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Network
Ltd

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Notes re our Sample Constitution :

- (1) The attached Constitution is a sample of our default for **A Proprietary Company** formed by the **CNL Formation** method, and is intended for general perusal (particularly by new users of our service). The Constitution is structured in 2 parts:
 - The body of the Constitution contains the provisions that (in our experience) clients rarely if ever request changes to.
 - The Schedules contain the provisions in areas that (in our experience) clients occasionally request modifications to provisions. There are 16 Schedules, containing 38 areas in which modifications, additions or deletions can be made.
- (2) **Drafting Notes** : The pdf file also includes our internal notes on the drafting of the Constitution - these notes (*presently being reviewed*) are generally a record of the factors we took into consideration when settling the wording of the various provisions.
- (3) **HotLinks** : the number of each provision in the Constitution is hotlinked to our internal note on that provision - that is, click on the number and you will be transferred to our associated note. In the Schedules, each use of the word "SCHEDULE" is also hotlinked to our associated note.
- (4) **Modifications** : Our software (developed and refined over many years) facilitates a wide range of modifications to our default now enclosed. Generally, we process modifications without additional charges.

The most convenient method of instructing us re required modifications is to use our free software to create the modifications. Our software will allow you to first print a draft for perusal (and email it to another party for approval) before your instructions are sent to us.

Our software also allows you to save any modified version of our constitution as a "template" for future use.

Yours faithfully,
Corporate Network Ltd

SAMPLE
CNL FORMATION
PTY LIMITED

ACN: 123 456 789

A Proprietary Company
Limited By Shares
Registered on May 1st, 2006

Professional Contact:
Client Firm
Accountants

Level 10, Client Chambers, 100 Client Street,
Sydney NSW 2000
Phone: (02) 1234 5678

Company Registration Agents:
CORPORATE NETWORK LTD
Companies House
74-76 Campbell Street, Sydney, NSW, 2010
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CONSTITUTION - INDEX

NOTE : if this document is being read as a pdf with Acrobat Reader, click on the regulation numbers - they are "hotlinked" to the relevant page in the body of the Constitution.

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CONSTITUTION

OF

SAMPLE
CNL FORMATION
PTY LIMITED

ACN : 123 456 789

Adopted on May 1st, 2006

.....
(director)

- 1.1 This Constitution is adopted on May 1st, 2006 by
SAMPLE CNL FORMATION
PTY LIMITED ACN : 123 456 789
- 2.1 In this Constitution, "Corporations Act" means the Corporations Act 2001, and:
"law" means that the text that follows and that is set in italics is a quote from the Corporations Act and is not a part of this Constitution;
"note" means that the text that follows and that is set in italics is not a part of this Constitution, but is added to assist interpretation or to provide a pointer to relevant provisions of the Corporations Act;
bold headers do not form part of this Constitution, and are added solely for the purpose of identifying the general content of following provisions.
- 2.2 The provisions in this Constitution are referred to as a "rule" or "rules". Provisions sharing the same numerical prefix may be referred to as a "sub-rule".
- 2.3 Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- schedules**
- 2.4 The schedules hereto are part of this Constitution, and their provisions shall prevail if they conflict with any other provision of this Constitution.
- company type and class**
- 3.1 The company is A Proprietary Company Limited By Shares.
- note This Constitution will require modification if the company changes its status.*
- when the company has a single director and/or a single shareholder**
- 4.1 Any provision of this Constitution that conflicts with a provision of the Corporations Act regarding a company with a single director and/or a single member does not apply whilst this company has a single director and/or a single member.
- note The Corporations Act sets out various exceptions regarding situations when the company has a single director and/or a single shareholder. These situations should be distinguished from where a single person is the only director and that person is also its only shareholder.*

law Section 248B(1) Resolutions (of 1 director companies). The director of a proprietary company that has only 1 director may pass a resolution by recording it and signing the record.

law Section 249B(1) Resolutions (of 1 member companies). A company that has only 1 member may pass a resolution by the member recording it and signing the record.

when a single person is the only director and is also the only shareholder

4.2 While this company has only one director and that person is also the only shareholder of the company, provisions of this Constitution that conflict with provisions of the Corporations Act governing this situation do not apply.

note The Corporations Act sets out various exceptions regarding proprietary companies where a single person is the only director and that person is also the only shareholder:

law Section 201F(1) Appointment of director. The director may appoint another director by recording the appointment and signing the record.

law Section 198E(1) Powers of director. The director may exercise all the powers of the company except any powers that this Law or the company's Constitution (if any) requires the company to exercise in general meeting. The business of the company is to be managed by or under the direction of the director.

law Section 198E(2) Negotiable instruments. The director may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

law Section 202C Director's remuneration. The director is to be paid any remuneration for being a director that the company determines by resolution. The company may also pay the director's travelling and other expenses properly incurred by the director in connection with the company's business.

note Sections 201F(2) provides for the appointment of a new director on the death, mental incapacity or bankruptcy of a single director/shareholder proprietary company. If the sole director of such a company is unable to act for reasons other than death, mental incapacity or bankruptcy (e.g: serious ill health), the company may provide for continuity by issuing from a class of shares that gives the holder similar "Appointor" rights to section 201F(1) - see Part B of Schedule 13.

objects

5.1 The principal objects of the company and/or any restrictions on the objects of the company are set out in [SCHEDULE 1](#).

powers

6.1 The powers of the company and any restrictions on the powers of the company are set out in [SCHEDULE 1](#).

directors - eligible persons

7.1 Subject to any provisions set out in [SCHEDULE 2](#), any person able by law to act as a director of a company is eligible to be appointed as a director of the company.

directors - company or directors may appoint

8.1 The company may appoint any eligible person as a director by resolution passed in general meeting.

8.2 The directors of the company may appoint any eligible person as a director.

directors - number

8.3 Unless provided otherwise in [SCHEDULE 2](#), there is no minimum number or maximum number of directors that may be acting at any time other than any minimum or

maximum number that may be set in the Corporations Act.

directors - confirmation by members of appointment

- 9.1 Provisions governing the confirmation by members of appointments made under this rule are set out in [SCHEDULE 2](#).

alternate directors

- 10.1 Subject to any provisions set out in [SCHEDULE 2](#), any person able by law to act as a director is eligible to be appointed as an alternate director of the company.
- 10.2 With the other directors' approval, a director may appoint an eligible person as an alternate to exercise some or all of the director's powers for a specified period.
- 10.3 If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.
- 10.4 When an alternate exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.
- 10.5 The appointing director may terminate the alternate's appointment at any time.
- 10.6 An appointment or its termination must be in writing, and a copy must be given to the company.

directors - powers

- 11.1 The business of the company is to be managed by or under the direction of the directors.
- 11.2 The directors may exercise all the powers of the company except any powers that the Corporations Act or this constitution (if any) requires the company to exercise in general meeting.
- 11.3 If this company is a wholly-owned subsidiary of a body corporate, a director may act in the best interests of the holding company provided that this company is not insolvent at the time the director acts and does not become insolvent because of the director's act.

secretary

- 12.1 The directors may appoint one or more secretaries of the company, who shall hold office on the terms and conditions (including as to remuneration) that the directors determine.

note Section 204A(1) of the Corporations Act provides that appointment of a secretary is optional for a proprietary company.

managing director

- 13.1 The directors may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.
- 13.2 A person ceases to be managing director if that person ceases to be a director.
- 13.3 The directors may confer on a managing director any of the powers that the directors can exercise and may provide that such powers may be exercised without the managing director being required to inform other directors.
- 13.4 Other provisions regarding managing directors, if any, are set out in [SCHEDULE 3](#).
- 13.5 The directors may revoke or vary an appointment or any of the powers conferred on the managing director.

directors - delegation to committees

- 14.1 The directors may delegate any of their powers to a committee of directors.

