commencement of the meeting (or adjourned meeting) at which the vote is to be cast.

15.7 Proxy of Joint Holders

The vote of a proxy appointed by all the joint holders of a Share is to be counted to the exclusion of a vote by any other proxy of any of the joint holders.

15.8 Chair may require Evidence

The Chair of a general meeting may require a person acting as a proxy for a Member to establish that he or she is the person named in the lodged proxy. If the person cannot do so, he or she may be excluded from voting as proxy for the Member.

16. MEMBER DIRECT VOTING

16.1 One Vote

If a Member casts a Direct Vote on a particular resolution they are taken to have revoked the authority of a previously authorised proxy to vote on their behalf on that resolution.

16.2 Priority of Votes

If a Member attempts to cast more than one vote on a particular resolution for the same share, only the last vote received by the Company is to be taken to have been cast, irrespective of whether the vote is by way of Direct Vote or proxy.

16.3 Direct Votes

For the above a Member is entitled to cast a Direct Vote prior to a general meeting.

Every Member who is entitled to attend a general meeting is entitled to cast a Direct Vote.

16.4 Direct Voting Instrument

The Member, the Member's attorney or the corporation Member's representative must sign the Direct Vote.

A Direct Vote includes any form of vote that the Directors may prescribe or accept including by any electronic means.

16.5 Lodgement of Direct Vote

Unless otherwise approved by the Chair of Directors, a Direct Vote is not treated as valid unless the following is received by the Company at its registered office (or another place specified in the notice of meeting) at least **24 hours** before the time of the meeting (or adjourned meeting) at which it is to be utilised:

- notice of the Member's voting intention, and
- any authority or power under which the Direct Vote was signed or a certified copy of that power or authority.

16.6 Form of the Direct Vote

A notice of a voting intention is valid if it contains the following information:

- the Member's name and address or any applicable identifying notations such as the holder identification number or similar approved by the Directors or specified in the notice of meeting; and
- the Member's voting intention on any or all of the resolutions to be put before the meeting.

16.7 Validity

A vote cast by Direct Vote is valid despite any of the following:

- the death of the Member or the Member ceasing to have mental capacity;
- the bankruptcy or liquidation of the Member;
- the revocation of the Direct Vote; or
- the transfer of the Share for which the Direct Vote was cast.

This does not apply if the Company receives notice of the relevant fact at its registered office at least 24 hours before the commencement of the meeting (or adjourned meeting) at which the Direct Vote was to have been cast.

16.8 Chairman's Decision

The Chair's decision as to whether a Direct Vote is valid is conclusive.

16.9 Attendance by Member who has Cast Direct Vote

A person who has cast a Direct Vote is entitled to attend the meeting. The Member's attendance cancels the Direct Vote. This is unless the Member instructs the Company or at its instruction the Company's share registry otherwise.

16.10 Count

If a vote is taken at a meeting on a resolution on which a Direct Vote is cast, the Chair of the meeting must:

- on a vote by show of hands, count each Member who has submitted a Direct Vote for or against the resolution in accordance with their Direct Vote, and
- on a poll, count the votes cast by each Member who has submitted a Direct Vote directly for or against the resolution, by the number of shares held by each Member.

16.11 Certificate of Direct Votes Cast

The Chair of a meeting must ensure that a certificate signed by the Company Secretary of Direct Votes received is available at the meeting ahead of any vote being taken.

17. MEETINGS OF A CLASS OF SHARES

The provisions of this Constitution relating to general meetings shall apply *mutatis mutandis* to a meeting of a distinct class of shareholders.

18. APPOINTMENT AND REMOVAL OF DIRECTORS

18.1 Board of Directors

The Board consists of:

- A minimum of 1 Director; and
- A maximum of 5 Directors

unless otherwise varied by a Special Majority Vote of Members.

The Directors may act, notwithstanding any vacancy in their body. However, if and so long as their number of Directors is reduced below the number fixed by or for this Constitution as the necessary quorum of Directors, the continuing Directors or Director may act for no other purposes other than to:

- Increase the number of Directors to the minimum following this Constitution and the Law; or
- Call a general meeting of the Company's Members.

18.2 Appointment and Removal of Directors

Subject to this Constitution and the Law, the Company in general meeting may by a Simple Majority Vote:

- Appoint any person to be a Director of the Company;
- Fix his qualifications and remuneration;
- Fix the maximum and minimum number of Directors that must retire by rotation and (if retirement by rotation is required) the order of that rotation;
- Provide for the filling up of casual vacancies and fix the quorum of Directors; and
- Remove any person as a Director of the Company.

18.3 Casual Vacancies

Subject to the other provisions of this Constitution, the Directors holding office from time to time for another provision of this Constitution may appoint a Director to fill a casual vacancy (**Interim Director**).

An Interim Director ceases to be a director 12 calendar months after the date of Interim Director's appointment, unless the appointment is confirmed by the Members following the other provisions of this Constitution.

18.4 Board Appointed Directors

The Directors holding office from time to time may, by way of a Unanimous Decision, appoint any one or more other persons to be a Director of the Company (**Board Appointed Director**).

A Board Appointed Director (duly appointed for this clause) holds office only until the earlier of:

- the date set in the resolution of the Nominated Directors; and
- the expiry of 18 calendar months of the date of appointment

at which time the Directors may, at their election, reappoint the Board Appointed Director.

18.5 Director Qualifications

Each Director is not:

- required to hold any Share qualification;
- subject to retirement by rotation; or
- subject to removal

other than by following the provisions of this Constitution.

