

Constitution of Pacific Restaurant Group Limited

Replacement Constitution as at 28 November 2011

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Corporations Act 2001

Public company not listed

Constitution

of

Pacific Restaurant Group Limited

Introduction

1. Replaceable rules excluded

1.1 The replaceable rules contained in the Act do not apply to the Company.

2. Definitions and interpretation

2.1 Definitions

In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
- (3) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (4) **Company** means Pacific Restaurant Group Limited;
- (5) **directors** means the directors for the time being of the Company or the directors assembled as a board;
- (6) **executive director** means a director in full-time employment of the Company or any subsidiary or related body corporate other than a managing director; and
- (7) **secretary** means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary.

2.2 Interpretation

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

Appointment of directors

3. Number of directors

[compare section 201A]

- 3.1 The number of the directors must be not less than 3 nor more than 16.
- 3.2 The Company in general meeting may by resolution increase or reduce the number of directors referred to in rule 3.1 but the number must not be reduced below 3.

4. Directors' qualifications

- 4.1 A share qualification for directors may be fixed by the Company in general meeting. Unless and until so fixed a director is not required to hold any share in the Company.

5. First directors

[compare section 120]

- 5.1 The first directors are those named in the application for registration of the Company.
- 5.2 The first directors, and all other directors appointed before the first annual general meeting of the Company, hold office until the termination of the first annual general meeting of the Company but, subject to this constitution, are eligible for election at that meeting. If they resign before the first annual general meeting they may be replaced at a general meeting before the first annual general meeting, and their replacements hold office until the termination of the first annual general meeting.

6. Election of directors

- 6.1 The directors are elected at each annual general meeting of the Company.
- 6.2 An elected director holds office until the termination of the next annual general meeting held after his or her election.
- 6.3 At the second annual general meeting of the Company:
 - (1) 2 directors must retire from office, the directors to retire are determined by lot unless they otherwise agree between or among themselves;
 - (2) the retiring directors are eligible for re-election without the necessity of giving any previous notice of his or her intention to submit himself or herself for re-election; and
 - (3) if the retiring directors are re-elected, they will not be required to submit themselves for re-election at the next annual general meeting of the Company pursuant to rule 6.4.
- 6.4 At the third annual general meeting of the Company:
 - (1) subject to rule 6.3(3), 2 directors must retire from office, the directors to retire are determined by lot unless they otherwise agree between or among themselves; and
 - (2) the retiring directors are eligible for re-election without the necessity of giving any previous notice of his or her intention to submit himself or herself for re-election.
- 6.5 At the fourth, and each subsequent, annual general meeting of the Company, the following applies:

- (1) 1/3 of the directors for the time being or, if their number is not 3 or a multiple of 3, then the number nearest to but not exceeding 1/3, retire from office but no director may retain office for more than 3 years without submitting himself or herself for re-election even though the submission results in more than 1/3 of the directors retiring from office;
- (2) the director or directors to retire at an annual general meeting are those who have been longest in office since their election;
- (3) as between or among 2 or more directors who became directors on the same day, the director or directors to retire are determined by lot unless they otherwise agree between or among themselves;
- (4) a retiring director is eligible for re-election without the necessity of giving any previous notice of his or her intention to submit himself or herself for re-election;
- (5) unless the directors decide to reduce the number of directors in office, the Company at any annual general meeting at which any director retires may fill the vacated office by re-electing the retiring director or electing some other qualified person; and
- (6) if at the annual general meeting the vacated office is not filled, the retiring director, if willing and not disqualified, must be treated as re-elected unless the directors decide to reduce the number of directors in office or a resolution for the re-election of that director is put and lost.

7. Nomination for election

7.1 Each candidate for election as a director must:

- (1) be proposed by a member or the nominated representative of a corporate member; and
- (2) be seconded by another member or the nominated representative of another corporate member.

7.2 No member or nominated representative of a member may propose more than 1 person as a candidate but may second more than 1 nomination.

7.3 A nomination of a candidate for election must:

- (1) be in writing;
- (2) be signed by the candidate; and
- (3) be signed by the proposer and seconder.

- 7.4 A nomination of a candidate for election must be received at the registered office of the Company not later than 5pm on the day which is 30 days prior to the annual general meeting at which the candidate seeks election.
- 7.5 A list of the candidates' names in alphabetical order together with the proposers' and seconders' names must be sent to members with the notice of the annual general meeting.

