



# THE CONSTITUTION OF SEAANZ LIMITED

*CORPORATIONS ACT 2001: A COMPANY LIMITED BY GUARANTEE*

The following document is the constitution of the Small Enterprise Association of Australia and New Zealand (SEAANZ), a company limited by guarantee under the Corporations Act (Commonwealth) 2001.

*12/10/2013*

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CORPORATIONS ACT 2001 – A COMPANY LIMITED BY GUARANTEE

# CONSTITUTION OF SEAANZ LTD

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## COMPANY NAME

- 1) The name of the company is Small Enterprise Association of Australia and New Zealand Limited (hereinafter known as SEAANZ Ltd).

## REPLACEABLE RULES DISPLACED

- 2) The provisions of the Corporations Act 2001, which operate as replacement rules do not apply to this company.

## OBJECTS OF THE COMPANY

- 3) The objectives of SEAANZ Ltd shall be to advance the development and understanding of small enterprise by:
  - a) Furthering the development of scholarship, education, research and practice in the relevant discipline areas, including encouraging the application of research findings.
  - b) Identifying and developing proposals for programs to meet small enterprise needs.
  - c) Communicating and disseminating ideas and information on small enterprise, and promoting their discussion by the holding of conferences, publishing material and other appropriate means.
  - d) Liaising, including affiliating, with other associations or bodies with similar objectives.
  - e) Making representations and/or providing commentaries to Government or other bodies on any matter relevant to SEAANZ; and small enterprise in particular.
  - f) Doing all such other things as are conducive or incidental to the attainment of the above objectives or any of them.

## INTERPRETATION

- 4) In this constitution:
  - a) “The board” or “the board of directors” means the directors of the company holding office pursuant to this constitution;
  - b) “The company” means SEAANZ Ltd;
  - c) “General meeting” means a meeting of the company’s members;
  - d) “Regulation” means a regulation made by the board in accordance with paragraph 53(b)(v);

- e) "The seal" means the common seal (if any) of the company;
- f) "Chairman" means any person appointed to perform the duties of President of the company;
- g) "Secretary" means any person appointed to perform the duties of a secretary of the company and includes an honorary secretary, and
- h) 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 2001, the same meaning as in that provision of the Corporations Act 2001.

## POWERS

- 5) Solely for the purpose of carrying out the objects and not otherwise, the company shall have the following powers:
  - a) To make such grants to or in aid of or to make donations or give assistance to or to make contracts with such individuals, trusts, corporations, associations, societies, institutions or other organisations or authorities whether within or outside the Commonwealth of Australia as may be necessary or desirable;
  - b) to print, publish and distribute any papers, journals and other publications that the company may think desirable for the promotion of its objects;
    - i) In particular the company may cause to be published a journal dedicated to disseminating research on small enterprises, with specific note that:
      - (1) The frequency and mode of publication shall be determined by the board.
      - (2) The board shall appoint an editor of the journal, who shall hold such position until such time as otherwise resolved by the board:
  - c) to organise and stage conferences, workshops, symposia, courses and other events designed for members and the wider community that will enhance research, education, policy and practice for small enterprises;
  - d) as far as the Corporations Act 2001 will permit and subject to the provisions of any relevant statute, rule, regulation, by-Law or any licence issued in pursuance thereof to collect funds and to solicit, receive, enlist and accept financial and other aid, subscriptions, donations and bequests from individuals, trusts, companies, associations, societies, institutions and other organisations or authorities, and from governments and public bodies;
  - e) to undertake and execute any trusts the undertaking whereof may be necessary or desirable for the carrying out of any of the objects of the company;
  - f) to accept any gift, endowment or bequest made to the company generally or for the purpose of any specific object and to carry out any trusts attached to any gift, endowment or bequest, provided that the company shall only deal with any property

which is subject to any trusts in such manner as is allowed by Law having regard to such trusts;

- g) to subscribe to, become a member of, cooperate with or amalgamate with any other association or organisation, whether incorporated or not, whose objects are similar to those of the company;
- h) to buy, sell and deal in all kinds of apparatus and all kinds of provisions, liquid and solid, required by the members of the company or persons frequenting the company's premises;
- i) to purchase, take on lease or in exchange, hire and otherwise acquire any lands, building, easement or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the company;
- j) to enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, that may seem conducive to the company's objects or any of them and to obtain from any such government or authority any rights, privileges and concessions which the company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- k) to appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the company;
- l) to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the company or the dependents or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects; or for any public, general or useful object;
- m) to construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, building, grounds, works or conveniences which may seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
- n) to insure against fire or otherwise any insurable property of the company and to pay premiums on insurance or assurance policies which the company may acquire by any means;
- o) to invest and deal with the money of the company not immediately required in such manner as may be permitted by an Act of the Commonwealth, a State Act, or a Law of a Territory of the Commonwealth for the investment of trust funds without special authorisation but the company may hold or retain any property or gift including any stocks funds and shares in the original form in which it was received by the company without selling or converting the same into money and the powers authorities and discretions in relation to securities conferred upon trustees by sections 21, 21A, 22 and

