

Dated 1 July 2002

Corporations Act 2001

**Constitution
of
SCS Super Pty Limited**

A Company Limited by Shares

ACN 064 712 607

This is a consolidated copy of the constitution of SCS Super Pty Limited.

It includes amendments made on 27 February 2003, 1 July 2004, 1 April 2006, 24 July 2008, 25 June 2009, 27 February 2014 and 31 May 2017.

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Corporations Act 2001

**CONSTITUTION
of
SCS SUPER PTY LIMITED**

**A Company Limited by Shares
ACN 064 712 607**

SECTION A

- A The name of the Company is SCS Super Pty Limited.
- B Subject to the provisions of the Corporations Act the Company shall have the rights, the powers and the privileges of a natural person.
- C The liability of the Shareholders is limited.
- D There shall be no distribution of income or property amongst Shareholders.
- E The Company is formed for the purpose of acting solely as the trustee of a regulated superannuation fund within the meaning of section 19 of the Superannuation Industry (Supervision) Act 1993, and to ensure at all times that the fund of which it is trustee is operated as a regulated superannuation fund in accordance with the requirements of the Superannuation Industry (Supervision) Act 1993.

SECTION B

1. PRELIMINARY

1.1 Definitions

Unless a contrary intention appears:

"Alternate Director" means any person appointed in accordance with this Constitution to act as an alternate of a Director.

"Archbishops" means the Roman Catholic Archbishops of Sydney and Brisbane for the time being or such other persons who may be appointed from time to time to assume the responsibilities appropriate to those offices.

"Auditor" or **"Auditors"** means the auditor or auditors for the time being of the Company.

"Chairperson of Directors" means the Chairperson appointed pursuant to **clause 20.9**.

"Company" means SCS Super Pty Limited ACN 064 712 607.

"Commission" means the Australian Securities and Investments Commission.

"Constitution" means this document as amended from time to time.

"Corporations Act" means the Corporations Act 2001 (Cth).

"Director" means a person duly appointed as a director of the Company from time to time.

"the Directors" and **"the Board"** means the Directors for the time being or such number of them as have authority to act for the Company, acting as a body.

"Employer Representative" has the same meaning as under the Superannuation Industry (Supervision) Act 1993.

"Fit and Proper Person" means a person that is fit and proper as determined by the Board in accordance with the Fit and Proper Policy.

"Fit and Proper Policy" means the document that contains the Board's policy and procedures that assist the Board in reaching a judgement about the fitness and propriety of a Responsible Officer.

"Fund" means the superannuation fund known as the Australian Catholic Superannuation and Retirement Fund or by such other name as the Directors may determine from time to time.

"Fund Member" means a person who is for the time being a member of the Fund.

"Governing Rules" means the trust deed or any other document governing the Fund, as amended from time to time.

"Member Representative" has the same meaning as under the Superannuation Industry (Supervision) Act 1993.

"Principal Employers" means the persons who hold the offices of principal employer in relation to the Fund from time to time.

"Register" means the Company's register of Shareholders kept in accordance with the Corporations Act.

"Registered Address" of a Shareholder means the address of a Shareholder stated in the Register, or, if the Shareholder has given notice in writing to the Company of a changed address, the last address of which the Shareholder has given such notice.

"Registered Office" means the Company's registered office for the time being.

"Relevant Law" means the requirements set out in:

- (a) the Superannuation Industry (Supervision) Act 1993;
- (b) the Income Tax Assessment Act 1936;
- (c) the Income Tax Assessment Act 1997;
- (d) the Superannuation (Resolution of Complaints) Act 1993;
- (e) the Corporations Act;
- (f) any regulations made under any of those Acts; and
- (g) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia which the Directors may determine to be a Relevant Law for the purposes of the Fund and any regulation made thereunder.

"Responsible Officer" means:

- (a) a Director;
- (b) the Secretary; or
- (c) an executive officer of the Company, being a person who is concerned, or takes part, in the management of the Company, including the chief executive officer and deputy chief executive officer of the Company.