8. Election procedure – directors

[compare section 201E]

- 8.1 If the number of candidates for election as directors is equal to or less than the number of vacancies on the board the chair of the annual general meeting must declare those candidates to be duly elected as directors.
- 8.2 If the number of candidates for election as directors is greater than the number of vacancies on the board a ballot must be held for the election of the candidates.
- 8.3 If a ballot is required balloting lists must be prepared listing the names of the candidates only in alphabetical order.
- 8.4 At the annual general meeting each person entitled to vote and voting on the ballot may vote for a number of candidates equal to the number of vacancies.
- 8.5 The candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.
- 8.6 If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the chair, prior to the declaration of the result of the ballot, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the chair:
- (1) does not exercise a casting vote; or
 - (2) is one of the candidates who received the same number of votes;
- then the names of the candidates who received the same number of votes must be put to a further ballot immediately.
- 8.7 Directors who retire at a meeting of members continue to hold office until the end of the meeting.
- 8.8 Directors who are appointed at a meeting of members take office immediately after the end of the meeting.
- 8.9 There is not a vacancy for the purpose of this rule 8 (or rules 9 or 10) because the number of directors is less than the maximum allowed under

rule 3.1. There is a vacancy only if the number of directors is less than the number elected at the previous annual general meeting (adjusted for any increase under rule 9.1).

Appointment of directors between AGMs

9. Casual vacancies and additional directors

[compare replaceable rules 201G and 201H]

- 9.1 The Company in general meeting may by resolution and the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.
- 9.2 Any director appointed under rule 9.1 holds office only until the termination of the next annual general meeting of the Company and is eligible for re-election at that annual general meeting.

10. Insufficient directors

[compare replaceable rule 201H]

- 10.1 In the event of a vacancy 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 at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

Alternate directors

[compare replaceable rule 201K]

11. Appointment

- 11.1 A director may appoint any person approved by a majority of the other directors to act as an alternate director in place of the appointing director for a meeting or for a specified period.
- 11.2 A managing director may not appoint an alternate to act as managing director.
- 11.3 An alternate director is not required to have any share qualification.
- 11.4 An alternate director is not taken into account for the purpose of rule 3.

12. Rights and powers of alternate director

- 12.1 An alternate director is entitled to notice of meetings of the directors and, if the appointing director is not present at a meeting, is entitled to attend and vote in his or her stead.
- 12.2 When an alternate director exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.

13. Suspension or revocation of appointment

- 13.1 A director may suspend or revoke the appointment of an alternate director appointed by him or her.
- 13.2 The directors may suspend or remove an alternate director by resolution after giving the appointing director reasonable notice of their intention to do so.

14. Form of appointment, suspension or revocation

- 14.1 Every notice of appointment, suspension or revocation under rule 11 or rule 13 must be in writing and a copy must be given to the Company. The notice may be given by facsimile.

15. Termination of appointment

- 15.1 The appointment of an alternate director automatically terminates:
- (1) if the appointing director ceases to hold office as director;
 - (2) on any event which causes a director to vacate the office of director; or
 - (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

16. Power to act as alternate for more than 1 director

- 16.1 A director or any other person may act as alternate director to represent more than 1 director.

Powers of directors

17. Validation of acts of directors and secretaries

[compare sections 201M and 204E]

- 17.1 An act done by a director or secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment, is invalid because the Company, the director or secretary did not comply with this constitution or any provision of the Act.
- 17.2 Rule 17.1 does not deal with the question whether an effective act by a director or secretary:
- (1) binds the Company in its dealings with other people; or
 - (2) makes the Company liable to another person.

18. General business management

[compare replaceable rule 198A]

- 18.1 The business of the Company is to be managed by or under the direction of the directors.
- 18.2 The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 18.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.
- 18.4 The directors may pay all expenses incurred in promoting and forming the Company.

19. Borrowing powers

- 19.1 Without limiting the generality of rule 18, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

20. Appointment of attorney

- 20.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and

discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.

- 20.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

21. Negotiable instruments

[compare replaceable rule 198B]

- 21.1 Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 21.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

22. Delegation

[compare replaceable rule 198D]

- 22.1 The directors may delegate any of their powers to:
- (1) a committee of directors;
 - (2) a director;
 - (3) an employee of the Company; or
 - (4) any other person;
- and may revoke the delegation.
- 22.2 The delegate must exercise the powers delegated in accordance with any directions of the directors.
- 22.3 The exercise of the power by the delegate is as effective as if the directors had exercised it.