18.6 Directors' Undertakings

Each Director must, and each Member must procure that each Director:

- conduct the Business with sound and good management practice and the highest ethical standards;
- not use any Confidential Information in any way that is reasonably likely to damage the Company, its Business or the Members; and
- take all reasonable precautions to protect the Confidential Information.

18.7 Directors' Fees and Expenses

The Company must pay for the services of the Directors:

- to each of the Directors a Director's Members in each year. If any Director year, he may only receive that proportion of the year for which he
- to each Director, monthly in arrears Director in the performance of his (if applicable).

If a Director at the request of the Directors the opinion of the Directors are outside the Company may remunerate that Director's remuneration under this clause.

Director's Interests and Conflicts

A Director must give the Board notice if it relates to the affairs of the Company (Conflicts of Interest).

A Director may give a general Conflict Notice if he is a member of a specified corporation or firm and:

- The Conflict Notice must set out the Director's interest in a matter involving the Company only if the Director's interest at the time is greater than as stated in the general Conflict Notice.
- Subject to a contrary Simple Majority Vote of the Law or this Constitution, a Director must not:
 - hold any office or place of profit in the Company;
 - hold any office or place of profit in any other company promoted by the Company or in which the Company has an interest;
 - enter into any contract or arrangement with the Company;
 - participate in any association, institution or company of employees of the Company or Directors;
 - act in a professional capacity (or business capacity) for the Company, except as a Director;
 - participate in, vote on and be counted in any decision of the Directors and may be counted as a Director considered by the Directors;
 - sign or participate in the execution of any instrument on behalf of the Company;
 - do any of the above despite the fiduciary duties of the Director;
- without any liability to account to the Company or the Director; and

without affecting the validity of any contract entered into by the Company.

Which is better as trustee of your SMSF: company vs human?

Legal Consolidated recommends a company as trustee of your SMSF. This is because:

1. An SMSF company lives forever. This is better succession planning. If a member dies, you don't need to transfer land. The land just stays in the SMSF corporate trustee name. You update the directors only.
2. If Mum and Dad at the SMSF trustees you can change them only via a Deed. In contrast, changing a director is simpler and less expensive. It is free and easy to just change an SMSF company director. (Changing a director of the company does not change the trustee.)
3. If 'mum' and 'dad' are the two individual trustees of the SMSF, there is a problem if one dies. An SMSF cannot have one human as a trustee.
4. Ease of SMSF audit
5. Banks require SMSF to have an SMSF company as trustee for borrowing money.
6. The Legal Consolidated rules are easier to comply with if you travel overseas.
7. ATO penalties are less with an SMSF special purpose company. Human trustees are jointly and severally liable.
8. An SMSF corporate trustee (special purpose company) pays lower ASIC fees each year.
9. An SMSF special-purpose company won't have an ABN. It does not trade in its own right. Instead, the SMSF has the ABN.
10. An SMSF corporate trustee does not prepare accounts. It has no assets. Instead, the SMSF prepares accounts and pays tax.
11. Land tax. Land tax rates are progressive. The more land in any given entity then the higher the rate of land tax.

A reference to the Company in this this clause is also a reference to each Related Body Corporate of the Company.

If a Director complies with the Law and this Constitution in relation to disclosing an interest:

- the Director may vote on whether the Company enters into the contract or arrangement;
- the contract or arrangement may be entered into by the Company;
- the Director may participate in the execution of the contract; and
- the Director may vote on matters involving the contract.

18.8 Retirement and Vacancy of Office

A Director may retire from office by giving written notice to the Company at its registered office. The resignation is effective at the time stated in the notice, provided it is after the time the notice was given. If not, the notice is effective immediately it is given.

The office of a Director is automatically vacated if the Director:

- ceases to be a Director by virtue of the provision of this Constitution or the Law;
- becomes bankrupt or makes any arrangement or composition with his creditors generally;
- becomes prohibited from being a Director by reason of any order made under the Law;
- 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;
- is absent from meetings of the Directors for more than 6 calendar months without the permission of the Directors; or
- is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his interest in the manner required by this Constitution or the Law.

19. POWERS AND DUTIES OF DIRECTORS

19.1 Directors to Manage Company

The Business of the Company is to be managed by the Directors acting as a Board, who may exercise all powers of the Company that are not, by the Law or by this Constitution, required to be exercised by the Company in general meeting.

19.2 Management Principles

The business of the Company is to be managed by the Directors following the management principles adopted by the Directors and applying from time to time.

19.3 Specific Powers of Directors

Without limiting the generality of the above subclause 1, but subject to subclause 2, the Directors may exercise all the powers of the Company to:

- Borrow or raise money;
- 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 any debt, liability or obligation of the Company, or of any other person.

19.4 Appointment of Attorney

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

The entrusting of a power to a person does not exclude the exercise of that power by the Directors themselves.

19.5 Provisions in Power of Attorney

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

19.6 Appointment of Managing Director (or Chief Executive Officer) and Other Officers

The Directors may appoint one or more of themselves to the office of managing director or chief executive officer (**Managing Director**) or to any other office (except auditor), or any position of employment with the Company for the period and on the terms they think fit.

If more than one Managing Director has been appointed at a particular time, they hold office jointly.

The clauses in this Constitution that apply in relation to the resignation, disqualification and removal of a Director apply to the Managing Director with any necessary qualifications.

The Directors may remove the Managing Director from office, but only following the Company's contract of employment with that person.