"Seal" means the common seal or duplicate seal of the Company.

"Secretary" means any person appointed to perform the duties of a secretary.

"Shareholder" means a person who holds a share in the Company.

1.2 Interpretation

Unless a contrary intention appears:

- (a) expressions referring to writing shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all genders;
- (d) words importing natural persons include corporations;
- (e) references to notices in **clause 27** include not only formal notices of meeting but also all documents and other communications from the Company to its Shareholders but do not include cheques;
- (f) references to any officer of the Company include any person acting for the time being as such officer;
- (g) references to any statutory enactment, regulation, rule, by-law or other law or a provision thereof (hereinafter collectively called a "law") shall include that law as amended or re-enacted from time to time and any law which replaces the same or has the same effect in whole or in part (whether or not passed or approved by the same legislative body or other authority and whether or not incorporating or adopting any law previously in force) and shall also include any regulation, or any effective and enforceable determination or ruling, made under the authority of such a law;
- (h) 'paid up' includes credited as paid up;
- (i) 'present' when referring to a Shareholder in relation to a meeting means present in person, or by representative appointed pursuant to the Corporations Act or by attorney or by proxy or deemed presence in person under **clause 12.8** and when referring to a Director in relation to a meeting means present in person or deemed presence in person under **clause 20.11**;
- (j) 'representative' in relation to a corporation which is a Shareholder of the Company means a representative appointed pursuant to Section 250D of the Corporations Act; and
- (k) the headings and any index shall not affect the construction of this Constitution.

2. CORPORATIONS ACT

- 2.1 An expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division a special meaning for the purposes of that or any other Part or Division has, in this Constitution that deals with a matter dealt with by the relevant Part or Division, the same meaning as applies in or in respect of that Part or Division.
- 2.2 The replaceable rules contained in the Corporations Act are excluded and do not apply to the Company (except insofar as they are repeated in this Constitution).

3. PROPRIETARY COMPANY RESTRICTIONS

- 3.1 The Company is a proprietary company and accordingly:
- (a) the right to transfer shares is restricted in the manner set out in this Constitution;
 - (b) the number of its non-employee Shareholders is limited to not more than 50;
 - (c) any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any shares in, or debentures of, the Company is prohibited; and
 - (d) any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with, the Company for fixed periods or payable at call, whether bearing or not bearing interest is prohibited.

4. EXERCISE OF POWERS

The Company may by resolution or special resolution as the Corporations Act requires exercise from time to time any power which by the Corporations Act a company limited by shares may exercise if authorised by its constitution.

5. CAPITAL AND SHARES

- 5.1 Without prejudice to any special rights previously conferred on the holders of existing shares or class of shares but subject to the Corporations Act, shares in the Company may be issued by the Board and any such share may be issued with such preferred, deferred or other special rights, or subject to such restrictions, whether in regard to voting, return of capital or other matters, as the Board may from time to time determine.
- 5.2 If at any time the capital of the Company is divided into different classes of shares, the rights and privileges attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class. The provisions of this Constitution relating to general meeting shall apply to every such meeting, except that the necessary quorum shall be Shareholders present holding or representing three fourths of the nominal amount of the issued shares of the class and that any Shareholder present holding shares of that class may demand a poll.
- 5.3 Except as required by law, the Company shall not recognise a person as holding a share upon any trust.
- 5.4 The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by this Constitution or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

6. CERTIFICATES

- 6.1 A person whose name, is entered as a Shareholder in the Register is entitled without payment to receive a certificate in respect of the share in accordance with the Corporations Act.
- 6.2 If a share certificate is defaced, lost or destroyed it may be renewed on payment of such fee (if any) prescribed pursuant to the Corporations Act, and subject to the Corporations Act, on such terms (if any) as to evidence and indemnity as the Directors think fit.