23. Committee of directors

- 23.1 The meetings and proceedings of any committee of directors are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.
- 23.2 The directors may establish local boards or agencies for managing any of the affairs of the Company in any specified locality and may appoint any persons to be members of the local board or any managers or agents and may fix their remuneration.

Managing director

24. Power to appoint

[compare replaceable rule 201J]

- 24.1 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), the directors see fit.

25. Qualifications

- 25.1 A person ceases to be managing director if he or she ceases to be a director.

26. Powers

[compare replaceable rule 198C(1)]

- 26.1 The directors may, upon terms and conditions and with any restrictions they see fit, confer on a managing director any of the powers that the directors can exercise.
- 26.2 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.

27. Withdrawal of appointment or powers

[compare replaceable rule 198C(2)]

- 27.1 The directors may revoke or vary:
- (1) an appointment; or
 - (2) any of the powers conferred on the managing director.

28. Temporary appointments

- 28.1 If a managing director becomes incapable of acting in that capacity the directors may appoint another director to act temporarily as managing director.

Removal and resignation of directors

29. Removal of directors

[compare section 203D]

29.1 Subject to the Act the Company may by resolution remove a director from office.

30. Resignation of director

[replaceable rule 203A]

30.1 A director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.

31. Vacation of office of director

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

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

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (3) is not present (either personally or by an alternate director) at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
- (4) ceases to be qualified as a director under rule 4;
- (5) fails to pay any call due on any shares held by him or her for 1 month or any further time the directors allow after the call is made;
- (6) being an executive director ceases to be employed full time by the Company or a subsidiary or related body corporate;
- (7) becomes disqualified from being a director under the Act or any order made under the Act;
- (8) is removed from office in accordance with rule 29; or
- (9) resigns from office in accordance with rule 30.

Directors' interests

32. Prohibition on being present or voting

[compare section 195]

- 32.1 Except where permitted by the Act a director who has a material personal interest in a matter that is being considered at a meeting of directors:
- (1) must not be counted in a quorum;
 - (2) must not vote on the matter; and
 - (3) must not be present while the matter is being considered at the meeting.

33. Director to disclose interests

[compare section 191]

- 33.1 A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest as soon as practicable after the director becomes aware of his or her interest in the matter and in the manner required by section 191(3) of the Act.
- 33.2 The requirements of rule 33.1 are subject to the limitations and qualifications set out in section 191 of the Act.

34. Standing notice of interest

[compare section 192]

- 34.1 A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- 34.2 A notice under rule 34.1 may be given:
- (1) at a directors' meeting (either orally or in writing); or
 - (2) to the other directors individually in writing.
- 34.3 If the standing notice is given to the other directors individually in writing:
- (1) the notice is effective when it has been given to every director; and
 - (2) the notice must be tabled at the next directors' meeting after it is given.

34.4 The director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

35. Other directorships and shareholdings

35.1 A director of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

35.2 Subject to the Act:

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

36. Wholly owned subsidiary

[compare section 187]

36.1 Subject to the Act, if the Company is a wholly owned subsidiary of another body corporate, a director may act in the best interests of the other body corporate.

Remuneration of directors

37. Payment of remuneration

[compare replaceable rule 202A(1)]

- 37.1 The directors are to be paid the remuneration that the Company determines by resolution.
- 37.2 The Company determines by resolution only the total remuneration to be paid to the directors, and the directors determine how the total remuneration is divided among them.
- 37.3 The remuneration of directors accrues daily.
- 37.4 Despite the other provisions of rule 37 the directors determine the remuneration to be paid to a managing director and any other executive director, and this is not included in the total remuneration to be paid to the directors referred to in rule 37.2.
- 37.5 The expression “remuneration” in rule 37 does not include any amount which may be paid by the Company under rules 38, 40 or 46.

38. Payment of expenses

[compare replaceable rule 202A(2)]

- 38.1 The Company may also pay the directors’ travelling and other expenses that they properly incur:
- (1) in attending directors’ meetings or any meetings of committees of directors;
 - (2) in attending any general meetings of the Company; and
 - (3) in connection with the Company’s business.