14.2 A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.

14.3 Unless otherwise approved by the directors, a committee shall conduct meetings and pass resolutions according to the same rules as this Constitution provides for directors.

directors - interested in contracts with proprietary company

15.1 The provisions of this rule do not apply if the company is a proprietary company with one director and that person is also the only shareholder of the company.

- (a) In this rule, "contract" includes transaction or arrangement.
- (b) Notwithstanding any rule of law or equity to the contrary a director of the company shall not be disqualified by the holding of that office from contracting with the company either as vendor, purchaser or otherwise.
- (c) If a director of the company has an interest in a contract or proposed contract with the company (other than as a member) and discloses the nature and extent of the interest at a meeting of the directors or as otherwise allowed by the Corporations Act:
 - (i) the director may vote on whether the company enters into the contract; and
 - (ii) the contract may be entered into; and
 - (iii) the director may vote on matters involving the contract; and
 - (iv) if the disclosure is made before the contract is entered into the director may retain benefits under the contract even though the director has an interest in the contract.
- (d) If a director has an interest in a contract or proposed contract with the company (other than as a member) and discloses or fails to disclose the nature and extent of the interest at a meeting of the directors or as otherwise allowed by the Corporations Act, the company cannot avoid the contract merely because of the existence of the interest.

Other provisions, if any, regarding interests of directors in contracts with the company are set out in [SCHEDULE 2](#).

note Section 192 of the Corporations Act provides (amongst other things) for a director to give a standing notice regarding interests in contracts.

15.2 A director may be or become a director or other officer or otherwise interested in any other company promoted by the company or in which the company may be interested as shareholder or otherwise, and no such director shall be accountable to the company for any remuneration or other benefits received as a director or officer of or from the interest in such other company.

directors - remuneration

16.1 The directors of a company are to be paid the remuneration that the company determines by resolution.

That remuneration shall be deemed to accrue from day to day unless otherwise specified at the time of appointment.

16.2 The company may also pay the directors' travelling and other expenses that they properly incur in attending directors' meetings or any meetings of committees of directors, in attending any general meetings of the company, and in connection with the company's business.

directors - vacation of office

17.1 Rules, if any, in addition to those provided in the Corporations Act, governing vacation

of the office of director are set out in [SCHEDULE 2](#).

directors - removal

- 18.1 The directors or the company may by resolution remove a director from office, and may by resolution appoint another eligible person as a director instead.

directors - resignation by written notice

- 19.1 A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office or at its place of business.

directors' meetings - alternatives to personal presence

- 20.1 Any director may participate in a meeting 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 meetings (including for the purpose of constituting a quorum).

If some or all directors participate in a meeting by such means, the place where the meeting is deemed to be held shall be the place where the chair is present.

Other provisions, if any, regarding meetings of directors by alternative means are set out in [SCHEDULE 2](#).

directors' meetings - circulating resolutions

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

directors' meetings - calling of by a director

- 22.1 A director may at any time, and a secretary shall on the requisition of a director, call a meeting of the directors by giving reasonable notice individually to every other director.

law Section 248D Use of Technology A directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.

directors' meetings - chair

- 23.1 The directors may elect a director to chair their meetings, and may determine the period for which the director is to be the chair.
- 23.2 If a previously elected chair is not available or declines to act for a particular meeting, the directors must elect a director present to chair that meeting.

If a previously elected chair is not available or declines to act for part of a particular meeting, the directors must elect a director present to chair that part of the meeting.

directors' meetings - quorum

- 24.1 Unless the directors determine otherwise, the quorum for a meeting of directors is as set out in [SCHEDULE 4](#). The quorum must be present at all times during the meeting.
- 24.2 There is no quorum requirement if the company has only one director duly appointed.
- 24.3 In the event of a vacancy or vacancies in the office of a director, the remaining directors may act but, if the number of remaining directors is not sufficient to

constitute a quorum, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or to convene a general meeting of the members of the company.

directors' meetings - passing of resolutions

- 25.1 A resolution of the directors is passed if a majority of the votes cast by directors present and entitled to vote on the resolution are cast for the resolution.

directors' meetings - casting vote of chair

- 25.2 If there is an equality of votes for and against a resolution, the chair of the meeting has a casting vote if such is provided for in [SCHEDULE 5](#) hereto.

The casting vote of the chair shall be in addition to any vote the chair has as a director and may be cast contrary to that vote.

members' meetings - calling of by a director

- 26.1 A director may call a meeting of the company's members.

note Section 249D of the Corporations Act provides that the directors must call and arrange to hold a general meeting of members on the request of members with at least 5% of the votes that may be cast at a general meeting.

members' meetings - calling of by members

law Section 249F(1). Members with at least 5% of the votes that may be cast at a general meeting may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.

members' meetings - alternatives to personal presence

- 27.1 Unless otherwise provided in [SCHEDULE 6](#) and to the extent allowed by the Corporations Act, the provisions of this Constitution regarding personal presence at meetings of directors shall also apply to meetings of members or classes of members.

members' meetings - circulating resolutions

- 28.1 Unless otherwise provided in [SCHEDULE 6](#) and to the extent allowed by the Corporations Act, the provisions of this Constitution regarding circulating resolutions as an alternative to a meeting of directors shall also apply to meetings of members or classes of members.

members' meetings - notice

note Section 249H(1) of the Corporations Act provides as a general rule that at least 21 days notice must be given of meetings of a company's members.

Section 249J(1) provides that the notice be in writing and be given to all members and to all directors, and section 249L provides the contents of the notice.

Section 249J(3) provides that notice to a member be given personally, or by post to the member's address in the register of members, or to any alternative address nominated by the member, or by any other means that the company's constitution permits.

members' meetings - notice to joint members

- 29.1 Notice to joint members must be given to the joint member named first in the register of members.

members' meetings - notice by post, fax, or email

- 30.1 Notice of meetings may be sent by fax or email. Notice may also be sent by other means (including electronic means) agreed to in advance by all members entitled to cast a vote at a general meeting.

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

of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

members' meetings - short notice

note Section 249H(2) of the Corporations Act provides for shorter notice of meetings of members for a general meeting of a proprietary company if members with at least 95% of the votes that may be cast agree beforehand.

members' meetings - quorum

31.1 There is no quorum requirement if the company has only one member. Otherwise, the quorum for a meeting of a company's members is as set out in **SCHEDULE 4** and must be present at all times during the meeting.

31.2 In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are to be counted. If a member has appointed more than 1 proxy or representative, and more than one of them is attending, only 1 of them is to be counted. If an individual attends both as a member and as a sole proxy or body corporate representative, that individual is to be counted in both capacities.

31.3 A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:

- (a) if the date is not specified - the same day in the next week; and
- (b) if the time is not specified - the same time; and
- (c) if the place is not specified - the same place.

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

members' meetings - chair

32.1 The directors may elect an individual to chair meetings of the company's members. That individual may be a director, a member, or a person who is neither a director or member.

32.2 If a previously elected chair is not available or declines to act for a particular meeting of members, the directors or the members present must elect an individual present to chair that meeting.

If a previously elected chair is not available or declines to act for part of a particular meeting of members, the directors or the members present must elect an individual present to chair that part of the meeting.