23 of the Trustee Act of the state or territory of jurisdiction of the incorporation of this company shall apply to any such property or gift;

- p) to borrow or raise or secure the payment of money in such manner as the company may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the company in any way and in particular by the issue of mortgages, charges or debentures, perpetual or otherwise, charged upon all or any of the company's property (both present and future), and to purchase, redeem or pay off such securities;
- q) to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- r) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company;
- s) to take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the company's property of whatsoever kind sold by the company or any money due to the company from purchasers and others;
- t) to take any gift of property whether subject to any special trust or not, for any one or more of the objects of the company;
- u) to hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith;
- v) to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the company is authorised to amalgamate;
- w) to transfer all or any part of the property, assets, liabilities and engagements of the company to any one or more of the companies, institutions, societies or associations with which the company is authorised to amalgamate;
- x) to ensure that the company complies with the requirements in regard to ethical and other standards for human and animal experimentation imposed from time to time by institutions or organisations which may provide accommodation or premises for use by the company; and
- y) to do all such other acts matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

The powers set forth in subsection 124(1) of the Corporations Act 2001 shall not apply to the company except in so far as they are included in clauses 4 and 5(a) to 5(y).

**Note:**

Details of subsection 124(1) of the Corporations Act 2001 relating to the legal capacity and powers of a company can be found at Appendix A.

## INCOME AND PROPERTY

- 6) The income and property of the company whencesoever derived shall be applied solely towards the promotion of the objects of the company as set forth in this constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever to members of the company.

## PAYMENTS TO DIRECTORS

- 7) The payment of directors' fees, in whatever form, is prohibited to directors for serving in that capacity. However, payments may be made to a director:
  - a) for the payment of out-of-pocket expenses incurred in carrying out the duties of a director where the payments do not exceed an amount previously approved by the board; or
  - b) for any service rendered to the company in a professional or technical capacity, where the provision of that service has the prior approval of the board and the amount payable is approved by a resolution of the board and is on reasonable commercial terms; or
  - c) as an employee of the company, where the terms of employment have been approved by a resolution of the board.

## LIABILITY OF MEMBERS LIMITED

- 8) The liability of the members of the company is limited.

## GUARANTEE BY MEMBERS

- 9) Every member of the company undertakes to contribute to the property of the company, in the event of the same being wound up while the member is a member or within one year after the member ceases to be a member, for payment of the debts and liabilities of the company contracted before the member ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding \$10.00.

## WINDING UP

- 10) If upon the winding up or dissolution of the company there remains after satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed amongst the members of the company but shall be given or transferred to one or more other funds, authorities or institutions which or each of which:
  - a) has objects similar to the objects of the company; and

- b) whose constitution shall prohibit the distribution of its income and property among its members to an extent at least as great as is imposed on the company under or by virtue of clause 6, to be determined by the board at or before the time of dissolution and in default thereof by application to the Supreme Court for determination.

## FINANCIAL RECORDS

- 11) Financial records shall be kept by the company in accordance with Part 2M.2 of the Corporations Act 2001.

**Note:**

Details of Part 2M.2 of the Corporations Act 2001 relating to the management of financial records can be found at Appendix B.

## MEMBERSHIP

- 12) The number of members is unlimited.

- 13) The members of the company are:

- a) the persons who consented to become members in the application for registration of the company; and
- b) thereafter, any applicant for membership that the board admits to membership pursuant to this constitution and the regulations.

- 14) Members of the company will generally be classified into four types:

- a) Ordinary (Individual) membership:
  - i) Shall be available to those persons who are: full-time or part-time teachers or scholars of small enterprise management or related disciplines in educational institutions; consultants to small enterprise; employees of organizations with a significant involvement in small enterprise management education, research, training, advice or consulting; and to such other persons, including small enterprise operators, as may have a substantial interest in the advancement of scholarship in those disciplines.
  - ii) Application for ordinary membership shall be made in the prescribed format as determined by the board from time to time, and shall be lodged with the company's Secretariat.
  - iii) Once a nomination has been approved by the board, or under its authority delegated to an officer of the company, and the annual subscription has been paid by the nominee, they will become an ordinary member of the company with access to the benefits of the International Council of Small Business (hereinafter known as 'ICSB').