39. Information about directors’ remuneration

[compare section 202B]

- 39.1 If required by the Act, the Company must comply with a direction by members to disclose the remuneration paid to each director by the Company (whether paid to the director in his or her capacity as a director or another capacity).

40. Payment for extra services

- 40.1 Subject to the Act, any director called upon to:
- (1) perform extra services; or

- (2) undertake any executive or other work for the Company beyond his or her general duties;

may be remunerated either by a fixed sum or a salary as determined by the directors.

- 40.2 Remuneration under rule 40.1 may be either in addition to or in substitution for the director's share in the remuneration provided by rule 37.

41. Cancellation, suspension, reduction or postponement

- 41.1 The Company may by resolution cancel, suspend, reduce or postpone payment of any remuneration of any director under rule 37.

42. Financial benefit

[compare Chapter 2E – sections 208 and following]

- 42.1 A director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.
- 42.2 The Company must not make loans to directors or provide guarantees or security for obligations undertaken by directors except as may be permitted by the Act.

Secretary

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

43. Appointment of secretary

- 43.1 The directors must, in accordance with the Act, appoint 1 or more secretaries.

44. Terms of office of secretary

[compare section 204F]

- 44.1 A secretary of the Company holds office on the terms and conditions (including as to remuneration) that the directors determine.

Indemnity and insurance

45. Indemnity

[compare section 199A]

45.1 To the extent permitted by the Act, the Company may indemnify:

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

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

45.2 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Company:
 - (a) a liability owed to the Company or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
 - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 45.2(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 45.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

- (3) For the purposes of rule 45.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

45.3 An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under rule 45.1;
- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

45.4 In rule 45.3 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;

- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 45.4(1) or 45.4(2) may be initiated.

46. Insurance

[compare section 199B]

- 46.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:
- (1) conduct involving a wilful breach of duty in relation to the Company; or
 - (2) a contravention of section 182 or 183 of the Act.

47. Director voting on contract of indemnity or insurance

[compare sections 191 and 195]

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

48. Liability

- 48.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

49. Meaning of “officer”

- 49.1 For the purposes of rules 45, 46, 47 and 48, **officer** means a director or secretary or a member of a local board or agency appointed under rule 23.2.

Inspection of records

50. Rights of inspection

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

- 50.1 The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.
- 50.2 A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolutions of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.
- 50.3 Directors have the rights of inspection and access provided by section 198F of the Act.

51. Confidential information

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

Directors' meetings

[compare sections 248A to 248G]

52. Circulating resolutions

[compare replaceable rule 248A]

- 52.1 The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution (except a director absent from Australia who has not left a facsimile number at which he or she may be given notice) sign a document containing a statement that they are in favour of the resolution set out in the document.
- 52.2 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.
- 52.3 The resolution is passed when the last director signs.
- 52.4 A facsimile addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this rule 52 must be treated as a document in writing signed by that director.

53. Meetings of directors

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

54. Calling directors' meetings

[compare replaceable rule 248C]

54.1 A director may at any time, and a secretary must on the requisition of a director, call a meeting of the directors.

55. Notice of meeting

[compare replaceable rule 248C]

55.1 Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:

- (1) has been given special leave of absence; or
- (2) is absent from Australia and has not left a facsimile number at which he or she may be given notice.

55.2 A notice of a meeting of directors may be given in writing or orally, by facsimile, telephone, electronic mail or any other means of communication.

56. Waiver of notice

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

57. Technology meeting of directors

[compare section 248D]

57.1 A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.

57.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

- 57.3 The following provisions apply to a technology meeting:
- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
 - (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.
- 57.4 If the secretary is not present at a technology meeting 1 of the directors present must take minutes of the meeting.
- 57.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- 57.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

58. Chairing directors' meetings

[compare replaceable rule 248E]

- 58.1 The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.
- 58.2 The directors must elect a director present to chair a meeting, or part of it, if:
- (1) a director has not already been elected to chair the meeting; or
 - (2) a previously elected chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for the meeting or the part of the meeting.
- 58.3 The directors may appoint a deputy chair who in the absence of the chair at a meeting of the directors may exercise all the powers and authorities of the chair.

59. Quorum

[compare replaceable rule 248F]

- 59.1 The quorum for a directors' meeting is 2 directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.

59.2 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (so long as the alternate is, under the Act relating to directors' interests, entitled to vote).