32.3 The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

members' meetings - adjourned meetings

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

members' meetings - business at adjourned meetings

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

members' meetings - who can appoint a proxy

35.1 A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.

35.2 The appointment may specify the proportion or number of votes that the proxy may exercise. Fractions of votes resulting from the application of this rule are to be disregarded.

35.3 Each member may appoint a proxy. If a member is entitled to cast 2 or more votes at the meeting, the member may appoint 2 or more proxies. If the member appoints 2 or more proxies and the appointments do not specify the proportion or number of the member's votes each proxy may exercise, the number of votes able to be cast by each proxy shall be in proportion to the number of proxies appointed by that member. Fractions of votes resulting from the application of this rule are to be disregarded.

members' meetings - proxy vote valid if member dies, revokes appointment, etc

36.1 Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing member dies; or
- (b) the member is mentally incapacitated; or
- (c) the member revokes the proxy's appointment; or
- (d) the member revokes the authority under which the proxy was appointed by a third party; or
- (e) the member transfers the shares in respect of which the proxy was given.

note Other provisions re proxies are provided in sections 249Y, 249Z, 250A, 250B, 250BA, 250C(1) and 250D.

members' meetings - how many votes a member has

37.1 At a meeting of members or classes of members of the company:

- (a) on a show of hands, each member has 1 vote; and
- (b) on a poll, each member has such number of votes for for each share held as is provided in the rights of the class of each share held held but subject to any conditions or restrictions attached to the rights of the class.

members' meetings - casting vote of chair

37.2 If there is an equality of votes for and against a resolution, the chair of the meeting has a casting vote if such is provided for in **SCHEDULE 5** hereto.

If the chair is a member, the casting vote shall be in addition to any vote the chair may have as a member and may be cast contrary to that vote.

members' meetings - jointly held shares

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

members' meetings - objections to right to vote

39.1 A challenge to a right to vote at a meeting of a company's members may only be made at the meeting and must be determined by the chair, whose decision is final.

members' meetings - how voting is carried out

40.1 A resolution put to the vote at a meeting of a company's members shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

- (a) the chair;
- (b) at least 3 members present in person or by proxy;

- (c) members present in person or by proxy and representing not less than 10% of the total voting rights of all the members having the right to vote at the meeting; or
- (d) members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than 10% of the total sum paid up on all the shares conferring that right.

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

members' meetings - when and how polls must be taken

41.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

41.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

inspection of company books and records

42.1 The directors of a company may inspect any accounting records and other documents of the company.

42.2 Except as provided by law, members may inspect the accounting records and other documents of the company only if authorised by the directors or by the company by a resolution passed at a general meeting.

42.3 Except as provided by law, the directors or the company when authorising a member to inspect accounting records or other documents of the company may attach restrictions to such authorisation regarding time, place and records and documents able to be inspected.

inspection of registers

Note Section 173 of the Corporations Act provides that a company must allow "anyone" to inspect the register of members. If the register is kept on a computer: a hard copy is to be provided, or access to the information by computer given, or a copy of the data (in readable form) on a floppy disk given. Section 174 provides like responsibilities for an agent who agrees to maintain a register of members for a company.

banking and negotiable instruments

43.1 Any 2 directors of the company if it has 2 or more directors, or the sole director of the company if it is a proprietary company that has only 1 director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

43.2 The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

43.3 Other provisions, if any, regarding banking and negotiable instruments are set out in **SCHEDULE 7**.

company shall indemnify officers

44.1 The company shall indemnify any person who is or has been an officer or auditor of the company against:

- (a) a liability to another person (other than the company or a related body corporate) unless the liability arises out of conduct involving a lack of good faith, and
- (b) a liability for costs and expenses incurred by the person:
 - (i) in defending proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Act.

44.2 The company may pay a premium in respect of a contract insuring a person against a liability incurred in respect of matters indemnified under the preceding rule.

loans - directors, members, other

45.1 Provisions, if any, regarding loans by or to the company are set out in [SCHEDULE 8](#).

required provisions - for an industry, profession, licencing authority

46.1 Provisions, if any, required to be in the Constitution of the company by an industry body, professional body or licencing authority are set out in [SCHEDULE 9](#).

miscellaneous provisions - common seal

47.1 The directors may by resolution adopt a common seal for the company, may set rules governing how a common seal is to be signed when affixed, and may set rules governing documents the seal must be affixed to.

If a common seal is adopted, and no rules governing how it is to be signed when affixed have been set by the directors, the following rules shall apply:

- (a) Every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.
- (b) If the company has a sole director who is also the sole secretary of the company, that sole director may be the sole signatory to documents to which the seal is affixed.

Additional or alternative provisions, if any, are set out in [SCHEDULE 10](#).

miscellaneous provisions - other

47.2 Other miscellaneous and/or alternative provisions are set out in [SCHEDULE 10](#).

shares - eligibility rules re membership

48.1 Rules, if any, regarding persons or classes of persons who are eligible to be members of the company and to hold shares are set out in [SCHEDULE 6](#).

shares - interest in shares by other parties

48.2 Except as required by law, the company shall not recognize a person as holding a share upon any trust.

48.3 The company is not bound by or compelled in any way to recognize (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 these rules or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

shares - pre-emption re issue of shares

49.1 Rules, if any, regarding the offer of shares applied for or to be issued are set out in [SCHEDULE 11](#).

shares - pre-emption re transfer or transmission of shares

50.1 Rules, if any, regarding shares sought to be transferred or shares subject to transmission are set out in [SCHEDULE 11](#).

shares - directors may refuse to register transfers

51.1 Subject to any provisions set out in [SCHEDULE 11](#), the directors may refuse to register a transfer of shares in the company for any reason.

shares - registration of transfers

- 51.2 A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.
- 51.3 The directors are not required to register a transfer of shares in the company unless:
- (a) a transfer form has been lodged at the company's registered office; and
 - (b) any fee payable on registration of the transfer has been paid; and
 - (c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.
- 51.4 For the purposes of the preceding rule, a share transfer form shall:
- (a) state the name, registered number and jurisdiction of the company;
 - (b) state the full names and addresses of vendor and purchaser;
 - (c) state the number and class, and distinctive numbers if applicable, of the shares to be transferred;
 - (d) state the price per share paid or payable; and
 - (e) be signed and dated by the vendor and the purchaser.
- 51.5 The directors may refuse to register a transfer of shares in the company if:
- (a) the shares are not fully-paid; or
 - (b) the company has a lien on the shares.
- 51.6 The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.

shares - transmission on death, bankruptcy or mental incapacity

- 52.1 The provisions of sections 1091AA, 1091AB and 1091B of the Corporations Law, being Replacable Rules, are adopted under this Constitution.

shares - calls on shares

- 53.1 The directors may make calls upon members in respect of any money unpaid on their shares other than money payable at fixed times by the terms of issue of those shares.
- 53.2 A member shall be given notice of at least 14 days specifying the time and place for payment of calls, and shall pay the amount called to the company at the time and place so specified.
- 53.3 The directors may revoke or postpone a call.
- 53.4 A call shall be deemed to have been made when the resolution of the directors authorizing the call was passed, and the directors may allow payment by instalments.
- 53.5 The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.
- 53.6 If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate as determined by the the directors and set out in the terms of issue of the shares, but the directors may waive payment of that interest wholly or in part. Unless determined otherwise by the directors, the rate of such interest shall be 8% per annum.
- 53.7 Any sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date shall for the purposes of these rules be deemed to be a call duly made and payable

on the date on which by the terms of issue the sum becomes payable, and, in case of nonpayment, all the relevant provisions of these rules as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