7. TRANSFER AND TRANSMISSION OF SHARES

- 7.1 Unless otherwise authorised by law, the instrument of transfer of any share shall be executed by or on behalf of the transferor and the transferee and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the Register in respect thereof.
- 7.2 Shares may be transferred in any form which the Directors approve.
- 7.3 The Directors may in their discretion decline to register any transfer of shares provided that the Directors shall not decline to register any transfer of shares between Body Corporates created under the provisions of the Roman Catholic Church Trust Property Act 1936 (NSW) or similar law in Queensland.
- 7.4 Every instrument of transfer shall be left at the Registered Office or at such other place as the Directors shall determine accompanied by the certificate of the shares to be transferred and such other evidence as the Company may require to prove the title of the transferor or his right to transfer the shares and to prove the title of the transferee to be registered as the owner of the shares. No fee shall be charged by the Company for any transfer of shares.
- 7.5 All instruments of transfer which shall be registered shall be retained by the Company but any instrument of transfer which the Directors may decline to register shall except in the case of fraud be returned to the person who deposited it with the Company.
- 7.6 Subject to this Constitution, in case of the death of a Shareholder, the legal personal representative of the deceased shall be the only person recognised by the Company as having any title to the Shareholder's interest in the shares.
- 7.7 The transfer books and Register may be closed during such time as the Directors think fit, not exceeding in total thirty days in each year.

8. ALTERATION OF CAPITAL

- 8.1 Subject to the Corporations Act, the Company may:
- (a) consolidate and divide all or any of its authorised share capital into shares of larger amount than its existing shares;
 - (b) subdivide its shares or any of them into shares of a smaller amount, provided that the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
 - (c) reduce its share capital in accordance with the Corporations Act.

9. GENERAL MEETINGS

- 9.1 If the Directors so determine, the Company may in each calendar year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices convening it. Subject to any extension permitted by the Commission, the annual general meeting shall be held within any period prescribed by the Corporations Act. The annual general meeting shall be held at such time and place as the Directors shall approve.
- 9.2 All general meetings of Shareholders of the Company other than the annual general meetings shall be called general meetings.
- 9.3 A general meeting may be convened:
- (a) by the Secretary, with the authority of the Directors; or
 - (b) on the request of Shareholders with at least 5% of the votes that may be cast at the general meeting.

10. NOTICE OF GENERAL MEETINGS

- 10.1 A notice of general meeting shall be given to all Shareholders entitled to attend and vote at the meeting and shall specify the place, the day and the hour of meeting and, except as provided by **clause 10.2**, shall state the general nature of the business to be transacted at the meeting.
- 10.2 It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of accounts and the reports of the Directors and auditors, the election of Directors in place of those retiring or the appointment and fixing of the remuneration of the auditors.
- 10.3 Subject to the Corporations Act relating to agreements for shorter notice, meetings of the Company or of classes of Shareholders shall be convened by notice in writing of at least 21 days.
- 10.4 Subject to the Corporations Act the omission whether by accident or error to give notice of a meeting to, or the non-receipt of notice of a meeting by, any Shareholder shall not invalidate the proceedings of any meeting.

11. BUSINESS OF MEETING

Anything that under this Constitution or under the Corporations Act may be done by the Company in general meeting may be done either at an annual general or other general meeting provided that due notice is given accordance with this Constitution.

12. PROCEEDINGS AT GENERAL MEETINGS

- 12.1 No business shall be transacted at any general meeting unless a quorum of Shareholders who for the time being are entitled to vote is present at the time when the meeting proceeds to business. Save as herein otherwise provided one or more Shareholders holding at least two thirds of the number of shares in the Company present in person or by a representative, attorney or proxy shall be a quorum.
- 12.2 If a quorum is not present within half an hour from time appointed for the meeting, the meeting shall be dissolved.
- 12.3 The Chairperson of Directors shall be entitled to take the chair at every general meeting but if there is no Chairperson of Directors, or if at any meeting that chairperson is not

present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Shareholders present and entitled to vote shall elect one of their number to be chairperson of the meeting.