19.7 Conferral of Powers on Managing Director and Executive Directors

The Directors may:

- Confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- Withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

19.8 Powers of Delegation

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

20. PROCEEDINGS OF DIRECTORS

20.1 Directors' Meetings

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

20.2 Director may Convene a Meeting

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

20.3 Quorum for Directors' Meeting

A quorum of the Board is no less than **50%** of the Directors appointed at any time and from time to time present in person or by their alternates.

20.4 Remaining Directors may Act

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by this clause, the continuing Directors may, except in an emergency, act only for the purpose of:

- filling vacancies to the extent necessary to bring their number up to that minimum; or
- to convene a general meeting.

20.5 Questions at Board Meetings

All questions arising at a meeting of Directors must be considered and resolved by way of a Simple Majority Vote, unless required to be considered and resolved by way of either a Special Majority Vote or a Unanimous Decision under a term of this Constitution or by the Law.

Subject to this Constitution and the requirements of the Law, a resolution is taken to be carried if the requisite number of qualifying votes is passed in favour of it.

20.6 Alternate Director or Proxy and Voting

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

20.7 Chair of Directors

The Directors may elect one of their number as Chair of their meetings and may also determine the period for which the person elected as Chair is to hold office.

The Chair may invite any person who is not a Director to attend and address a meeting of Directors, including the auditor.

20.8 Absence of Chair at Directors' Meeting

If a Directors' meeting is held and:

- a Chair has not been elected under this clause; or
- the Chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

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

20.9 Chair Does Not Have Casting Vote At Directors' Meetings

If an equality of votes cast for and against a question the Chair does not have a second or casting vote.

20.10 Director Attending and Voting By Proxy

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

- is another Director; and
- has been appointed in writing signed by the appointor.

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

20.11 Circulating Resolutions

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy. The resolution is passed when the last Director signs.

20.12 Validity of Acts of Directors

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

- there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- a person acting as a Director was disqualified or was not entitled to vote, as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

The resolutions passed at a meeting of Directors for which notice was not given to all Directors, and actions taken to implement those resolutions, are nonetheless valid if each Director who was not given notice later agrees to waive the receipt of that notice.

20.13 Minutes of Meetings

The Directors must keep minutes of any meetings following the Law. They must record each of the following:

- the names of Directors and Alternate Directors present at each meeting of Directors;
 - all orders, resolutions and proceedings of meetings of Directors; and
- any matter that the Law requires to be recorded in the books of the Company. This includes declarations and notices of interest made and given by a Director.

The Chair of the meeting, or of the next meeting, must sign the minutes as a true and correct record of the meeting. The Chair's signing of the minutes is sufficient evidence of anything recorded and of the regularity of what was done at the meeting.

If there is only one director of the Company, he or she must record:

- all orders and resolutions made; and
- any matter that the Law requires to be recorded in the books of the Company. This includes declarations and notices of interest made and given by the Director.

21. COMMITTEES OF THE BOARD

21.1 Delegation to Committees

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

21.2 Powers Delegated to Committees

A Committee to which any powers have been delegated under subclause 1 must exercise those powers following any directions of the Directors.

21.3 Chair of Committee

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

- a Chair has not been elected; or
 - the Chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,
- the members involved may elect one of their number to be Chair of the meeting.

21.4 Meetings of Committee

A Committee may meet and adjourn as it thinks proper.

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

If an equality of votes the Chair of the meeting has a casting vote, unless only two members of the Committee are present and entitled to vote at the meeting on the question.

The rules applying to the minutes of meetings of Directors and their signing apply, with any necessary changes, to the minutes of meetings of a Committee. If a Committee consists of only one Director, a minute signed by that Director recording a decision by that one Director as that Committee is a minute of that Committee.

22. ALTERNATE DIRECTORS

22.1 Appointment of Alternate Director

Subject to the Law, a Director may appoint a person approved by a majority of the other Directors to be an Alternate Director in the Director's place during such period as the Director thinks fit.

22.2 Alternate Director and Meetings

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

22.3 Alternate Director's Powers

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

22.4 Alternate Director Responsible for Own Acts and Defaults

Whilst acting as a Director, an Alternate Director:

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

22.5 Alternate Director and Remuneration

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

22.6 Termination of Appointment of Alternate Director

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

The other Directors may immediately terminate the appointment of an Alternate Director, or suspend their appointment, by a Simple Majority Vote of Directors, after giving the appointor reasonable written notice.

An Alternate Director may resign by giving the Company written notice at its registered office. The resignation takes effect immediately the notice is given.

22.7 Appointment or Termination in Writing

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

22.8 Alternate Director and Number of Directors

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

23. ASSOCIATE DIRECTORS

23.1 Appointment

The Board may from time to time appoint any person to be an Associate Director and may from time to time terminate such appointment.

23.2 Powers and Duties

The Board may from time to time determine the powers, duties, responsibilities and remuneration (if any) of any person appointed to the role of Associate Director.

23.3 Qualifications and Rights

A person appointed as an Associate Director is not required to hold any shares to qualify that person for the appointment, but except by the invitation and with the consent of the Board, does not have any right to attend or vote at any meeting of Directors.

24. SECRETARY

24.1 Appointment of Secretary

The Company may have at least one Secretary who

24.2 Suspension and Removal of Secretary

The Directors may suspend or remove a Secretary

24.3 Powers, Duties and Authorities of Secretary

A Secretary holds office on the terms and conditions, the powers, duties and authorities, as determined by the powers and authorities and the performance of the Secretary at all times to the control of the Directors.