- 53.8 The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.
- 53.9 The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- 53.10 The directors may authorize payment by the company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate as is agreed upon between the directors and the member paying the sum.

shares - lien on shares

- 54.1 (a) The company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- (b) The company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by that person or that person's estate to the company.
- (c) The directors may at any time exempt a share wholly or in part from the provisions of this rule.
- (d) The company's lien (if any) on a share extends to all dividends payable in respect of the share.
- 54.2 Subject to sub-rule 1, the company may sell, in such manner as the directors think fit, any shares on which the company has a lien, unless:
- (a) a sum in respect of which the lien exists is presently payable; and
- (b) the company has, not less than 14 days before the date of sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of the death or bankruptcy or mental incapacity of the registered holder a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.
- 54.3 (a) For the purpose of giving effect to a sale of a share on which the company has a lien, the directors may authorize a person to transfer the shares sold to the purchaser of the shares.
- (b) The company shall register the purchaser as the holder of the shares comprised in any such transfer and the purchaser is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
- 54.4 The proceeds of the sale of shares subject to a lien shall be applied by the company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

shares - forfeiture of shares

- 55.1 If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.

- 55.2 The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.
- 55.3 If the requirements of a notice served under this rule are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.
- 55.4 Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- 55.5 A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.
- 55.6 A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the company all money that, at the date of forfeiture, was payable by him to the company in respect of the shares (including interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest).
- The liability of the member ceases if and when the company receives payment in full of all the money (including interest) so payable in respect of the shares.
- 55.7 A statement in writing declaring that the person making the statement is a director or a secretary of the company, and that a share in the company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.
- 55.8 The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- 55.9 Upon the execution of the transfer, the transferee shall be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- 55.10 The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- 55.11 The provisions of these rules as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time as if that sum had been payable by virtue of a call duly made and notified.

shares - certificates

- 56.1 Each member of the company is entitled without payment to receive a certificate in respect of the share or shares registered as issued.
- In respect of a share or shares held jointly by several persons, the company is not bound to issue more than one certificate.
- 56.2 A member who has advised the directors in writing that a share certificate has been lost or destroyed is entitled upon payment of such reasonable fee (if any) as the directors require to receive a duplicate certificate in respect of the share or shares.
- 56.3 Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

dividends - general dividend provisions

- 57.1 Subject to the terms on which shares in the company are on issue, the directors may declare and pay dividends on an annual or interim basis of such amounts as they see fit, and may fix the amount, time and method of payment of such dividends. The methods

of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

57.2 The directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by the member to the company on account of calls or otherwise in relation to shares in the company.

57.3 Interest is not payable on a dividend.

dividends - division or allocation between classes

58.1 Unless otherwise provided in [SCHEDULE 12](#) and subject to the particular rights of the classes of shares, upon a dividend being declared, the directors shall have absolute discretion as to the division or allocation of such dividend between the classes entitled to be considered for dividends and may allocate dividends to any one or more such classes to the exclusion of other classes and may allocate dividends at different rates to different classes.

dividends - capitalisation of profits

59.1 Subject to the approval of the directors, the company in general meeting may resolve to capitalise the whole or part of any sum available for distribution as a dividend.

A sum resolved to be capitalised shall be applied to the benefit of members in the proportions to which members would have been entitled in a distribution of that sum by way of dividend, and may be applied in the form of paying up amounts paid on issued shares and/or paying up in full a new issue of shares.

The directors shall do all things necessary to give effect to such a resolution of the company and, in particular, do such things as may be necessary to maintain the relative rights of the members among themselves.

capital - general

60.1 Subject to the provisions of the Corporations Act, and without prejudice to any special rights conferred on the holders of any existing shares or class of shares, shares in the company may be issued by the directors and may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the directors by resolution determine.

capital - authorised

61.1 The company may by special resolution from time to time limit the number of shares that may be issued in total and/or in particular classes, and/or may limit the sum of the capital that may be raised from share issues. The initial limitations, if any, are set out in [SCHEDULE 13](#).

capital - reserve price for shares may be set

62.1 The directors by resolution may set a reserve price for shares of any class. The reserve price of shares is not intended to be a par value, but an internal management tool.

The reserve price(s) may be separately recorded in the registers of the company or in such other places as the secretary or directors consider appropriate, and may also be referred to in any rights and conditions which are attached to classes of shares.

The initial reserve price(s) of shares, if any, are set out in [SCHEDULE 14](#).

capital - return of issue price on windup

63.1 The directors may issue shares on the condition that an amount less than the issue price is returnable to the shareholder as capital on a winding up of the company, with the balance to be distributed amongst shareholders on the same basis as other assets of the company.

The directors may record in the registers and other records of the company:

- (a) the part of the issue price of shares that is to be returned as capital on a winding up of the company; and
- (b) the part of the issue price of shares that is to be distributed amongst shareholders as and on the same basis as general assets on a winding up of the company.

63.2 If shares are issued without any conditions regarding treatment of the issue price on a winding up of the company:

- (a) if a reserve price for the class of shares is set, and unless otherwise provided under the terms of issue (see SCHEDULE 15), the shareholders on a winding up of the company shall be entitled on a return of capital to a return of the reserve price, and any balance shall be distributed amongst shareholders on the same basis as the general assets of the company; or
- (b) if a reserve price for the class of shares is not set, the shareholders on a winding up of the company shall be entitled on a return of capital to a return of the issue price.

capital - share classes - general

64.1 The directors may issue shares in the capital of the company from the classes set out in PART A of SCHEDULE 14.

64.2 While ever the share capital is divided into different classes of shares, the rights 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 consent in writing of the holders of 75% of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of the class.

The provisions of this Constitution relating to general meetings apply so far as they are capable of application to such separate meeting of holders of shares of particular classes except that:

- (a) a quorum is constituted by such number of persons who, between them, hold or represent by proxy one-third of the issued shares of the class ; and
- (b) any holder of shares of the class, present in person or by proxy, may demand a poll.

64.3 The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

64.4 The company may exercise the power to make payments by way of brokerage or commission conferred by the Law in the manner provided by the Law.

Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

capital - share classes - distinctive numbers of shares

64.5 Shares issued shall be consecutively numbered within each class, the first number in each class being 1 unless the directors decide otherwise.

capital - share classes - authorised numbers of shares per class

64.6 The directors may not issue more shares from any particular class than the number (if any) specified for that class in PART A of SCHEDULE 14.

capital - share classes - rights (summary)

65.1 The rights and conditions of the shares in the classes set out in PART A of SCHEDULE 14 are summarised in the table in PART B of SCHEDULE 14.

note The rights and conditions attached to a class of shares in the table in PART B of SCHEDULE 14 are determined by:

- (a) for each class read its row horizontally, and
- (b) read the following definitions of the headings of the vertical columns.

capital - share classes - rights (specific details)

65.2 The rights and conditions associated with the column headings of the table in PART B of SCHEDULE 14 are:

- (a) **"Equity in Assets"** : This column heading concerns entitlements on a winding up of the company to a share of the surplus assets of the company.

The "surplus assets" of the company in this context are what is left for distribution on a winding up of the company after the distribution of paid up share capital and surplus profits.

YES in this column of the above table means that holders of the particular class of shares are entitled on a winding up of the company to participate equally with other shares regardless of class in the distribution of any surplus assets.