60. Passing of directors' resolutions

[compare replaceable rule 248G]

60.1 A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

60.2 The chair does not have a casting vote in addition to any vote he or she has as a director.

60.3 A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

61. Restriction on voting

61.1 A director is not entitled to be present in person or by an alternate director or to vote at a meeting of directors or to be counted in a quorum if and so long as he or she has failed to pay any call to the Company on shares held by him or her after the due date.

Meetings of members

62. Circulating resolutions

[compare section 249A]

62.1 This rule 62 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.

62.2 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. If a share is held jointly, each of the joint members must sign.

62.3 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.

62.4 The resolution is passed when the last member signs.

62.5 If the Company receives by facsimile transmission a copy of a document referred to in this rule 62 it is entitled to assume that the copy is a true copy.

63. Resolutions of 1 member company

[compare section 249B]

63.1 If the Company has only 1 member it may pass a resolution by the member recording it and signing the record.

63.2 If there is only 1 share in the Company but it is held by more than 1 person, the provisions of this constitution as to general meetings apply as if each holder were a separate member of the Company.

64. Calling of general meeting

[compare replaceable rule 249C and section 249D]

64.1 A director may call a meeting of the Company's members.

64.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.

64.3 Except as provided in the Act no member or members may call a general meeting.

65. Amount of notice of meeting

[compare section 249H]

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

66. Persons entitled to notice of general meeting

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

66.1 Written notice of a meeting of the Company's members must be given individually to:

- (1) each member entitled to vote at the meeting;
- (2) each director;
- (3) the Company's auditor; and
- (4) subject to rule 67.1, every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his or her death or bankruptcy, would be entitled to receive notice of the meeting.

- 66.2 No other person is entitled to receive notice of general meetings.
- 66.3 If a share is held jointly, notice need only be given to 1 of the members, being the joint member named first in the register of members (except if the share is the only share in the Company).

67. Notice upon transmission

- 67.1 A person entitled to a share in consequence of the death or bankruptcy of a member is not entitled to notice of meetings until the person has produced all information as to the person's entitlement to the share that the directors properly require.
- 67.2 A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member:
- (1) by serving it on the person personally; or
 - (2) by sending it to the person by post addressed to the person by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description:
 - (a) at the address (if any) in Australia supplied for the purpose by the person; or
 - (b) if an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

68. How notice is given

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

- 68.1 The Company may give the notice of meeting to a member:
- (1) personally;
 - (2) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member;
 - (3) by sending it to the facsimile number or electronic address (if any) nominated by the member;
 - (4) by sending it by other electronic means (if any) nominated by the member; or
 - (5) by notifying the member in accordance with rule 68.2.

68.2 If the member nominates:

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

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

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

69. When notice is given

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

- 69.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.
- 69.2 Except as provided by rule 69.3, a notice of meeting given to a member under rule 68.1(3) is taken to be given on the business day after it is sent.
- 69.3 A notice of meeting given to a member under rule 68.1(3) is not effective if:
 - (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
 - (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
 - (3) in either case, the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- 69.4 A notice of meeting given to a member under rule 68.1(5) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.
- 69.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 69 is conclusive evidence of the matter.

70. Period of notice

70.1 Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

71. Contents of notice

[compare section 249L]

71.1 A notice of a general meeting must:

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

72. Constructive notice

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

73. Notice of adjourned meeting

[replaceable rule 249M]

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

74. Accidental omission to give notice

[compare section 1322(3)]

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

75. Postponement of general meeting

- 75.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by shareholders as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 75.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 77.3 or rule 78.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

76. Technology

[section 249S]

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

77. Quorum

[compare replaceable rule 249T]

- 77.1 The quorum for a meeting of the Company's members is 2 members and the quorum must be present at all times during the meeting.
- 77.2 In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate representatives are counted. However, if a member has appointed more than 1 proxy, attorney or representative, only 1 of them is counted. If an individual is attending both as a member and as a proxy, attorney or body corporate representative, the individual is counted only once.
- 77.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or

- (2) in any other case, the 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;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.

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

78. Chair at meetings of the Company's members

[compare replaceable rule 249U]

78.1 If the directors have appointed 1 of their number as chair of their meetings, the person appointed presides as chair at every meeting of the Company's members.

78.2 Where a meeting of the Company's members is held and:

- (1) a chair has not been appointed as referred to in rule 78.1; or
- (2) the chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present may appoint 1 of their number to be chair of the meeting and in default of their doing so the members present must appoint another director or if no director is present or willing to act then the members present may appoint any 1 of their number to be chair of the meeting.