- 12.4 The chairperson may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but so that:
- (a) when a meeting is adjourned for one month or more, notice of the adjourned meeting shall be given as in the case of an original meeting; and
 - (b) except as provided in paragraph (a), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 12.5 All business arising at any general meeting shall be determined only by resolution put to the vote of the meeting.
- 12.6 In the case of an equality of votes the chairperson of the meeting shall not be entitled to a second or casting vote.
- 12.7 Subject to the provisions of the Corporations Act any resolution of the Company determined other than at a general meeting and evidenced by writing under the hand of each Shareholder of the Company who for the time being is entitled to vote, or of his attorney appointed as provided in this Constitution, or the Shareholder being a corporation of its representative appointed as provided in this Constitution, shall be as valid and effectual as a resolution duly passed at a general meeting of the Company. A resolution on those terms will be deemed to have been passed on the date on which the document is last signed by a Shareholder. If necessary, for the purposes of this **clause 12.7**, two or more separate documents containing statements in identical terms, each of which is signed by one or more Shareholders, will together be deemed to constitute one document containing a statement in those terms signed by those Shareholders.
- 12.8 Any Shareholder may participate in a meeting of the Shareholders by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.

13. VOTES OF SHAREHOLDERS

- 13.1 Subject to the conditions upon which any shares may be issued or may for the time being be held, at any general meeting every Shareholder present in person or by proxy attorney or representative shall be entitled to one vote only.
- 13.2 Votes may be given either personally or by representative appointed pursuant to this Constitution or by attorney or by proxy.
- 13.3 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered. Any such objection shall be referred to the chairperson of the meeting, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

14. PROXIES

- 14.1 The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under Seal or under the hand of an officer or attorney duly authorised.
- 14.2 A proxy may, but need not, be a Shareholder.

- 14.3 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- 14.4 An instrument appointing a proxy shall be in a form approved by the Directors.
- 14.5 An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a certified photostat copy of that power or authority, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the Registered Office or at such other place as is specified for that purpose in the notice convening the meeting.
- 14.6 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed), or the transfer or the redemption of the share in respect of which the instrument is given, if no intimation in writing of the death, unsoundness of mind, or transfer or redemption has been received by the Company at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

15. CORPORATIONS ACTING BY REPRESENTATIVES

- 15.1 Any corporation which is a Shareholder of the Company may by resolution of its directors or other governing body authorise any person (whether a Shareholder of the Company or not) whom it thinks fit to act as its representative at any meeting of the Company or of any class of Shareholders of the Company, and, if the corporation thinks fit, to exercise (whether at a meeting or not) the same powers (including the giving of any consent and the signing of any resolution appointment or other document) as the corporation could exercise if it were an individual Shareholder of the Company and also to exercise all such other powers as are conferred by the instrument of appointment.

16. ATTORNEYS OF SHAREHOLDERS

- 16.1 Any Shareholder may appoint an attorney (who may, but need not, be a Shareholder) to act for and on that Shareholder's behalf at all meetings of the Company at which that Shareholder is not present and to give any consent and sign any appointment or resolution or other document which the Shareholder could give or sign.
- 16.2 Any such appointment shall be made by power of attorney duly executed by the Shareholder and attested by one or more witness or witnesses, or if the Shareholder is a corporation then under its common seal, and the power of attorney shall at least forty-eight hours before the attorney becomes entitled to act thereunder be deposited at the Registered Office accompanied by such evidence of its due execution and non-revocation as the Directors require.
- 16.3 The power of attorney shall be in a form approved by the Directors.
- 16.4 No act done or vote given by an attorney shall be rendered invalid by the revocation of the appointment of the attorney by death or otherwise unless and until a duly authenticated notice of such revocation is received at the Registered Office.
- 16.5 The attorney so appointed may during the absence of the Shareholder and while the power of attorney remains un-revoked attend at and take part in the proceedings and vote at all meetings of the Company and demand or join in the demand for a poll in the same manner as the Shareholder could do if personally present, and may give any consent and sign any appointment or resolution or other document which the Shareholder could give or sign.