Unless the Directors decide otherwise, the Secretary is the Company Officer.

25. DEALINGS BETWEEN COMPANY AND

25.1 Indemnity

The Company may indemnify any current or former Director, Secretary or the Company or of a subsidiary of the Company or

- every liability incurred by the person in that capacity and
- all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity.

except to the extent that:

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

25.2 Insurance

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

- the Company is forbidden by statute to pay or agree to pay the premium; or
- the contract would, if the Company paid the premium, be made void by statute.

25.3 Agreements

The Company may enter into an agreement with a person referred to in this clause with respect to the matters covered by those clauses. An agreement entered into for this clause may include provisions relating to rights of access to the books of the Company conferred by the Law or otherwise by law.

SMSF company (SMSF corporate trustee)

The Legal Consolidated Special Purpose company complies with ASIC and Superannuation rules.

Build an SMSF company that acts solely as the trustee of your Self-Managed Super Fund (SMSF).

Allows for up to 6 members in your SMSF.

The Legal Consolidated constitution prohibits distributing income and property to shareholders.

It is 'safer' for your SMSF to have a Special Purpose company. You also save on ASIC's annual charge.

26. OPERATION OF COMPANY BANK ACCOUNTS

26.1 Bank Account

The bank account or accounts of the Company must be that or those from time to time established by the Managing Director (or their nominee) and nominated and approved by resolution of the Directors (**Bank Account**).

26.2 Receipt of Company Monies

All monies of the Company:

- Received by a Director or member of staff must be paid forthwith into the Bank Account; and
- Must be receipted in the Company name and on the Company form of receipt bearing the Company's name

unless the Directors resolve otherwise at a Board meeting.

26.3 Signing of Cheques

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

26.4 Operation of Bank Account

Unless otherwise resolved by the Board in a meeting of the Board, the Bank Account of the Company must be operated jointly by the Board.

27. DEALING WITH COMPANY PROFITS

27.1 No Distributions to Members

The Company is prohibited from making any distribution of income, profits or Dividends to its Members.

27.2 Reserves and Profits Carried Forward

Subject to the Law and to the limitations set out in this clause, the Directors may:

- set aside out of the profits of the Company such sums as they think proper as a reserve, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied; and
- carry forward so much of the profits remaining as they consider ought not to be distributed without transferring those profits to a reserve.

Pending application, any sum set aside as a reserve may, at the discretion of the Directors, be used in the business of the Company or be invested as the Directors think fit.

27.3 No Capitalisation of Profits

The Company is prohibited from capitalising any income or profits, or any amount standing to the credit of any reserve established under this clause.

28. ALTERATIONS TO CAPITAL

28.1 Alteration of Share Structure

Subject to this Constitution and the Law and to the limitations in clause 4, the Company may alter its capital by passing a resolution to that effect in general meeting.

Without limiting the generality of the authority conferred by this clause, the Company may alter its capital in any of the following ways:

- by converting any of its Shares into larger or smaller numbers, in which case, any amount unpaid on them is to be divided equally among the replacement Shares;
- by cancelling any Shares which have been forfeited; and
- by converting a class of Shares into another class.

28.2 Power to Reduce Capital

The Company may reduce its Share capital following the Law.

28.3 Power to Buy Back Shares

The Company may buy-back or purchase Shares at any time following the Law.

29. CONTROL OVER SUBSIDIARIES

The Company must take such action as may be necessary to ensure that each subsidiary or other Related Body Corporate of the Company acts by the terms, conditions and restrictions set out in this Constitution.

30. INSPECTION OF RECORDS

Subject to this Constitution and the Law:

- a Member (other than a Director) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting; and
- the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors).

31. CONFIDENTIALITY

Neither a Director nor Member may disclose the provisions of this Constitution or any other Confidential Information about the Company, its business or another Member, except:

- with the written consent of the Board;
- on a confidential basis to an officer, employee or professional adviser for the purposes of obtaining professional advice in relation to the Company; or
- as required by an applicable law after first consulting with the Company about the form and content of the disclosure

and must use its best endeavours to ensure all permitted disclosures are kept confidential by the party to whom the disclosure was made.

32. COMMON SEAL

Documents may, but need not, be executed by the Company under Seal.

- If the Company has a Seal:

- It must be kept by the person and in the place and the manner that the Directors think fit; and
- It must not be used except with the authority of the Directors or a Directors' committee authorised to permit use of the Seal who have power to use the seal in the execution of all or any of the powers hereby vested in them or otherwise in relation to the affairs or business of the Company; and
- The Directors may determine by resolution either generally or in any particular case that the signature of any Director or the Secretary to a document to which the Seal or a duplicate seal or certificate seal is affixed may be a facsimile applied to the document by specified mechanical means.

33. WINDING UP

If the Company is wound up, the liquidator must vest the whole of the surplus property of the Company (including all accumulated income and profits and amounts standing to any reserve):

- In the newly appointed trustee of the Regulated Superannuation Fund for which the Company acted as trustee (**Fund**), and upon trust for the benefit of the members of the Fund in the same proportions as their respective member balances; or
- If the Fund has been wound up (or is in the process of being wound up), among the members of the Fund in the same proportions as their respective member balances immediately prior to the commencement of the winding up of the Fund.