NO in this column of the above table means that holders of the particular class of shares are not entitled on a winding up of the company to share in a distribution of surplus assets.

- (b) **"Votes Per Share"** : This column heading concerns an entitlement to vote at meetings of members of the company.

1 or any higher number in this column of the above table means that holders of the particular class of shares shall be entitled to vote at a general meeting of members of the company, and on a poll to such number of votes per share as indicated in this column.

0 (zero) in this column of the above table means that holders of the particular class of shares are not entitled to vote at meetings of members of the company.

- (c) **"Dividend Pro-Rata"** : This column heading concerns equal dividend rights.

"equal dividend rights" means the right to share equally with other holders of shares of this class in such dividends as the directors from time to time declare on this class, and the right on a winding up of the company to participate equally with other shares of this class in the distribution of any surplus profits.

YES in this column of the above table means that holders of the particular class of shares are entitled to equal dividend rights.

NO in this column of the above table means that holders of the particular class of shares are not entitled to equal dividend rights.

- (d) **"Dividend Variable"** : This column heading concerns variable dividend rights.

"variable dividend rights" means the right to share with other holders of shares of this class in such dividends as the directors from time to time declare on this class; and the directors in their absolute discretion may declare dividends in respect of any one or more of these shares to the exclusion absolute or otherwise of any other of these shares and may declare dividends at different rates in respect of particular shares.

YES in this column of the above table means that holders of the particular class of shares are entitled to variable dividend rights.

NO in this column of the above table means that holders of the particular class of shares are not entitled to variable dividend rights.

- (e) **"Redeemable Preference"** : This column heading concerns the general rights of redeemable preference shares.
- (i) They are issued on the terms that they are liable to be redeemed.
 - (ii) The directors in their absolute discretion may redeem any one or more redeemable preference shares of this class to the exclusion of other shares.
 - (iii) They may be redeemed without notice to the holders.
 - (iv) The directors may set any redemption price before issue, and if none is set the redemption price shall be the the issue price excluding any amounts due.
 - (v) An issue of shares made for the purpose of raising capital from which to redeem any redeemable preference share shall not need to be first offered to the holders of the shares to be redeemed except to the extent that they may hold shares other than the shares to be redeemed.
 - (vi) Dividend rights, if any, shall be cumulative and non-preferential.
 - (vii) On a winding up of the company, all shares shall be entitled to a pro-rata repayment of capital contributed.

YES in this column of the above table means that the particular class of shares are redeemable preference shares with the above general rights.

NO in this column of the above table means that the particular class of shares are not redeemable preference shares.

- (f) **"WindUp Ranking"** : This column heading concerns priority and ranking on a wind up of the company in respect of repayment of capital and any distribution of surplus profits and surplus assets.

Priority: The available funds of the company shall be applied in the following order -

- (1) towards a the payment of dividends declared but not paid;
- (2) towards a distribution of surplus profits to members entitled to equal dividend rights;
- (3) towards a repayment of capital;
- (4) towards a distribution of surplus assets to members entitled to share in a distribution of such.

Ranking: in each of the above distributions on a winding up of the company, the classes shall rank for their entitlements according to the level of their ranking in the table. More than one class of shares may share the same ranking. All shares within a class shall have equal ranking.

1 (one) in this column of the above table means that the particular class of shares shall rank first. Numbers greater than 1 shall rank consecutively after the first level of rank.

- (g) **"Other Rights"** : This column heading concerns other rights and conditions attached to classes of shares.

If such other rights and conditions are contrary to the above rights and conditions generally attached to a particular class, then these other rights and conditions shall prevail.

The other rights and conditions attached to the classes set out in PART B of SCHEDULE 14 are set out in [SCHEDULE 15](#).

capital - other provisions

- 66.1 Other provisions, if any, regarding the capital of the company are set out in [SCHEDULE 16](#).

SCHEDULES

SCHEDULE 1:

objects: *(rule 5.1)*

No restrictions are placed on the objects which the company may pursue.

powers: *(rule 6.1)*

The company has all those powers provided for in the Corporations Act, including all the powers and legal capacity of a natural person, and no restrictions are placed thereon.

SCHEDULE 2:

directors - eligible persons: *(rule 7.1)*

None specified

directors - number: *(rule 8.3)*

No minimum or maximum number specified

directors - provisions re confirmation by members of appointment: *(rule 9.1)*

None specified

alternate directors - provisions re eligible persons: *(rule 10.1)*

None specified

directors - other provisions re interests in contracts: *(rule 15.1)*

None specified

directors - additional rules re vacation of office: *(rule 17.1)*

The office of director is vacated if a director is absent without the consent of the directors from meetings of the directors held during a period of 6 months or such other period of time as may be agreed to by the directors from time to time.

directors - provisions re meetings by alternative means: *(rule 20.1)*

None specified

SCHEDULE 3:

managing directors - additional provisions: *(rule 13.4)*

Unless otherwise provided upon appointment, all of the powers of the directors shall be conferred upon a Managing Director, such person shall have the authority to exercise those powers alone and without conferring or meeting with the other directors of the company, and such appointment shall continue until otherwise resolved by the Directors or by the Members.

If there is more than one Managing Director appointed at any time, and unless otherwise provided at the time the appointments are made, all concurrently acting Managing Directors shall be entitled to individually exercise the powers of a sole Managing Director in the manner provided in the preceding paragraph.

SCHEDULE 4:

meetings - quorum provisions: *(rules 24.1, 31.1)*

Meetings of **directors** = 51% of the directors

An alternate director attending a meeting in place of an appointing director shall be taken account of in determining whether a quorum is present.

Meetings of **members** = members collectively entitled to cast 51% of the votes

SCHEDULE 5:**casting vote of chair - provisions:** (*rules 25.2, 37.2*)meetings of **directors** = YESmeetings of **members** = YES**SCHEDULE 6:****members' meetings - alternatives to personal presence:** (*rule 27.1*)

As apply to meetings of directors.

members' meetings - circulating resolutions: (*rule 28.1*)

As apply to meetings of directors.

shares - eligibility rules re membership of company: (*rule 48.1*)

None Specified

SCHEDULE 7:**banking and negotiable instruments:** (*rule 43.3*)

No additional or alternative provisions are specified.

SCHEDULE 8:**loans - directors, members, other:** (*rule 45.1*)

Loans to shareholders and directors, who may be associates of shareholders within the meaning of the ITAA, shall be subject to repayment on the following terms:

- (a) The following words shall have the following meanings for the purpose of this Schedule:
- "ITAA" means the Income Tax Assessment Act 1936.
- "Borrower" means an individual or a company accepting a Loan from the Company.
- "Loan" means any advance made by the Company to a Borrower within the meaning of section 109D(3) of the ITAA and also includes any existing loan which is amended within the meaning of section 109D(5) of the ITAA but does not include any advance repaid before the end of the year in which it is made, or any other advance which would not be treated as a dividend for the purposes of Division 7A of the ITAA.
- "Year" means a period of 12 months comprising an income tax year of the Company for the purposes of the ITAA.
- (b) These terms apply to all Loans, whether made before or after adoption of this Constitution, except such loans as may be governed by a separate written agreement.
- (c) Each Borrower acknowledges that the terms of this Schedule to the Constitution constitute a binding written Agreement between that Borrower and the Company.
- (d) Each unsecured Loan shall be repaid in full by the Borrower within seven years by installments the amount of which shall be calculated in accordance with rule (i).
- (e) Each secured Loan shall be repaid in full by the Borrower within twenty five years by installments calculated in accordance with rule (i).
- (f) Notwithstanding the above, all Loans to a Borrower, together with interest, shall be repaid in full forthwith upon the earlier happening of one or more of the following events:
- (i) If the Borrower becomes insolvent or commits an act of bankruptcy, or, if a natural person, dies or becomes liable to be dealt with under the laws relating to mental health.
- (ii) If the Borrower fails to make any payment according to this agreement, or

otherwise commits a substantial breach thereof.