17. DIRECTORS

- 17.1 Subject to the Relevant Law, the Board has the power to:
- (a) appoint and remove the Directors of the Company. However, the Employer Representatives will be nominated by the Archbishops;
 - (b) determine the eligibility and selection criteria for Directors;
 - (c) determine the eligibility, nomination and election rules for Directors who will be appointed as Member Representatives;
 - (d) determine the maximum number of Directors that may be appointed;
 - (e) determine the term and maximum tenure of Directors;
 - (f) determine the criteria for the removal of Directors, including removal by rotation;
 - (g) determine the proportional representation of Directors. However, until the date of any significant change in Fund membership and size, the Directors must be appointed in a manner that maintains the following proportions:
 - (i) seven Directors must be appointed from New South Wales and the Australian Capital Territory;
 - (ii) three Directors must be appointed from Queensland; and
 - (iii) two Directors must be appointed from Western Australia.
- 17.2 No Director shall be appointed otherwise than as herein provided.
- 17.3 The Directors shall be paid such remuneration and on such terms as is from time to time determined by the Board.
- 17.4 The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.
- 17.5 A Director shall not be required to hold any shares in the Company by way of qualification. A Director who is not a Shareholder of the Company shall nevertheless be entitled to attend and speak at general meetings.
- 17.6 A Director shall not be disqualified from that office by being a Fund Member or from being employed by the Company or acting as an officer of the Company.
- 17.7 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested shall be avoided or rendered voidable by reason only of such Director holding that office (or of the fiduciary relation thereby established) or of being a Fund Member.
- 17.8 No Director so contracting or being so interested shall be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of such Director holding that office (or of the fiduciary relation thereby established) or of being a Fund Member.
- 17.9 A Director may not vote or be present in respect of any contract or arrangement in which that Director is so interested as aforesaid and shall not be entitled to be counted in the quorum in respect of the consideration of any such contract or arrangement and may not

attest the affixing of the Seal and may not affix the Seal to any deed or document relating thereto.

17.10 Despite any other provision of **clause 17**, a Director:

- (a) being an employee or officer of an employer participating in the Fund, shall not be disqualified from voting on any matter that is being considered by the Company which in any way, whether directly or indirectly, relates to any employer participating in the Fund;
- (b) shall not be disqualified from holding shares in either the Company or the Principal Employers;
- (c) shall not be disqualified from holding any position or office with any employer participating in the Fund; or
- (d) being a Fund Member, shall not be disqualified from voting on any matter that is being considered by the Company in which the Director's only interest in relation to the matter is as a Fund Member.

17.11 A Director must not:

- (a) provide any services to the Company (other than in their capacity as a Director or as an employee or officer of the Company); or
- (b) hold any office or undertake any employment with any company or entity engaged by the Company to provide services to the Company,

without the prior written approval of the Company.

17.12 The Company can withdraw its approval under **clause 17.11** at any time by giving reasonable, but not more than 90 days, written notice to the Director. In that event, the Director must:

- (a) retire as a Director;
- (b) cease providing the service to the Company; or
- (c) retire from the other office or employment.

17A. CEASING TO BE A FIT AND PROPER PERSON

17A.1 A person will automatically cease to hold office as a Responsible Officer if the person ceases to be a Fit and Proper Person in accordance with the Fit and Proper Policy.

18. POWERS AND DUTIES OF DIRECTORS

18.1 Subject to the Corporations Act and to any other provisions of this Constitution, the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all the powers of the Company that are not by the Corporations Act or by this Constitution or otherwise required to be exercised by the Company in general meeting.

18.2 Without limiting the generality of **clause 18.1** and without prejudice to the other powers conferred by this Constitution it is hereby expressly declared that the Directors shall have the powers necessary to enable the Company to carry out its trusteeship of the Fund in accordance with the Governing Rules and Relevant Law.