- iv) Membership shall be retained by payment of the annual subscription and shall be deemed to have lapsed if the subscription is not paid within 3 (three) months of its falling due.
  - v) Members who are not financial 3 months into the year that their subscription is due will lose their entitlement to the benefits of their company membership. Access to the benefits of the ICSB will also cease at that date.
- b) Organisational (Corporate) membership:
- i) This shall be available to those organisations with a substantial interest in the advancement of small enterprise including (but not limited to): educational institutions, small enterprise institutes or centres, consulting organisations, firms that provide professional service to small enterprise, government agencies, professional and trade associations, chambers of commerce and small to medium enterprises.
  - ii) Application and other procedures for organisational membership are as described in clause 14 a) i), ii), iii), iv) & v).
  - iii) Each organisational member shall be permitted to designate no more than two representatives who shall be entitled to all the privileges and benefits of ordinary membership.
- c) Institutional Supporter membership:
- i) This shall be available to those organisations with a substantial interest in the advancement of small enterprise including (but not limited to): educational institutions, small enterprise institutes or centres, consulting organisations, firms that provide professional service to small enterprise, government agencies, professional and trade associations and chambers of commerce.
  - ii) Application and other procedures for institutional supporter are as described in clause 14 a) i), ii), iii), iv) & v).
  - iii) Each institutional supporter shall be permitted to designate no more than two representatives who shall be entitled to all the privileges and benefits of ordinary membership.
  - iv) Each institutional supporter shall be offered promotional advertising on the company website; links from the company website to their corporate website and promotional opportunities in other company publications and activities.
- d) Student membership:
- i) Shall be available to students enrolled for fulltime courses in small enterprise management or similar and to other persons having an interest in small enterprise who do not qualify for ordinary membership as described in clause 14 a).
  - ii) Applications and other procedures for student membership are as described in clause 14 a) i), ii), iii), iv) & v).



iii) Student members are not eligible for election as an officer.

e) Life membership:

i) Shall be available to those persons who, in the opinion of the board from time to time have rendered meritorious service in advancing the objects of the company.

ii) Nomination and support review processes shall be undertaken before recommendation to the Board.

iii) Life membership shall be conferred on such persons at the Annual General Meeting (AGM) of the company.

iv) Persons admitted to life membership shall not be required to pay the annual subscription for ordinary membership.

f) Honorary membership:

i) Shall be available for distinguished visitors to Australia or New Zealand, being persons whose services to the advancement of scholarship in small enterprise and related disciplines in the opinion of the board merit this award of membership.

ii) Honorary membership shall be conferred by the board for periods not exceeding one year at a time.

iii) Honorary members are not eligible for election as an officer or as a member of the Board, and have no voting rights.

15) Every applicant for membership must:

a) sign an application for membership in such form as may from time to time be prescribed by regulation; and

b) undertake, as a condition of admission, to pay to the company such entrance fee (if any) and annual subscription as may from time to time be payable to the company in accordance with this constitution.

16) At the next meeting of the board after the receipt of any application for membership, that application shall be considered by the board, which shall thereupon determine upon the admission or rejection of the applicant. In no case shall the board be required to give any reason for the rejection of an applicant.

17) Further:

a) When an applicant has been accepted for membership, the secretary shall forthwith send to the applicant written notice of his or her acceptance and a request for payment of his or her entrance fee (if any) and first annual subscription

b) Upon payment of the entrance fee (if any) and first annual subscription, the applicant shall become a member of the company.

- c) If the payment is not made within two calendar months after the date of the notice, the board may in its discretion cancel its acceptance of the application for membership of the company.

18) With respect to fees:

- a) The entrance fee (if any) and annual subscriptions payable by members shall be as prescribed from time to time by regulation.
- b) All annual subscriptions shall become due and payable in advance on 30<sup>th</sup> June in every year.
- c) The board may, if hardship or other sufficient cause is shown, reduce or remit any entrance fee or annual subscription payable by a member.

## CESSATION OF MEMBERSHIP

19) If the subscription of a member remains unpaid for a period of two calendar months after it becomes due then the member may after notice of the default has been sent to him or her by the secretary or honorary treasurer be debarred by resolution of the board from all privileges of membership provided that the board may reinstate the member on payment of all arrears if the board thinks fit to do so.

20) A member may at any time by giving notice in writing to the secretary resign his or her membership of the company but shall continue to be liable for any annual subscription and all arrears due and unpaid at the date of his or her resignation and for all other moneys due by him or her to the company and in addition for any sum not exceeding \$10.00 for which he or she is liable as a member of the company under clause 9.

21) Subject to clause 22, if any member wilfully refuses or neglects to comply with the provisions of the constitution of the company or is guilty of any conduct which in the opinion of the board is unbecoming of a member or prejudicial to the interests of the company the board shall have power by resolution to censure, fine, suspend or expel the member from the company.

22) Further:

- a) At least one week before the meeting of the board at which a resolution of the kind mentioned in clause 21 is to be considered, the member concerned must be given written notice of the meeting and of what is alleged against him or her and of the intended resolution, and the member must at that meeting and before the passing of that resolution be given an opportunity to give orally or in writing any explanation which the member may think fit.
- b) Any such member may by notice in writing lodged with the secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the board, elect to have the question dealt with by the company in general meeting.
- c) If any such member elects to have the matter dealt with by the company in general meeting, a general meeting of the company shall be called for the purpose and, if at the general meeting such a resolution is passed by a majority of two-thirds of those present

and voting (such vote to be taken by ballot) the member concerned shall be punished accordingly, and in the case of a resolution for his or her expulsion, the member shall be expelled.