- (g) Each Borrower agrees to pay interest on each Loan calculated from the date on which it is made and computed on a daily basis.
- (h) Interest shall be paid annually in arrears or more frequently as agreed, on each Loan outstanding, on the anniversary date of making of the Loan at the benchmark interest rate prescribed pursuant to Division 7A of the ITAA or any other amended or substituting legislation which from time to time prescribes a minimum interest rate to be paid by recipients of loans from private companies.
- (i) The annual amount repaid on each Loan shall be the amount prescribed by Division 7A of the ITAA or any other amended or substituting legislation which from time to time prescribes a rate of repayment to be paid by recipients of loans from private companies.
- (j) Notwithstanding anything in this Agreement, a Borrower may repay any Loan in full before its due date, or may make payments greater than the minimum specified in rule (i), at times agreed between the parties.
- (k) All moneys paid by a Borrower to the Lender under this agreement will be applied firstly in payment of outstanding interest, secondly in payment of other moneys owing under this Agreement and lastly in reduction of the Borrower's longest outstanding Loan.
- (l) A Borrower shall from time to time sign all such documents as the Lender may reasonably require to confirm the total amount of the Loans outstanding from that Borrower.

SCHEDULE 9:

required provisions - for an industry, profession, licencing authority: (rule 46.1)

None specified.

SCHEDULE 10:

miscellaneous provisions - common seal: (rule 47.1)

None specified.

miscellaneous provisions - other: (rule 47.2)

None specified.

SCHEDULE 11:

shares - pre-emption rules re issue: (rule 49.1)

- (a) Before issuing shares of a particular class, the directors must offer them to the existing holders of shares of that class.
- (b) As far as practicable, the number of shares offered to each existing shareholder must be in proportion to the number of shares of that class that is properly recorded in the Register of Members as already held by that shareholder.

To make the offer, the directors must give the shareholders a statement setting out the terms of the offer. The statement shall include the number of shares offered, the price of the shares offered, and the period for which the offer will remain open.
- (c) The directors may issue any shares not taken up under the offer under sub-rule (a) as they see fit, but not at a price that is less than the price at which they were offered to the existing shareholders.
- (d) The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with sub-rule (a).

shares - pre-emption rules re transfer and/or transmission: (rule 50.1)

None specified.

shares - directors may refuse to register transfers (*rule 51.1*)

None specified.

SCHEDULE 12:

dividends - division or allocation between classes: (*rule 58.1*)

No alternative and/or additional provisions specified.

SCHEDULE 13:

authorised capital - total amount: (*rule 61.1*)

No limit is set on the amount of capital the company may raise.

authorised capital - total number of shares: (*rule 61.1*)

No limit is set on the total number of shares the company may issue.

SAMPLE

SCHEDULE 14 - PART A: (rules 62.1, 64.1, 64.6)

Share Classes - Basic Details. The directors may issue shares from the following classes and with the following attributes:

Class Name (in full)	Class Name (abbreviation)	Auth Number (if any)	Reserve Price (\$ per Share - if any)
REGISTRATION	REGR	None Specified	\$1-00
ORDINARY	ORD	None Specified	\$1-00
EQUITY	EQ	None Specified	\$1-00
MANAGEMENT	MGT	None Specified	\$1-00
DIVIDEND-E	DVE	None Specified	\$1-00
DIVIDEND-V-R	DVVR	None Specified	\$1-00
CAPITAL-R	CAPR	None Specified	\$1-00
APPOINTOR-R	APTR	None Specified	\$1-00

SCHEDULE 14 - PART B: (rules 65.1, 65.2)

Share Classes - Summary of Rights. The rights of shares in the above classes are summarised in the following table (specific column header definitions are in rule 65.2):

Class Name (ABV)	Equity In Assets (Y/N)	Votes Per Share (0 → 1000)	Dividend Pro-Rata (Y/N)	Dividend Variable (Y/N)	Redeemable Preference (Y/N)	Ranking On Windup (1 → 15)	Other Rights (Y/N)
REGR	YES	1	YES	NO	YES	1	YES
ORD	YES	1	YES	NO	NO	1	NO
EQ	YES	0	NO	NO	NO	1	NO
MGT	NO	1	NO	NO	NO	1	NO
DVE	NO	0	YES	NO	NO	1	NO
DVVR	NO	0	NO	YES	YES	1	NO
CAPR	NO	0	NO	YES	YES	1	NO
APTR	NO	0	NO	YES	YES	1	YES

SCHEDULE 15:

other rights attached to classes of shares: (rule 65.2(h))

The other rights and conditions (if any) attached to the share classes set out in PART B of SCHEDULE 14 are:

REGR REGISTRATION:

These shares are intended to be taken up by the person(s) consenting to be the first member(s) of the company upon its registration.

The first issue of shares after registration of the company shall be deemed to have been made for the purpose of raising capital to redeem such shares.

Whilst any such shares are the only shares on issue:

- (a) The company may not trade or incur any liabilities; and
- (b) Notwithstanding any provision to the contrary in this Constitution, the holder of these shares shall not be entitled to appoint a proxy to attend and vote at a meeting of members.

APTR APPOINTOR-R:

"**Appointor Rights**" means the right to appoint a new director.

In the event that the company has only one director who is also the sole member, and that person is unable to act as a director or attend a meeting of members, then the holders of these shares shall have "Appointor Rights".

For the purposes of this provision, "unable to act" means unable to carry out the functions of a director of the company for reasons of serious and prolonged ill-health or the like, and "attend a meeting of members" means unable to attend and vote at a meeting of members for reasons of serious and prolonged ill-health or the like.

The holder of a share of this class may be referred to as "the Appointor", and if more than one share is issued the holders may be referred to as "the Appointors".

A Director appointed by the Appointor or Appointors shall not declare or pay a dividend on this class of shares.

SCHEDULE 16:

capital - other provisions: *(rule 66.1)*

None specified.

SAMPLE

The following notes are not part of the Constitution of the company.

These notes are periodically reviewed and expanded, and are intended as a record of the factors taken account of by our solicitor when settling the wording of particular provisions in the Constitution.

1.1 For **proprietary** companies registered by CNL, it is appropriate to record that the Constitution is "adopted" by the company, as the company already exists at the time. An "Interim" Constitution was "agreed to" before registration by the persons nominated (on the form 201) as consenting to be members of the company upon its registration.

For **public** companies registered by CNL, adoption of a pre-registration "Interim" Constitution is not considered appropriate. Accordingly, the wording of rule 1.1 reflects that the Constitution was "agreed to" before registration of the company.

We feel that recording the distinction between these dates is important because:

Until 1.7.98, it was not possible for a company to be registered unless a signed Memorandum of Association was lodged with the predecessor of the ASIC. The Memorandum (or the companion Articles of Association) set out the classes of shares, and the rights of those classes. Thus, it was not possible for shares of non-existent classes to be agreed to be taken up by the persons signing the Memorandum & Articles.