- 18.3 Despite any other provision of this Constitution, the Board can only exercise the following powers (whether under this Constitution or otherwise) with the approval of at least 75% of the Directors:
- (a) determining the eligibility and selection criteria for Directors under **clause 17.1**;
 - (b) determining the eligibility, nomination and election rules for Directors who will be appointed as Member Representatives under **clause 17.1**;
 - (c) determining the maximum number of Directors that may be appointed under **clause 17.1**;
 - (d) the appointment and removal of Directors under **clause 17.1**;
 - (e) the eligibility and selection criteria, and appointment, of the Chairperson of Directors under **clause 20.9**;
 - (f) determining the term and maximum tenure of Directors under **clause 17.1**;
 - (g) determining the criteria for the removal of Directors, including removal by rotation, under **clause 17.1**;
 - (h) determining the proportional representation of Directors under **clause 17.1**.
 - (i) determining the quorum for Directors' meetings under **clause 20.2**;
 - (j) determining the remuneration for Directors under **clause 17.3**;
 - (k) the issue of shares in the Company under **clause 5.1**; and
 - (l) deciding whether the Fund should merge with another superannuation fund.
- 18.4 The Directors may pay out of the assets of the Company all properly incurred expenses relating to the Company.

19. MINUTES

- 19.1 The Directors shall cause minutes to be made of:
- (a) all appointments of Directors and officers;
 - (b) the names of the Directors present at each meeting of the Directors;
 - (c) all orders made by the Directors;
 - (d) any decision by the Board to increase or decrease the remuneration payable to any Director pursuant to **clause 17.3**;
 - (e) all declarations made or notices given by any Director (either generally or specially) of his interest in any contract or proposed contract or of his holding of any office or property whereby any conflict of duty or interest may arise; and
 - (f) all resolutions and proceedings of meetings of Shareholders and classes of Shareholders and of the Directors.
- 19.2 Any such minutes so entered of any meeting of the Directors or of any general meeting of Shareholders, or of any class or classes of Shareholders, if purporting to be signed by the

chairperson of the meeting or of the next succeeding meeting of the same body, shall be receivable as prima facie evidence of the matters stated in the minutes of that meeting of the meeting having been duly held and convened and of the validity of all proceedings and appointments at such meetings.

20. PROCEEDINGS OF DIRECTORS

- 20.1 Except as otherwise provided in this Constitution or in the Governing Rules, the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and manner of dispatching business as they think fit and a meeting at which a quorum is present should be competent to exercise all or any of the powers exercisable by the Directors generally.
- 20.2 The number of Directors whose presence is necessary to constitute a quorum necessary for the transaction of the business of the Directors shall be determined by the Board in accordance with **clause 18.3(i)** and the Relevant Law.
- 20.3 No business shall be transacted at any meeting of Directors unless a quorum of Directors is present throughout the meeting.
- 20.4 A quorum of Directors must attend in person or by conference call as defined in **clause 20.11**.
- 20.5 All business arising at any meeting of the Directors shall be determined only by resolution and no such resolution shall be effective unless carried by at least a simple majority of votes cast by Directors entitled to vote on such resolution.
- 20.6 Each Director present at a meeting of Directors shall have one deliberative vote on any question. No Director shall have a second or casting vote in addition to his deliberative vote.
- 20.7 A Director may at any time, and the Secretary shall on the requisition of a Director, convene a meeting of the Directors. Unless a quorum of Directors determine that a meeting of Directors shall be held at shorter notice not less than seven days prior written notice of a meeting of Directors shall be given to each of the Directors or, where the meeting has been convened by a Director, the other Directors.
- 20.8 The continuing Directors (provided that there is a quorum as defined in **clause 20.2**) may act notwithstanding any vacancy.
- 20.9 The Chairperson of Directors shall, subject to the Relevant Law, be appointed by the Board in accordance with **clause 18.3(e)**.
- 20.10 The Chairperson of Directors shall act as chairperson of each meeting of Directors at which the said Chairperson of Directors is in attendance. Where a meeting is held and the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or if the Chairperson is unwilling to act or if no Chairperson has been appointed, the Directors present shall elect one of their number to be chairperson of the meeting.
- 20.11 Any Director may participate in a meeting of the Directors by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.
- 20.12 All acts done by any meeting of the Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director, or to act as a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director.