## GENERAL MEETINGS

23) An annual general meeting of the company shall be held in accordance with the provisions of the Corporations Act 2001.

**Note:**

Details of sections 250N and 250P of the Corporations Act 2001 relating to the holding of AGMs can be found at Appendix C.

24) Any director may whenever he or she thinks fit convene a general meeting. General meetings shall also be convened on such requisition or in default may be convened by such requisitionists as provided by sections 249D or 249E of the Corporations Act 2001.

**Note:**

Details of sections 249D and 249E of the Corporations Act 2001 relating to who may call meetings can be found at Appendix D.

25) Subject to the provisions of the Corporations Act 2001 relating to special resolutions and agreements for shorter notice, 21 days' notice at least (exclusive of the day on which the notice is served or deemed to be served, and exclusive of the day for which notice is given) shall be given to such persons as are entitled to receive such notices from the company.

26) A notice of general meeting shall:

- a) set out the place (which may be within or outside Australia), date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- b) state the general nature of the business to be transacted at the meeting;
- c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- d) contain a statement that a member has the right to appoint a proxy who must be a member of the company.

## PROCEEDINGS AT GENERAL MEETINGS

27) In relation to proceedings at General Meetings:

- a) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- b) No resolution shall be passed at any general meeting unless a quorum of members is present at the time when the resolution is put to the vote of the meeting.

- c) Save as herein otherwise provided, the quorum required for the purpose of a general meeting is the majority of members for the time being.
  - d) If a member attending a general meeting is also a proxy for a member, he or she shall be counted only once in determining whether a quorum is present.
- 28) If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the board may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the member or members present shall be a quorum.
- 29) The chair of the board, or in that person's absence the vice-chair of the board, shall preside as chairman at every general meeting of the company. If neither the chair of the board nor vice-chair of the board is present within 15 minutes after the time appointed for holding the general meeting, or if neither the chair of the board nor vice-chair of the board is willing to act as chairman of a general meeting, then the directors present may elect a person present as chairman of that general meeting. If no director is present or is willing to act as chairman then the members may elect a person present as chairman of that general meeting.
- 30) The chairman 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 no business shall be transacted at any adjourned meeting other than When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.
- 31) At any general meeting a resolution put to the vote of the meeting 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:
- a) by the chairman; or
  - b) by at least a member or members representing no less than one quarter of the voting rights of all members having the rights to vote at the general meeting present in person or by proxy.
- 32) Unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.
- 33) If a poll is duly demanded it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

34) In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

35) A member may vote in person or by proxy.

36) A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the Corporations Act 2001 relating to mental health may vote, whether on a show of hands or on a poll, by his or her committee or trustee or by such other person as properly has the management of his or her estate, and any such committee, trustee or other person may vote by proxy.

37) No member shall be entitled to vote at any general meeting if his or her annual subscription (if any) is more than two months in arrears at the date of the meeting.

- a) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing.
- b) A proxy must be a member of the company.
- c) 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 shall not be entitled to vote on the resolution except as specified in the instrument.
- d) An instrument appointing a proxy may specify that the proxy is to abstain from voting in respect of a particular resolution and, where an instrument of proxy so provides, the proxy shall not vote in respect of the resolution.
- e) Unless otherwise instructed, a proxy may vote or abstain from voting as he or she thinks fit.
- f) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

38) An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

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I, \_\_\_\_\_ of , \_\_\_\_\_ being a member of the company, hereby appoint of or, failing him/her, of \_\_\_\_\_ as my proxy to vote for me and on my behalf at the \*annual general/\*general meeting of the company to be held on the \_\_\_\_ day of 20\_\_\_\_ and at any adjournment of that meeting.

This form is to be used in accordance with the directions below. Unless the proxy is directed, he or she may vote or abstain as he or she thinks fit.

For            Against            Abstain

[Description of resolution]

\*Strike out whichever is not desired.

**INSTRUCTIONS:**

- i) A proxy must be a member of the company.*
  - ii) To direct the appointee to cast your vote in respect of an item of business in a particular manner either on a show of hands or on a poll, place a sufficient indication (including, without limitation, a tick or a cross) in the relevant box in respect of that item of business.*
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39) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company, or at such other place as is specified for that purpose in the notice convening the meeting, not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. In default the instrument of proxy shall not be treated as valid.

40) A vote given in accordance with the terms of an instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

41) Notwithstanding clauses 27 to 40 inclusive:

- a) the company may hold a meeting of its members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate; and
- b) subject to section 249A of the Corporations Act 2001, the company may pass a resolution without a general meeting being held if all the members 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.

## THE BOARD OF DIRECTORS

42) The number of the directors (not including alternate directors) shall be not less than three nor more than twelve/

43) The office-bearers of the company shall consist of a chair of the board, a vice-chair of the board and an honorary treasurer, all of whom shall be directors of the company elected as herein provided.