34. GENERAL OPERATIVE PROVISIONS

34.1 Notices

A notice is properly given by the Company to a person if it is:

- in writing signed on behalf of the Company (by original or printed signature);
- addressed to the person to whom it is to be given; and
- either:
 - delivered personally;
 - sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - sent by fax to the fax number (if any) nominated by that person;
 - sent by electronic message to the electronic address (if any) nominated by that person.

A Member whose registered address is not in Australia must notify the Company in writing of an address in Australia to which notices may be sent.

A notice to a person by the Company is regarded as given and received:

- if it is delivered personally or sent by fax or electronic message:
 - by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
- if it is sent by mail:
 - within Australia: 3 Business Days after posting; or
 - to a place outside Australia: 7 Business Days after posting.

A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service.

A day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent, is a Business Day.

Notice to joint holders of Shares must be given to the joint member named first in the register. Every person who becomes entitled to a Share is bound by every notice for that Share which was properly given to the person from whom title derived before the transfer or transmission of the Share was entered in the register.

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of the representatives of the deceased or assignee of the bankrupt or by any like description at the address (if any) supplied for the purpose by the person claiming to be so entitled or (until an address has been supplied) by giving the notice in any manner in which the same would have been given if the death or bankruptcy had not occurred.

Subject to the Law the signature to a written notice given by the Company may be written or printed.

Notice of every general meeting shall be given in any manner hereinbefore authorised to:

- Every member, except a member who has not supplied to the Company an address within Australia for the giving of notices;
- Every Director and Alternate Director;
- Every person entitled to a Share in consequence of the death or bankruptcy of a member who (but for his death or bankruptcy) would be entitled to receive notice of the meeting;
- The Auditor for the time being of the Company; and
- Any other person required by law.

34.2 Exclusion of Partnership

Nothing in this Constitution is to be treated as creating a partnership between the Members and/or the Company under the laws of any applicable jurisdiction and, except as specifically provided for in this Constitution, no party may act or has any authority to act as agent of or in any way bind or commit any other party to any obligation.

34.3 Compliance

Each Member covenants that it has read and has made itself fully aware of the content and legal effect of this Constitution.

Each Member hereby irrevocably appoints the Company as his attorney (with the power to appoint any Director as a substitute and to delegate to that substitute all or any powers hereby conferred, other than this power of substitution, as if he had been originally appointed by this power of attorney) to give effect to the provisions of these clauses.

Each Member hereby acknowledges and agrees that:

- The solicitor who prepared this Constitution (Solicitor) acted as legal counsel to the Company and not to any of the parties;
- The parties have each been advised by the Solicitor that the interests of the parties are opposed to each other and are opposed to the interests of the Company and, accordingly, the Solicitor's representation of the Company may not be in the best interests of the parties; and

Notwithstanding the above, the parties:

- desire the Solicitor to represent the Company for the purposes of preparing this Constitution; and
- jointly and severally forever waive any claim that the Solicitor's representation of the Company for the purposes of preparing this Constitution constitutes a conflict of interest.

34.4 Goods and Services Tax

If a goods and services tax or any similar tax (**GST**) imposed in Australia or elsewhere has application to any supply made under or in connection with this Constitution, the supplier may, in addition to any moneys payable under this Constitution, recover from the recipient of the supply an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the recipient for the relevant supply by the prevailing GST rate.

Any additional amount on account of GST recoverable from the recipient under this clause are calculated without any deduction or set-off of any other amount and is payable by the recipient upon demand by the supplier whether such demand is by means of invoice or otherwise.

34.5 Dispute Resolution

All disputes or differences which at any time arise between one or more Members and/or the Company (**Disputants**) for the construction or effect of this Constitution or the rights, duties and liabilities of the Disputants hereunder or any matter or event connected with or arising out of this Constitution must be initially referred on notice to each other party.

Each Disputant may give notice to the other that the provisions of this clause are to apply to any dispute arising between the Disputants as to any matter arising out of or in connection with this Constitution.

The notice referred to in the Constitution must include a summary of the issues in dispute and notification of a time within a period of 10 Business Days beginning four Business Days after the service of the notice, and a place in the Capital of the State at which the representatives of the Disputants (which may include a Disputant) are to meet to try to resolve the dispute.

The representatives of the Disputants must meet at the time and place specified in the notice to try to resolve the dispute and must, if necessary, continue to negotiate for 2 consecutive Business Days unless they otherwise agree to reconvene.

If the dispute has not been resolved by the representatives of the Disputants representatives by the end of the meeting then either party may within 10 Business Days thereafter apply to the President of the Law Society or the Law Institute (as the case maybe) of the State to appoint a neutral adviser to assist in a further attempt by the parties in good faith to resolve

the dispute by structured negotiations. Such person acts as an expert. Not as an arbitrator. And is entitled to appoint such technical expert or experts as such person considers necessary to assist them in seeking to resolve the matter so referred.

If the Parties fail to appoint a neutral adviser within the 10 Business Day period referred to above or the parties fail to reach agreement in the structured negotiations within 20 Business Days of the neutral adviser being appointed, then any dispute may be referred to a court of competent jurisdiction. Neither party is precluded from taking such interim formal steps as may be considered necessary to protect such party's position while the mediation or other procedure is pending or continuing.

The costs of the neutral adviser must be borne equally by the parties in dispute.

34.6 Waiver

Any waiver or forbearance in regard to the performance of this Constitution operates only if in writing and applies only to the specified instance, and does not affect the existence and continued applicability of the terms of it thereunder.

No failure or delay by any party in exercising any right, power or privilege hereunder (and no course of dealing between or among any of the parties) operates as a waiver of any such right, power or privilege.