- 20.13 The Directors may delegate any power, authority or discretion exercisable by the Directors to any one or more of their number (without specifically naming or identifying the Director or Directors concerned) who shall in the exercise of the powers, authorities or discretions so delegated comply with such terms and conditions which may be imposed upon any such delegate by the Directors.
- 20.14 The Directors may at any time and from time to time by power of attorney appoint any person or persons or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with such attorney as the Directors think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions for the time being so vested.
- 20.15 If all Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day and at the time the document was last signed by a Director.
- 20.16 For the purposes of **clause 20.15**, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- 20.17 A reference in **clause 20.15** to Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution, but does include any Alternate Director who has been appointed by a Director to act as an alternate director on his or her behalf in accordance with **clause 21**.

21. ALTERNATE DIRECTORS

Appointment of Alternate Director

- 21.1 Each Director may appoint any other Director to act as an Alternate Director in his or her place.
- 21.2 The appointment of an Alternate Director constitutes the appointed person as an Alternate Director for each Director appointing him or her and he or she shall be competent to exercise the directorial functions of each appointing Director (in addition to his or her own functions if he or she is a Director in his or her own right). The presence of an Alternate Director at any meeting shall for all purposes be counted as the presence of each of the appointing Directors (in addition to their presence as a Director in their own right, if applicable).

Notice of Meetings

- 21.3 Notice of meetings of Directors convened while an Alternate Director is in office shall be deemed due notice to both the Alternate Director and the appointing Director if given to either of them.
- 21.4 Directors must notify the Secretary of any expected absence and of their intended Alternate Director before a meeting.

Rights and obligations of Alternate Directors

- 21.5 An Alternate Director:

- (a) may be appointed on a standing basis or for one or more particular meetings;
- (b) is entitled (so far as is consistent with the duration and nature of his or her appointment and subject to contrary provisions of this Constitution) to attend and vote at any meeting of Directors in the place of the appointing Director if that appointing Director is not present at the Meeting;
- (c) may exercise all the powers (except the power to appoint an Alternate Director) of the appointing Director insofar as that appointing Director has not exercised them, including signing any circulating resolution of directors under **clause 20.15**;
- (d) will perform, observe and discharge all the directorial functions of the appointing Director insofar as that appointing Director has not performed them;
- (e) is while acting as an Alternate Director, responsible to the Company for his or her own acts and defaults;
- (f) may be removed or suspended as an Alternate Director by notice to the Company in writing signed by the appointing Director;
- (g) will automatically cease to be an Alternate Director if the appointing Director dies or otherwise vacates office; and
- (h) is entitled to act as Chairperson of the Board or of a committee in place of the appointing Director.

21.6 A Director may act as Alternate Director to represent more than one Director.

Interpretation

- 21.7 (a) A reference in **clauses 21.2 to 21.5** to "appointing Director" means a Director who appoints an Alternate Director; and
- (b) where the subject or context does not otherwise require, the word "Director" where appearing in this Constitution shall be deemed to include an Alternate Director.

22. SECRETARY

The Secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

23. THE SEAL AND EXECUTION OF DOCUMENTS

- 23.1 The Seal shall not be affixed to any instrument except by the authority of a resolution of the board of Directors and every instrument to which the Seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose.
- 23.2 All documents which of legal necessity need not be under seal and which the Company is capable in law of entering into shall be legally binding on the Company if signed by one of the Directors or other person authorised by the Directors in accordance with a resolution of Directors made under **clause 20.5**.
- 23.3 Promissory notes, cheques or other negotiable instruments shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be, for or on behalf of the

Company by one of the Directors and the Secretary or in such other manner as the Directors may from time to time determine.

24. INSPECTION OF RECORDS

The Directors shall 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 for the inspection of Shareholders other than Directors, and a Shareholder 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.