The registration procedure until that time required that one or more persons subscribed to a Memorandum of Association, which (at Common Law) created an unregistered company - this document gave the company shape and form. Articles of Association set out the internal management rules, and were optional - a company was deemed to have adopted model Articles (called Table A) if it did not adopt its own. The Memorandum of Association had to be lodged with the predecessor of the ASIC before registration of a company could take place.

Since 1.7.98, the role of the Memorandum of Association was replaced by an Application for Registration procedure (the form 201) - that is, in general terms, instead of intending members of the company first creating a Common Law company and then seeking its registration, the intending members now (via an Applicant) request the ASIC to register a company. The previous model Articles of Association (in Table A) were partly hard-coded into the Act, and partly inserted in the Act as optional Replacable Rules - certain provisions in Table A were not emulated at all in the new era.

The form 201, when a proprietary company registration is applied for, does not ask the applicant whether a Constitution has been agreed to or whether, if one has been agreed to, whether it defines the names and rights of the classes of shares nominated as agreed to be taken up by the consenting members - these shares are deemed to be issued on registration.

If the form 201 nominated shares which are not defined in a Constitution agreed to before registration of a company, there is legal doubt as to whether the deeming provision could operate.

Further, if no Constitution was agreed to at all before registration (and the Replacable Rules applied), and if Ordinary shares were nominated on the form 201, there could also be legal problems if there were a subsequent internal dispute between members regarding dividend rights. The dividend rights of the undefined ("Ordinary") shares under the Replacable Rules are variable for proprietary companies, and are equal for public companies - that is, the dividend rights are quite different. A dispute could arise as to whether the dividend rights in a proprietary company, for contract law purposes, were equal or variable - particularly if there were (say) 2 members with 1 Ordinary share each, and only one of those persons was a director (with control of the dividends).

A Constitution, and the Replacable Rules, create a contract between the members and directors, and the as yet unresolved legal issue would be whether the Replacable Rules provision would apply to a contract if the parties to that contract were unaware of the existence of those provisions or unaware that the treatment of dividend rights by the Replacable Rules re proprietary companies was quite different to their rights under the previous law (as per table A). Evidence might be given that in all the promotion of the "simplification" of the Replacable Rules, it was never mentioned that the dividend rights in proprietary companies had been reversed from equal to variable.

- 2.1 On 18-7-01, all references to "Corporations Law" were changed to "Corporations Act 2001".

"law" Sections of the Corporations Act that may be relevant to a particular rule in the Constitution are quoted for the benefit of readers of the Constitution who may have no legal training and are not aware of the provisions of the Corporations Act. This is in line with the contemporary practice in Acts of inserting "signposts" to other relevant provisions.

"note" Generally, notes are signposts. The use of notes are also in line with the contemporary practice in the Corporations Act and other Acts.

- 2.2 There is no compelling reason why we chose to use "rule" or "rules" as the internal reference to numbered provisions. Some choose "sections", others prefer "regulations". We feel that "rule" is more neutral than the alternatives.

definitions, etc

- 2.3 This is a routine and conventional provision. Its origins were in Table A of the longstanding law until July 1998.

- 2.4 Schedules are used to highlight and facilitate variations where there is no generally accepted norm.

company type and class

- 3.1 This is inserted as a matter of record.

when the company has a single director and/or a single shareholder

- 4.1 No drafting note. The meaning and purpose appear to be self-evident.

- 4.2 No drafting note. The meaning and purpose appear to be self-evident.

objects

- 5.1 Stating the objects or principal object of a company is optional. It is usually

done when an external authority requires it, or to provide a statement that other provisions can interally refer to. For example, it may be necessary to restrict the powers of the company to matters directly related to the principal object of the company.

powers

- 6.1 Until about 1987, companies had to state all of the powers they might wish to have (which was tedious, and what was called the "ultra vires" rule caused problems if an obscure power was inadvertently omitted. In 1987 the "ultra vires" rule was removed. Now, the Corporations Law provides that a company starts with all of the powers of a natural person (plus certain additional powers that are specific to a company), but can restict itself from exercising certain powers. In other words, it is now only necessary to state any specific powers the company cannot exrecise.

directors - eligible persons

- 7.1 Schedule 2 is a mechanism to facilitate any eligibility rules that may be appropriate or required by an external authority (for example, it may be a condition of an external licencing authority that only persons with certain qualifications may be directors.

directors - company or directors may appoint

- 8.1 No drafting note. The purpose these provisions appear to be self-evident.
8.2 No drafting note. The purpose these provisions appear to be self-evident.

directors - number

- 8.3 The Corporations Act presently provides that the minimum number of directors for a proprietary company is one. This provision provides a mechanism for the company to set a higher minimum number if it is considered appropriate in certain circumstances.

directors - confirmation by members of appointment

- 9.1 There is no requirement in the Companies Act for directors appointments in proprietary companies to be confirmed by the members of the company, although if the members disagree with an appointment made by the directors they have to power to remove the person appointed (subject to the provisions of any contract of appointment that may apply to the appointment).

For comparision is might be noted that Section 201H(3) of the Companies Act provides, if the company is a public company, that the appointment of a director must be confirmed by resolution of the members at the next AGM of the company, and if the appointment is not confirmed the person ceases to be a director at the end of the AGM.

Schedule 2 provides a place for proprietary companies to insert any desired rules requiring confirmation (prior or otherwise) by the members of directors appointments. For example, if a company has a holding company in a foreign or interstate jurisdiction, it may be considered appropriate that all intended appointments of directors (and any intended appointment conditions) by the local directors be first confirmed/approved by the holding company.

alternate directors

- 10.1 (no current note)

10.2 (no current note)

10.3 (no current note)

10.4 (no current note)

10.5 (no current note)

10.6 (no current note)

directors - powers

11.1 (no current note)

11.2 (no current note)

11.3 added re s187(a)

secretary

12.1 (no current note)

managing director

13.1 (no current note)

13.2 (no current note)

13.3 (no current note)

13.4 (no current note)

13.5 (no current note)

directors - delegation to committees

14.1 (no current note)

14.2 (no current note)

14.3 (no current note)

directors - interested in contracts with proprietary company

15.1 (no current note)

15.2 (no current note)

directors - remuneration

16.1 (no current note)

16.2 (no current note)

directors - vacation of office

17.1 (no current note)

directors - removal

18.1 (no current note)

directors - resignation by written notice

19.1 (no current note)

directors' meetings - alternatives to personal presence

20.1 (no current note)

directors' meetings - circulating resolutions

21.1 (no current note)

21.2 (no current note)

21.3 (no current note)

directors' meetings - calling of by a director

22.1 (no current note)

directors' meetings - chair

23.1 (no current note)

23.2 (no current note)

directors' meetings - quorum

24.1 (no current note)

24.2 (no current note)

24.3 (no current note)

directors' meetings - passing of resolutions

25.1 (no current note)

directors' meetings - casting vote of chair

25.2 (no current note)

members' meetings - calling of by a director

26.1 (no current note)

members' meetings - calling of by members

members' meetings - alternatives to personal presence

27.1 (no current note)

members' meetings - circulating resolutions

28.1 (no current note)

members' meetings - notice

note (no current note)

members' meetings - notice to joint members

29.1 (no current note)

members' meetings - notice by post, fax, or email

30.1 (no current note)

members' meetings - short notice

note (no current note)

members' meetings - quorum

31.1 (no current note)

31.2 (no current note)

31.3 (no current note)

31.4 (no current note)

members' meetings - chair

32.1 (no current note)

32.2 (no current note)