No waiver of any default on any one occasion constitutes a waiver of any subsequent or other default. No single or partial exercise or any such right, power or privilege precludes the further or full exercise thereof.

34.7 Severance

If any provision of this Constitution should be held to be invalid in any way or unenforceable it is severed and the remaining provisions are not in any way affected or impaired.

34.8 Parties

If a party consists of more than 1 person, this Constitution binds each of them separately and any 2 or more of them jointly.

An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

A party which is a trustee is bound both personally and in its capacity as a trustee.

35. DEFINITIONS AND INTERPRETATION

35.1 Interpretation

In this Constitution, unless the context otherwise requires or permits:

- (gender) words importing any gender include all other genders;
- (person) a reference to a person includes a reference to:
 - an individual;
 - a body corporate (wherever incorporated);
 - a body politic;
 - an association of persons (whether incorporated or unincorporated);
 - a partnership;
 - a trust;

- a person in the capacity as a trustee;
 - a person in the capacity as the Personal Representative of a deceased estate; and
 - a superannuation fund;
 - (singular includes plural) the singular includes the plural and vice versa;
 - (regulations) a reference to a law includes regulations and instruments made under the law;
 - (amendments to statutes) reference to any statute, or any subordinate legislation or instrument includes all statutes, subordinate legislation or instruments amending, modifying, consolidating, re-writing, re-enacting or replacing them and a reference to a statute includes all subordinate legislation and instruments made under that statute;
 - (conduct) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
 - (from time to time) a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
 - (amount paid) a reference to an amount paid on a Share includes an amount credited as paid on that Share;
 - (currency) a reference to dollars and \$ is to Australian currency;
 - (signed) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;
 - (writing) “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;
- an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law; and headings are inserted for convenience and are not to affect the interpretation of this Constitution.

35.2 Definitions

In this Constitution, unless the context otherwise requires or admits:

Alternate Director means a person appointed as an alternate director under this clause;

Assessment Act means:

the *Income Tax Assessment Act 1936* (Cth) (**Assessment Act 1936**); and

the *Income Tax Assessment Act 1997* (Cth) (**Assessment Act 1997**);

Associate in relation to a person means a person who is an Associate of that person within the meaning of either:

- the Law; or
- section 318 Assessment Act 1936;

Associate Director means a person appointed as an Associate Director under the Constitution;

Board means the Directors acting collectively following this Constitution;

Board Appointed Director means a Director appointed under the Constitution;

Business means the activities carried on by the Company from time to time;

Business Day means any day that banks are open for business in the capital of the State excluding weekends and public holidays;

Change-in-Control means an event where a person who did not (directly or indirectly) effectively control a Member at the date when that Member first acquired Shares, either alone or together with others, acquires effective control of the issued voting capital of that Member without the prior written consent of the other parties;

Company means the company governed by the terms of this Constitution the name of which is set out above;

Confidential Information means all information relating to the Company, that:

- is by its nature confidential;
- is designated by the Company as confidential; and
- a person knows or ought to know is confidential;

Direct Vote includes a vote delivered to the Company by post, fax or other electronic means approved by the Directors and the Directors may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid;

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

Directors means all or some of the Directors acting as the Board;

Dividend includes interim dividends and bonus issues;

Effective Date means the date on which the Constitution is duly adopted by the Company;

Encumbrance means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect;

Goods and Services Tax (and GST) has the same definition as in the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Insolvent for a Member means if:

- the Member assigns any of the Member's property for the benefit of creditors or any class of them;
- a mortgagee or person with a similar legal interest in any of the Member's assets takes possession of them or takes a step in that direction, or exercises a power of sale over them;
- the Member, being a company, disposes of its assets, or threatens to do so, except for the purpose of a solvent reconstruction or amalgamation that has been approved by the Company;
- a security interest becomes enforceable or is enforced against the Member;

- a distress, attachment or other form of execution is levied or enforced against the Member for more than \$5,000;
- the Member takes any step to obtain protection under legislation against the Member's creditors, or is granted that protection;
- the Member commits an act of bankruptcy or becomes insolvent;
- the Member passes a resolution to appoint an administrator or an administrator of the member is appointed;
- an order is made that the Member be wound-up;
- an order is made appointing a liquidator or a provisional liquidator of the Member;
- an order is made or a resolution is passed for the Member to enter into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them, except for the purposes of a solvent reconstruction or amalgamation previously approved by the Company;
- the Member is, or states that it is, or under applicable legislation is taken to be, unable to pay its debts (except as a result of a failure to pay a debt or claim that is the subject of a dispute in good faith) or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- a receiver, receiver and manager, administrator, controller or similar officer of any of the assets or the whole or any part of the undertaking of the Member is appointed; or
- the Member is or makes a statement from which it may be reasonably deduced by the Company that the party is the subject of an event described in section 459C(2) of the Law;

Law means the *Corporations Act 2001* (Cth);

Market Value means the reasonable arm's length open market value of the Company on the basis of a going concern and following the definition of market value adopted by member organisations of the International Asset Valuation Standards;

Member means a person who holds Shares;

Member's Representative means for a Member the person nominated by the Member as their Member's Representative following the terms of this Constitution;

Minimum Parcel means the lower of:

- a parcel of Shares with a Market Value of no less than \$10,000 (or such other minimum Market Value as may be adopted by the Board from time to time); and
- 100% of a Member's Shares in the Company;

Officer means what it means in the Law;