25. RESERVES AND PROVISIONS

25.1 The Directors may set aside out of the profits of the Company such sums as they think proper as reserves or provisions to be applied for such purposes as the profits of the Company may be properly applied.

25.2 Pending such application the Directors may invest any such reserve or provision or may dispose of all or any part of it for the benefit of the Company.

26. CAPITALISATION OF PROFITS AND RESERVES

Subject to this Constitution and the Corporations Act, the Directors may from time to time pass a resolution to the effect that any moneys otherwise available for distribution to Shareholders shall be capitalised and shall be applied in or towards paying up in full un-issued shares of the Company to be allotted and distributed (credited as fully paid up) amongst such of the Shareholders of the Company who would have been entitled to receive such sum if distributed by way of dividend and in the same proportions. While the Company acts as trustee of the Fund, no amount shall be applied in favour of Shareholders.

27. NOTICES

27.1 A notice may be given by the Company to any Shareholder either by serving it on that Shareholder personally or by sending it by post to that Shareholder at the Shareholder's Registered Address or (if the Shareholder has no Registered Address) the address, if any, supplied to the Company for the giving of notices.

27.2 When a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected in the case of a notice of a meeting on the day after the date of the posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

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

- (a) every Shareholder except those Shareholders who (having no Registered Address) have not supplied to the Company an address for the giving of notices to them;
- (b) the Auditor; and
- (c) every Director of the Company.

28. WINDING UP

If the Company is wound up, the liquidator may, with the sanction of a special resolution, vest the whole or any part of any property of the Company in trustees on such trusts as are consistent with a wind up of the Fund under the Governing Rules. No property of the Company shall be divided amongst Shareholders except to the extent a Shareholder may be a beneficiary under a trust referred to above.

29. INDEMNITY

- 29.1 Every Director, agent, Auditor, Secretary and other officer for the time being of the Company shall be entitled to be indemnified out of the assets of the Company and as provided in the Governing Rules against all liabilities which may be sustained or incurred in or about the execution of that office or otherwise in relation thereto.
- 29.2 No Director, agent, Auditor, Secretary or other officer for the time being of the Company shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of office or in relation thereto.
- 29.3 The Principal Employers shall not be personally liable for or in respect of any liability arising out of or in connection with the exercise or failure to exercise their powers pursuant to this Constitution.
- 29.4 Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company.
- 29.5 Where the Board considers it appropriate, and to the extent to which the Company is not precluded by law from doing so, the Company may:
- (a) make payments of amounts by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or a subsidiary of the Company, or in or arising out of the discharge of the duties of the officer; and
 - (b) bind itself in any contract or deed with any officer of the Company to make the payments.
- 29.6 Where the Board considers it appropriate, the Company may:
- (a) give a Director or former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and
 - (b) bind itself in any contract or deed with a Director or former Director to give the access.
- 29.7 The benefit of any indemnity previously given to any person in respect of liabilities incurred prior to the adoption of this **clause 29** (including in this Constitution) is not affected by this **clause 29**.
- 29.8 The benefit of each indemnity given in this **clause 29** continues, even after its terms or the terms of this **clause 29** are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

29.9 In this **clause 29**:

- (a) **"officer"** means a director, secretary or executive officer of the Company or a person who formerly held one of those positions;
- (b) **"duties of the officer"** includes, in any particular case where the Board considers it appropriate duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or, where applicable, a subsidiary of the Company to any other corporation;
- (c) **"liability"** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether civil, criminal, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.

29.10 Notwithstanding anything aforesaid, this clause shall have effect only in so far as its provisions are not avoided by law.

30. PARAMOUNT PROVISION

Notwithstanding anything to the contrary expressed or implied in this Constitution the Company, the management, administration and operation thereof (whether internal or otherwise) including without limitation the appointment and powers of Directors, transfer, redemption and transmission of shares (if any), the conduct of business of the Company and the amendment of this Constitution shall at all times comply with the Relevant Law.