44) In addition to the abovementioned board members:

- a) The editor of the SEAANZ journal (see section 23) shall be eligible to sit on the board, as will any Chapter Presidents as may exist, however they will do so only as non-voting members.

- b) The Executive Director or Secretariat representative, will also attend board meeting as a non-voting member.
  - c) The President of the ICSB may be a non-voting ex-officio member of board.
- 45) At the first annual general meeting of the company and at the annual general meeting of the company in each year thereafter the office-bearers and other directors shall be elected from among the members of the company and such directors shall hold office until the next annual general meeting when they shall retire but they shall be eligible for re-election.
- 46) The election of office-bearers and other directors shall take place in the following manner:
- a) Any members of the company shall be at liberty to nominate any member to serve as an office-bearer or other director.
  - b) The nomination, which shall be in writing and signed by the nominating member and the nominated member, shall be lodged with the secretary at least 14 days before the annual general meeting at which the election is to take place.
- 47) An office-bearer or other director elected in accordance with this constitution shall take office at the conclusion of the annual general meeting at which he or she is elected and shall, subject to this constitution, hold office until the conclusion of the next succeeding annual general meeting.
- 48) The company may by resolution of which special notice pursuant to section 227 of the Corporations Act 2001 has been given remove any office-bearer or other director before the expiration of his or her period of office, and may by a resolution appoint another person in his or her stead; the person so appointed shall hold office only until the next following annual general meeting.
- 49) The office of a director shall become vacant if the director:
- a) becomes an insolvent under administration or makes any arrangement or composition with his or her creditors generally;
  - b) becomes prohibited from being a director of a company by reason of any order made under the Corporations Act 2001;
  - c) ceases to be a director by operation of section 228 of the Corporations Act 2001;
  - d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the Corporations Act 2001 relating to mental health;
  - e) resigns his or her office by notice in writing to the company;
  - f) for more than six months is absent without permission of the board from meetings of the board held during that period;
  - g) holds any office of profit under the company otherwise than as provided by clause 7;
  - h) ceases to be a member of the company; or

i) is suspended from membership of the company by virtue of clause 20 or clause 21.

50) If a casual vacancy occurs on the board, the board shall appoint another member to fill the vacancy for the balance of the term of office which the former office-bearer or other director would otherwise have served.

## DIRECTORS' INTERESTS

51) If a director of the company has a material personal interest in a matter that relates to the affairs of the company and:

- a) the director discloses the nature and extent of the interest and its relation to the affairs of the company at a meeting of the directors; or
- b) the interest is one that does not need to be disclosed under Corporations Act 2001; then:
- c) the director may vote on the matters that relate to that interest; and
- d) any transactions that relate to the interest may proceed; and
- e) the director may retain benefits under the transaction even though the director has the interest; and
- f) the company cannot avoid the transaction merely because of the existence of the interest.

52) Further:

- a) No director shall be disqualified by his office from:
  - i) holding any other office or place of profit under the company (other than as auditor);
  - ii) holding any other office or place of profit in any company in which the company shall be a shareholder or otherwise interested; or
  - iii) contracting with the company either as vendor, purchaser or otherwise.
- b) No such contract, and no other contract, transaction or arrangement entered into by or on behalf of the company in which any director is in anyway directly or indirectly interested shall be avoided, nor shall any director be liable to account to the company for any profit arising from such contract, transaction or arrangement by reason only of such director holding the office of director or because of the fiduciary relationship thereby established.
- c) A director may be counted in any quorum of directors and vote in respect of any contract, transaction or arrangement in which that director is so interested, and if the director does so his or her vote shall be counted and be deemed to be as valid for all purposes both at law and in equity as it would have been if he had not been interested in any of the ways referred to above.



- d) Such a director may also exercise all the authorities and powers of a director under the constitution in respect of the execution, signing and countersigning of any deed or instrument or document constitution or in any way relating to or affecting any such contract, transaction or arrangement.
- e) The existence and nature of the director's interest shall be disclosed by the director in the manner provided below, but any failure by the director to make such disclosure or by the company to record it shall not operate so as to render void or voidable any contract, transaction or arrangement entered into by the company or to invalidate impugn or render irregular any act by the director or proceedings of the directors pursuant to the authority of which the company has entered into such contract, transaction or arrangement (except in the case of a contract, transaction or arrangement entered into between the company and such interested director).
- f) A director shall disclose his or her interest by declaring the same at the meeting of the directors at which the contract transaction or arrangement is first taken into consideration (if to the director's knowledge his or her interest then exists) or in any other case at the first meeting of the directors after the director acquires knowledge of his or her interest.
- g) if a director becomes interested in a contract, transaction or arrangement if first taken into consideration (if to the director's knowledge his or her interest then exists) or in any other case at the first meeting of the directors after the director acquires knowledge of his or her interest.
- h) A general notice to the directors by a director to the effect that he or she is an officer a member or any employee of any specified company or corporation or a member of any specified firm and is to be regarded as interested in any contract, transaction or arrangement which may after the date of the notice be made with the company corporation or firm shall be deemed to be in all respects a sufficient declaration of interest under and for the purposes of this Clause, but no such notice shall be of effect unless either it is given at a meeting of directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