Personal Representative for a person means:

- in the case of a deceased person the executor or administrator to whom probate or letters of administration has been granted or any other person duly authorised to administer the estate of such deceased person; and
- in other cases any person who is duly authorised for any statutory enactment to administer or manage the affairs of any other person where such other person is incapable of managing his own affairs by reason of his age mental or physical illness, disability or incapacity or for any other reason whatsoever;

Property includes any estate and any interest in any real, personal, movable or immovable property of any description and in any location, whether in possession or not, including (without limiting the generality hereof) policies of assurance or endowment, cash and choses in action;

Register means the register of Members of the Company under the Law and if appropriate includes a branch register;

Regulated Superannuation Fund means a regulated superannuation fund within the meaning in section 19 of the *Superannuation Industry (Supervision) Act 1993* (Cth);

Related Body Corporate has the same meaning as related body corporate has in the Law;

Seal means the common seal (if any) of the Company and includes any official seal of the Company;

Secretary means the secretary (if any) from time to time of the Company;

Share means a share in the Company and includes stock;

Simple Majority Vote means a resolution passed at a properly constituted meeting by persons who together hold more than **50%** of the total voting rights that may be exercised for that resolution;

Special Majority Vote means a vote passed at a properly constituted meeting by persons who together hold **75%** or more of the total voting rights that may be exercised for that resolution;

Spouse includes:

- a legal spouse;
- a putative spouse;
- a widow or widower; and
- a person who is living with another person on a bona fide domestic basis in a marriage-like relationship, including a marriage-like relationship between persons of the same gender;

Standard Rate from time to time means the rate of 4% per annum above the Reserve Bank of Australia's indicated cash target rate at that time;

State means New South Wales; and

Unanimous Decision means a vote passed at a properly constituted meeting by persons who together hold 100% of the total voting rights that may be exercised for that resolution.

-THE REST OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK -

Adoption of Constitution

We, the initial Members of the Company, adopt this constitution as the Company's Constitution dated the 0th day of :

Schedule A - Share Classes

Ordinary, A, B, C & D Class Shares	Right to receive notice of any general meeting of the Company. Right to attend and vote at all general meetings of the Company.
E, F & G Class Shares	No right to receive notice of any general meeting of the Company. No right to attend and vote at all general meetings of the Company.
All other classes	With the rights and obligations as adopted by the Board at the time of issue.

- END OF SCHEDULE -

Schedule B - Pro-forma Proxy Form

Details of the Meeting

Place	
Date	
Time	

I/We, [insert name and address of Member/Members], am/are a Member/Members of BAY NOMINEES PTY LTD (A.C.N. 165987536).

I appoint the following person/persons as my proxy/proxies to vote on my/our behalf at the specified meeting and any adjournment.

Name or office of proxy	Address of proxy

I/We appoint the following alternate person/persons to vote on my/our behalf at that meeting and any adjournment if a person I/we have appointed proxy is/are unable to act.

Name of proxy	Name of alternate	Address of alternate

[Include any instructions concerning voting in favour of or against particular resolutions]

Signature/signatures of Member/Members

[Insert name of Member/Members appointing proxy]

- END OF SCHEDULE -

RECORD OF RESOLUTIONS OF SOLE DIRECTOR

BAY NOMINEES PTY LTD

A.C.N. 165987536

(the **Company**)

Regarding: Acknowledgement of formation of the Company
Confirmation of appointment of Company Officers
Confirmation of allotment of Shares and Share Certificates
Registered Office and Principal Place of Business
Establishing Company Registers

Director: Bob Dylan Bay

Date:

NOTICE OF RESOLUTIONS:

The requirements for notice of these resolutions have been satisfied.

The Director acknowledges the following resolutions are pursuant to section 248B (sole Director) of the *Corporations Act 2001* (Cth).

REGISTRATION OF COMPANY:

Bay Nominees Pty Ltd was registered under the *Corporations Act 2001* (Cth) and is deemed to have been registered in New South Wales on . The Company has received a Certificate of Registration from the Australian Securities and Investments Commission.

DIRECTOR APPOINTMENTS:

The following person has been duly appointed in accordance with the Application for Registration of the Company dated as the first Director of the Company:

- Bob Dylan Bay

APPOINTMENT OF SECRETARY:

The following person has been duly appointed in accordance with the Application for Registration of the Company dated as the first Secretary of the Company:

- Bob Dylan Bay

APPOINTMENT OF PUBLIC OFFICER:

It is resolved to appoint the following person as the Public Officer for the Company, to receive and record the signed Consent to act as Public Officer and to notify the Deputy Commissioner of Taxation of the appointment:

Bob Dylan Bay

REGISTERED OFFICE:

In accordance with the notification to the Australian Securities and Investments Commission, it is resolved that, as from the date of registration of the Company, the Registered Office of the Company is:

Fourth Street
Ashbury NSW 2193
Australia

PRINCIPAL PLACE OF BUSINESS:

In accordance with the notification to the Australian Securities and Investments Commission, it is resolved that, as from the date of registration of the Company, the Principal Place of Business of the Company is:

Fourth Street
Ashbury NSW 2193
Australia

SUPERANNUATION TRUSTEE:

The Director has noted that the Company has been established with the sole purpose of acting as the trustee for a complying self-managed superannuation fund, and that this purpose has been notified to the Australian Securities & Investments Commission at the time of incorporation.

The Directors noted that the Company is prohibited by its Constitution from making any distributions of income or other assets of the Company to its Members.