32.3 (no current note)

members' meetings - adjourned meetings

33.1 (no current note)

members' meetings - business at adjourned meetings

34.1 (no current note)

members' meetings - who can appoint a proxy

35.1 (no current note)

35.2 (no current note)

35.3 (no current note)

members' meetings - proxy vote valid if member dies, revokes appointment, etc

36.1 (no current note)

members' meetings - how many votes a member has

37.1 (no current note)

members' meetings - casting vote of chair

37.2 (no current note)

members' meetings - jointly held shares

38.1 (no current note)

members' meetings - objections to right to vote

39.1 (no current note)

members' meetings - how voting is carried out

40.1 (no current note)

40.2 (no current note)

members' meetings - when and how polls must be taken

41.1 (no current note)

41.2 (no current note)

inspection of company books and records

42.1 (no current note)

42.2 (no current note)

42.3 (no current note)

inspection of registers

Note (no current note)

banking and negotiable instruments

43.1 (no current note)

43.2 (no current note)

43.3 (no current note)

company shall indemnify officers

44.1 (no current note)

44.2 (no current note)

loans - directors, members, other

45.1 (no current note)

required provisions - for an industry, profession, licencing authority

46.1 (no current note)

miscellaneous provisions - common seal

47.1 (no current note)

miscellaneous provisions - other

47.2 (no current note)

shares - eligibility rules re membership

48.1 (no current note)

shares - interest in shares by other parties

48.2 (no current note)

48.3 (no current note)

shares - pre-emption re issue of shares

49.1 (no current note)

shares - pre-emption re transfer or transmission of shares

50.1 (no current note)

shares - directors may refuse to register transfers

51.1 (no current note)

shares - registration of transfers

51.2 (no current note)

51.3 (no current note)

51.4 (no current note)

51.5 (no current note)

51.6 (no current note)

shares - transmission on death, bankruptcy or mental incapacity

52.1 (no current note)

shares - calls on shares

53.1 (no current note)

53.2 (no current note)

53.3 (no current note)

53.4 (no current note)

53.5 (no current note)

53.6 (no current note)

53.7 (no current note)

53.8 (no current note)

53.9 (no current note)

53.10 (no current note)

shares - lien on shares

54.1 (no current note)

54.2 (no current note)

54.3 (no current note)

54.4 (no current note)

shares - forfeiture of shares

55.1 (no current note)

55.2 (no current note)

55.3 (no current note)

55.4 (no current note)

55.5 (no current note)

55.6 (no current note)

55.7 (no current note)

55.8 (no current note)

55.9 (no current note)

55.10 (no current note)

55.11 (no current note)

shares - certificates

56.1 (no current note)

56.2 (no current note)

56.3 (no current note)

dividends - general dividend provisions

57.1 (no current note)

57.2 (no current note)

57.3 (no current note)

dividends - division or allocation between classes

58.1 (no current note)

dividends - capitalisation of profits

59.1 (no current note)

capital - general

60.1 (no current note)

capital - authorised

61.1 (no current note)

capital - reserve price for shares may be set

62.1 We set a (removable/optional) Reserve Price for shares, the default being \$1. The Corporations Law allows a company to set a Reserve Price for shares, and the Reserve Price able to be set under this Constitution is declared not to be a nominal or par value, nor a minimum price for shares, but an internal management tool. It is solely a name or tag for that part of the Issue Price of a share that (unless contrary provision is made) will be returned to the shareholder in a distribution of capital on a windup.

Unless a contrary provision is made (and our system provides a simple facility for this), any difference between the Reserve Price and the Issued Price is distributed pro-rata amongst shareholders with "equity" rights (with the assets of the company).

The purpose of this provision is to provide a mechanism to deal with potential problems that may flow from misunderstandings regarding changes made to the Corporations Law on 1-9-1998 :

- Before 1-7-1998, unless a contrary provision was made, a Share Premium paid was not returned to the shareholder on a windup - it was distributed

pro-rata amongst the shareholders with a right to share in a return of company assets (that is, the shareholders with what are usually called "equity" rights). This old default treatment facilitated situations where, for example, a latecoming shareholder paid a premium (for goodwill, etc) when taking up a share in a company, and that premium was distributed on a windup pro-rata amongst all shareholders with "equity" rights. This ensured that "latecomers" compensated existing shareholders for the watering down of their share of the goodwill and other assets of the company flowing from the later issue of shares.

- Since 1-7-1998, Nominal Value (or Par value or Face value) shares, and Share Premium reserves, have not been allowed under the Corporations Law. Unless a specific provision to the contrary is made in the Constitution of a company, all of the Issue Price of a share is now distributed to the shareholder on a windup of the company.

The Reserve Price provisions in this Constitution emulate the treatment of a share premium on a windup under the Corporations Law pre 1-7-98, and is intended to remove problems that might arise if a company was inadvertently unaware that the Corporations Law has reversed the old treatment on a windup of a difference in what various shareholders may have paid for their shares on issue.

capital - return of issue price on windup

63.1 (no current note)

63.2 (no current note)

capital - share classes - general

64.1 (no current note)

64.2 (no current note)

64.3 (no current note)

64.4 (no current note)

capital - share classes - distinctive numbers of shares

64.5 (no current note)

capital - share classes - authorised numbers of shares per class

64.6 (no current note)

capital - share classes - rights (summary)

65.1 (no current note)

capital - share classes - rights (specific details)

65.2 (no current note)

(a) **"Equity in Assets"** : (no current note)

(b) **"Votes Per Share"** : (no current note)

(c) **"Dividend Pro-Rata"** : (no current note)

(d) **"Dividend Variable"** : (no current note)

(e) **"Redeemable Preference"** : (no current note)

(f) **"WindUp Ranking"** : (no current note)

(g) **"Other Rights"** : (no current note)

capital - other provisions

66.1 (no current note)

SCHEDULE 1 objects & powers

The CNLdefault provision is based on (no current note)

SCHEDULE 2 directors

The CNLdefault provision is based on (no current note)

SCHEDULE 3 managing directors - additional provisions

The CNLdefault provision is based on (no current note)

SCHEDULE 4 meetings - quorum provisions

The CNLdefault provision is based on (no current note)

SCHEDULE 5 casting vote of chair - provisions

The CNLdefault provision is based on (no current note)

SCHEDULE 6 members' meetings - alternatives to personal presence

The CNLdefault provision is based on (no current note)

SCHEDULE 7 banking & negotiable instruments

The CNLdefault provision is based on (no current note)

SCHEDULE 8 loans - directors, members, other

The CNLdefault provision is based on (no current note)

SCHEDULE 9 required provisions - industry, profession, licencing authority

The CNLdefault provision is based on (no current note)

SCHEDULE 10 miscellaneous provisions - common seal

The CNLdefault provision is based on (no current note)

SCHEDULE 11 shares - pre-emption rules

The CNLdefault provision is based on (no current note)

SCHEDULE 12 dividends - division or allocation between classes

The CNLdefault provision is based on (no current note)

SCHEDULE 13 authorised capital

The CNLdefault provision is based on (no current note)

SCHEDULE 14 Part A: share classes - basic details

The CNLdefault provision is based on (no current note)

SCHEDULE 14 Part B: share classes -summary of rights

The CNLdefault provision is based on (no current note)

SCHEDULE 15 other rights attached to classes of shares

The CNLdefault provision is based on (no current note)

SCHEDULE 16 capital - other provisions

The CNLdefault provision is based on (no current note)

SAMPLE