## POWERS AND DUTIES OF THE BOARD

53) With respect to the powers and duties of the Board:

- a) Subject to the Corporations Act 2001 and to any other provision of this constitution, the business and affairs of the company shall be managed by the board, which may exercise all such powers of the company as are not, by the Corporations Act 2001 or by this constitution, required to be exercised by the company in general meeting; subject, nevertheless, to such directions, not being inconsistent with the Corporations Act 2001 or this constitution, as may be given by the company in general meeting, provided that no such direction shall invalidate any prior act of the board which would have been valid if that direction had not been given.

- b) Without limiting the generality of subclause (a), the board may exercise all the powers of the company:
- i) to borrow and raise money;
  - ii) to charge any property or business of the company and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person;
  - iii) to determine who shall be entitled on behalf of the company to sign, draw, accept, endorse or otherwise execute cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, receipts, acceptances, endorsements, releases, contracts and documents;
  - iv) to pay the costs, charges and expenses incidental to the promotion, management and regulation of the company; and
  - v) to make, amend and repeal regulations, not being inconsistent with the Corporations Act 2001 or this constitution, in relation to the affairs of the company.

54) Any regulation for the time being in force shall be binding on the members of the company as if it were included in this constitution.

55) The board shall cause minutes to be made:

- a) of all appointments of officers and servants;
- b) of the names of the directors present at all meetings of the company and of the board; and
- c) of all proceedings at all meetings of the company and of the board.

Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

## PROCEEDINGS OF THE BOARD OF DIRECTORS

56) The board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A director may at any time and the secretary shall on the requisition of a director convene a meeting of the board.

57) Subject to this constitution questions arising at any meeting of the board shall be decided by a majority of votes and a determination by a majority of the directors present shall for all purposes be deemed a determination of the directors. In case of an equality of votes the chairman of the meeting shall have a second or casting vote.

58) The quorum necessary for the transaction of the business of the board shall be at least half of the number of directors or such greater number as may be fixed by the directors.

59) The continuing directors may act notwithstanding any vacancy in the board, but if and so long as their number is reduced below the number fixed by clause 58 as the necessary

quorum of the board, the continuing director or directors may act for the purpose of increasing the number of directors to that number or of convening a general meeting of the company, but for no other purpose.

- 60) The chair of the board shall preside as chairman at every meeting of the board, or if there is no chair of the board, or if at any meeting he or she is not present within ten minutes after the time appointed for holding the meeting or if being present he or she is unwilling to preside, the vice-chair of the board shall be chairman or if the vice chair of the board is not present at the meeting then the members may choose one of their number to be chairman of the meeting.
- 61) The board may delegate any of its powers and/or functions (not being duties imposed on the board as the directors of the company by the Corporations Act 2001 or the general Law) to one or more committees consisting of such member or members of the company as the board thinks fit. Any committee so formed shall conform to any regulations that may be given by the board and subject thereto shall have power to co-opt any member or members of the company and all members of such committees shall have one vote.
- 62) The board may appoint one or more advisory committees consisting of such member or members of the board as the board thinks fit. Such advisory committees shall act in an advisory capacity only. They shall conform to any regulations that may be given by the board and subject thereto shall have power to co-opt any member or members of the company and all members of such advisory committees shall have one vote.
- 63) Every committee or advisory committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.
- 64) All acts done by any meeting of the board or of a committee or by any director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such board, committee or director, or that the directors or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director or committee member.
- 65) In relation to board documents:
- a) If all of the directors have signed a document containing a statement that they are in favour of a resolution of the board in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the board held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the directors signed the document on different days, on the day on which, and at time at which, the document was last signed by a director.
  - b) For the purpose of subclause (a), 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.

- c) A reference in subclause (a) to all of the directors does not include a reference to a director who, at a meeting of the board, would not be entitled to vote on the resolution.

66) In relation to board meetings:

- a) Provided that all of the directors consent, the directors may participate in a meeting of the board by means of any technology allowing all persons participating in the meeting to hear each other at the same time. Any director participating in such a meeting shall for the purposes of this constitution be deemed to be personally present at the meeting.
- b) The consent of a director to the use of technology may be a standing one.
- c) Any consent of a director to the use of technology may be withdrawn only within a reasonable period prior to a meeting at which the technology is to be used.

## SECRETARY

67) The board may in accordance with section 204 of the Corporations Act 2001 appoint a secretary for such term, and upon such conditions as it thinks fit, and any secretary so appointed may be removed by it. Nothing herein shall prevent the board from appointing a member of the company as honorary secretary, and any member so appointed shall forthwith become an office-bearer of the company and, if not already a director, ex officio a director, and any member so appointed shall be subject to the provisions of clause 7.