INITIAL SHAREHOLDERS:

In accordance with the Application for Registration of the Company signed by the applicant and lodged on [], the following persons are the initial Members of the Company:

The Shares held by these persons are deemed to have been allotted on the date of registration.

It is resolved to:

Record the names of each initial Member in the Register of Members; and

Prepare and issue Share Certificates in the name of each initial Member recording the number and type of shares allotted to that Member.

ESTABLISH STATUTORY REGISTERS:

It is resolved to establish and maintain the following registers:

Register of Members in accordance with section 169 of the *Corporations Act 2001* (Cth);

Register of Option Holders & Copies of Option Documents in accordance with section 170 of the *Corporations Act 2001* (Cth); and

Register of Debenture Holders in accordance with section 171 of the *Corporations Act 2001* (Cth).

I, being the sole Director of the Company, state that I am in favour of the resolutions set out above:

Bob Dylan Bay
Sole Director

RECORD OF RESOLUTIONS OF SOLE DIRECTOR

BAY NOMINEES PTY LTD

A.C.N. 165987536

(the **Company**)

Regarding: Opening of bank account
 Conferral of bank account operational authority

Director: Bob Dylan Bay

Date:

NOTICE OF RESOLUTIONS:

The requirements for notice of these resolutions have been satisfied.

The Director acknowledges the following resolutions are pursuant to section 248B (sole Director) of the *Corporations Act 2001* (Cth).

REVIEWED AND CONSIDERED:

The Director:

Reviewed and considered the Constitution of the Company and acknowledged the authority of the Director to open a bank account and confer operating authority on one or more persons; and

Considered whether the anticipated activities of the Company would necessitate the Company opening and maintaining a bank account in the name of the Company.

RESOLUTIONS:

It is resolved that the Company:

Open a bank account with the institution set out below; and

Confer authority on the persons set out below to operate the bank account.

Banking institution:

Persons having operational authority:

(Transactions on the account are to be conducted with the consent of *[any one]/[any two]/[all] of the above persons.)

I, being the sole Director of the Company, state that I am in favour of the resolutions set out above:

Bob Dylan Bay
Sole Director

NOTIFICATION OF PUBLIC OFFICER

To:

Deputy Commissioner of Taxation
P.O. Box 3373
PENRITH NSW 2740

Attention: Deputy Commissioner

NOTICE OF APPOINTMENT OF PUBLIC OFFICER

In accordance with section 252 of the *Income Tax Assessment Act 1936* (Cth), I give notice of the appointment on of the following person as the Public Officer of Bay Nominees Pty Ltd (A.C.N. 165987536):

Name: Bob Dylan Bay

Date of birth: 15 April 1954

The Company's Registered Office and address for service is:

Fourth Street
Ashbury NSW 2193
Australia

If you have any queries, please contact me at the above address.

Yours faithfully,

Bob Dylan Bay
Sole Director/Secretary/Public Officer

DECLARATION

SPECIAL PURPOSE COMPANY

Trustee of Regulated Superannuation Fund

(Regulation 3, Corporations (Review Fees) Regulations 2003 (Cth))

Company Name: Bay Nominees Pty Ltd

A.C.N. 165987536

The following declaration is made to support that this Company is a 'special purpose company' as defined in paragraph (f) of the definition of 'special purpose company' in regulation 3 of the *Corporations (Review Fees) Regulations 2003 (Cth)*.

The Constitution of this Company prohibits distribution of the Company's income or property to its Members; and

The sole purpose of the Company is to act as the trustee of a regulated superannuation fund within the meaning of section 19 of the *Superannuation Industry (Supervision) Act 1993 (Cth)*.

This company became a special purpose company on incorporation on .

DATED this _____ day of _____ 2022

Signature

Name

Capacity (Director or Secretary)

SHARE CERTIFICATE

BAY NOMINEES PTY LTD

A.C.N. 165987536

THIS IS TO CERTIFY that Bob Dylan Bay of 23 King Street Richmond VIC 3121 Australia is the registered holder of the Shares shown in the following Schedule subject to and with the benefit of the terms and conditions of the Constitution described hereunder.

SCHEDULE

DATE OF ISSUE	NUMBER OF SHARES	CLASS	PRICE PER SHARE	AMOUNT PAID PER SHARE
	10	ORD	\$1.00	\$1.00

This certificate is issued by the Company pursuant to its Constitution dated .

Payment for the Shares as set out in the Schedule is hereby acknowledged.

SIGNED for or on behalf of the
Company)

Per :

Bob Dylan Bay

Sole Director/Secretary

This certificate must be delivered to the Company on application to transfer any of the Shares.

SHARE CERTIFICATE

BAY NOMINEES PTY LTD

A.C.N. 165987536

THIS IS TO CERTIFY that **Alice Anna Bay** of 3 South Street Ipswich QLD 4305 Australia is the registered holder of the Shares shown in the following Schedule subject to and with the benefit of the terms and conditions of the Constitution described hereunder.

SCHEDULE

DATE OF ISSUE	NUMBER OF SHARES	CLASS	PRICE PER SHARE	AMOUNT PAID PER SHARE
	10	ORD	\$1.00	\$1.00

This certificate is issued by the Company pursuant to its Constitution dated .

Payment for the Shares as set out in the Schedule is hereby acknowledged.

SIGNED for or on behalf of the
Company)

Per :

Bob Dylan Bay

Sole Director/Secretary

This certificate must be delivered to the Company on application to transfer any of the Shares.