## SEAL

68) In relation to the company seal:

- a) If the company has a seal, the board shall provide for its safe custody.
- b) The seal shall be used only by the authority of the board or of a committee of the board authorised by the board to authorise the use of the seal, and every instrument to which the seal is affixed shall be signed by a director and be countersigned by another director or by a secretary.

## INSPECTION OF BOOKS

69) The directors shall determine whether and to what extent, and at what time and places and under what conditions, the books of the company or any of them will be open to the inspection of members other than directors, and a member other than a director shall 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.

## FINANCIAL REPORT

70) The board shall distribute copies of every:

- a) annual financial report;

- b) report of the directors for the year; and
- c) where prepared as required by the Corporations Act 2001, report of the auditor or auditors on the financial report as required by the Corporations Act 2001.

71) The board shall lay before each annual general meeting:

- a) the financial report;
- b) the report of the directors; and
- c) where prepared as required by the Corporations Act 2001, the report of the auditor or auditors for the last financial year ended before the annual general meeting.

## AUDIT

72) Where required by the Corporations Act 2001, a properly qualified auditor or auditors shall be appointed and his or their duties regulated in accordance with section 327 of the Corporations Act 2001.

**Note:**

Details of section 327 of the Corporations Act 2001 relating to the appointment of auditors can be found at Appendix E.

## NOTICE

73) In relation to notices:

- a) A notice may be given by the company to any member either by serving it on the member personally or by sending it by post to the member at his or her registered address or the address if any supplied by the member to the company for the giving of notices to the member.
- b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the second day after the date of its posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- c) Notwithstanding the foregoing, if a member has supplied to the company a facsimile number for the service of notices on the member, then any notice may be served by the company on that member by facsimile.
- d) A notice sent by facsimile (provided a status report is received by the sender which shows the notice has been transmitted) shall be deemed served immediately upon completion of sending if such completion is within business hours in the place where the addressee's facsimile machine is located, but if not, then at 9:00 am next occurring during business hours at such place.

- e) For the purposes of this clause, “business hours” means from 9:00 am to 5:00 pm on a day on which the major trading banks are open for business at the place or in the postal district where the addressee’s facsimile machine is located.

74) In relation to notices of general meetings:

- a) Notice of every general meeting shall be given in the manner authorised by clause 73 to:
  - i) every member except those members for whom the company has no registered address or other address for the giving of notices to him or her; and
  - ii) the auditor or auditors for the time being of the company.
- b) No other person shall be entitled to receive notices of general meetings.

## INDEMNITY

75) Except to the extent that it is prohibited from doing so by sections 241 and 241A of the Corporations Act 2001, the company:

- a) shall indemnify every officer, employee, auditor and agent of the company against any liability incurred by him or her in that capacity; and
- b) may pay or agree to pay a premium in respect of a contract insuring any such person against any such liability.

## APPENDIX A: PART 124(1)—LEGAL CAPACITY & POWERS

### 124 Legal capacity and powers of a company

(1) A company has the legal capacity and powers of an individual both in and outside this jurisdiction. A company also has all the powers of a body corporate, including the power to:

(a) issue and cancel shares in the company;

(b) issue debentures (despite any rule of law or equity to the contrary, this power includes a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long);

(c) grant options over unissued shares in the company;

(d) distribute any of the company's property among the members, in kind or otherwise;

(e) grant a security interest in uncalled capital;

(f) grant a circulating security interest over the company's property;

(g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction;

(h) do anything that it is authorised to do by any other law (including a law of a foreign country).

A company limited by guarantee does not have the power to issue shares.

Note: For a company's power to issue bonus, partly—paid, preference and redeemable preference shares, see section 254A.

(2) A company's legal capacity to do something is not affected by the fact that the company's interests are not, or would not be, served by doing it.

(3) For the avoidance of doubt, this section does not:

(a) authorise a company to do an act that is prohibited by a law of a State or Territory; or

(b) give a company a right that a law of a State or Territory denies to the company.

## APPENDIX B: SECTION 250—ANNUAL GENERAL MEETINGS

### 250N Public company must hold AGM

- (1) A public company must hold an annual general meeting (*AGM*) within 18 months after its registration.
- (2) A public company must hold an AGM at least once in each calendar year and within 5 months after the end of its financial year.

Note: An AGM held to satisfy this subsection may also satisfy subsection (1).

- (2A) An offence based on subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) An AGM is to be held in addition to any other meetings held by a public company in the year.

Note 1: The company's annual financial report, directors' report and auditor's report must be laid before the AGM (see section 317).

Note 2: The rules in sections 249C-250M apply to an AGM.

- (4) A public company that has only 1 member is not required to hold an AGM under this section.

### 250P Extension of time for holding AGM

- (1) A public company may lodge an application with ASIC to extend the period within which section 250N requires the company to hold an AGM.
- (2) If the company applies before the end of the period within which the company would otherwise be required to hold an AGM, ASIC may extend the period in writing. ASIC must specify the period of the extension.
- (3) A company granted an extension under subsection (2) must hold its AGM within the extended period.
- (4) ASIC may impose conditions on the extension and the company must comply with those conditions.
- (5) An offence based on subsection (3) or (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



## APPENDIX C: SECTIONS 249D & 249E—CALLING OF MEETINGS

### 249D Calling of general meeting by directors when requested by members

- (1) The directors of a company must call and arrange to hold a general meeting on the request of:
  - (a) members with at least 5% of the votes that may be cast at the general meeting; or
  - (b) at least 100 members who are entitled to vote at the general meeting.
- (1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:
  - (a) a particular company; or
  - (b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.
- (2) The request must:
  - (a) be in writing; and
  - (b) state any resolution to be proposed at the meeting; and
  - (c) be signed by the members making the request; and
  - (d) be given to the company.
- (3) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- (4) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.
- (5) The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.

### 249E Failure of directors to call general meeting

- (1) Members with more than 50% of the votes of all of the members who make a request under section 249D may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to the company.
  - (2) The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called. The meeting must be held not later than 3 months after the request is given to the company.
  - (3) To call the meeting the members requesting the meeting may ask the company under section 173 for a copy of the register of members. Despite paragraph 173(3)(b), the company must give the members the copy of the register without charge.
  - (4) The company must pay the reasonable expenses the members incurred because the directors failed to call and arrange to hold the meeting.
- (4A) An offence based on subsection (3) or (4) is an offence of strict liability.
- Note: For **strict liability**, see section 6.1 of the *Criminal Code*.
- (5) The company may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with section 249D. The directors who are liable are jointly and individually liable for the amount. If a director who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to, or remuneration of, the director.

## APPENDIX D: PART 2M.2—FINANCIAL RECORDS

### 286 Obligation to keep financial records

- (1) A company, registered scheme or disclosing entity must keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited.

The obligation to keep financial records of transactions extends to transactions undertaken as trustee.

Note: Section 9 defines *financial records*.

#### *Period for which records must be retained*

(2) The financial records must be retained for 7 years after the transactions covered by the records are completed.

#### *Strict liability offences*

- (3) An offence based on subsection (1) or (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 287 Language requirements

- (1) The financial records may be kept in any language.

(2) An English translation of financial records not kept in English must be made available within a reasonable time to a person who:

- (a) is entitled to inspect the records; and
- (b) asks for the English translation.

- (3) An offence based on subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 288 Physical format

(1) If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

- (2) An offence based on subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 289 Place where records are kept

(1) A company, registered scheme or disclosing entity may decide where to keep the financial records.

#### *Records kept outside this jurisdiction*

(2) If financial records about particular matters are kept outside this jurisdiction, sufficient written information about those matters must be kept in this jurisdiction to enable true and fair financial

statements to be prepared. The company, registered scheme or disclosing entity must give ASIC written notice in the prescribed form of the place where the information is kept.

(2A) An offence based on subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) ASIC may direct a company, registered scheme or disclosing entity to produce specified financial records that are kept outside this jurisdiction.

(4) The direction must:

(a) be in writing; and

(b) specify a place in this jurisdiction where the records are to be produced (the place must be reasonable in the circumstances); and

(c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

## 290 Director access

### *Personal access*

(1) A director of a company, registered scheme or disclosing entity has a right of access to the financial records at all reasonable times.

### *Court order for inspection on director's behalf*

(2) On application by a director, the Court may authorise a person to inspect the financial records on the director's behalf.

(3) A person authorised to inspect records may make copies of the records unless the Court orders otherwise.

(4) The Court may make any other orders it consider appropriate, including either or both of the following:

(a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;

(b) an order limiting the right of a person who inspects the records to make copies in accordance with subsection (3).

## 291 Signposts to other relevant provisions

The following table sets out other provisions that are relevant to access to financial records.

<b>Other provisions relevant to access to financial records</b>		
<b>members</b>		
1	section 247A	A member may apply to the Court for an order to inspect the records.
<b>auditor</b>		
2	section 310	The auditor has a right of access to the records.

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**Other provisions relevant to access to financial records**

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**controllers**

3 section 431 A controller of a corporation's property (for example, a receiver or receiver and manager) has a right of access to the records.

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**ASIC**

4 sections 28 to 39 of the ASIC Act ASIC has power to inspect the records. It also has power under subsection 289(3) of this Act to call for the production of financial records kept outside this jurisdiction.

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## APPENDIX E: SECTION 327A APPOINTMENT OF AUDITOR

### 327A Public company auditor (initial appointment of auditor)

(1) The directors of a public company must appoint an auditor of the company within 1 month after the day on which a company is registered as a company unless the company at a general meeting has appointed an auditor.

(2) Subject to this Part, an auditor appointed under subsection (1) holds office until the company's first AGM.

(3) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).