78.3 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.

79. Business at adjourned meetings

[replaceable rule 249W(2)]

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

Proxies and body corporate representatives

80. Who can appoint a proxy

[compare mandatory rule 249X]

- 80.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members or at a meeting of the holders of a class of shares may appoint an individual or a body corporate as the member's proxy to attend and vote for the member at the meeting. The proxy need not be a member.
- 80.2 The appointment may specify the proportion or number of votes that the proxy may exercise.
- 80.3 If the member is entitled to cast 2 or more votes at the meeting, the member may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
- 80.4 Any fractions of votes resulting from the application of rule 80.2 or rule 80.3 are disregarded.

81. Rights of proxies

[compare section 249Y]

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

82. When proxy form must be sent to all members

[section 249Z]

- 82.1 If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

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

83. Appointing a proxy

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

83.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001*, and in rules 83.2 and 83.3) by the member making the appointment and contains the following information:

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

An appointment may be a standing one.

83.2 An electronically authenticated appointment of a proxy must in addition to rule 87.1:

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

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

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

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

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

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

If a proxy is also a member, this rule 83.5 does not affect the way that the person can cast any votes the person holds as a member.

83.6 An appointment does not have to be witnessed.

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

84. Form of proxy sent out by Company

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

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

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

84.3 Despite rule 84.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

Pacific Restaurant Group Limited
ACN 129 686 559

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

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

Signed on .

* Strike out whichever is not desired.

† To be inserted if desired.

85. Receipt of proxy documents

[compare section 250B]

- 85.1 For an appointment of a proxy for a meeting of the Company's members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
- (1) the proxy's appointment; and
 - (2) if the appointment is signed or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- 85.2 If a meeting of the Company's members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 85.3 The Company receives an appointment or authority:
- (1) when it is received at any of the following:
 - (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for the purpose in the notice of meeting; or
 - (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Company and complies with rules 83.2 and 83.3.
- 85.4 An appointment of a proxy is ineffective if:
- (1) the Company receives either or both the appointment or authority at a facsimile number or electronic address; and
 - (2) a requirement (if any) in the notice of meeting that:
 - (a) the transmission be verified in a way specified in the notice; or

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

is not complied with.

86. Validity of proxy vote

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

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

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

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

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

87. Body corporate representative

[section 250D]

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

- (1) at meetings of the Company's members;
- (2) at meetings of creditors or debenture holders;
- (3) relating to resolutions to be passed without meetings; or
- (4) in the capacity of a member's proxy appointed under rule 80.

The appointment may be a standing one.

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

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

88. Attorney of member

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

Voting at meetings of members

89. How many votes a member has

[compare replaceable rule 250E]

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

90. Jointly held shares

[compare replaceable rule 250F]

- 90.1 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.
- 90.2 Rule 90.1 applies whether the vote is cast in person or by proxy or by attorney.
- 90.3 Several executors or administrators of a deceased member are treated, for the purposes of rule 90.1, as joint holders.

91. Objections to right to vote

[compare replaceable rule 250G]

91.1 A challenge to a right to vote at a meeting of members:

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

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

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

[section 250H]

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

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

93. How voting is carried out

[compare replaceable rule 250J]

93.1 A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.

93.2 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.

93.3 Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by members entitled to vote on the resolutions.

94. Matters on which a poll may be demanded

[compare section 250K]

94.1 A poll may be demanded on any resolution.

94.2 A demand for a poll may be withdrawn.

95. When a poll is effectively demanded

[compare section 250L]

95.1 At a meeting of the Company's members, a poll may be demanded by:

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

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

95.2 The poll may be demanded:

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

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

96. When and how polls must be taken

[compare replaceable rule 250M]

- 96.1 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.
- 96.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 96.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 96.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

97. Chair's casting vote

[compare replaceable rule 250E(3)]

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

98. Voting rights of persons entitled under transmission rule

- 98.1 A person entitled under the transmission rule (rule 136) to any shares may not vote at a meeting or adjourned meeting in respect of the shares unless:
 - (1) 48 hours at least before the time of holding the meeting or adjourned meeting there is lodged at the registered office of the

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

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

Annual general meeting

[compare section 250N]

99. Business of an annual general meeting

[compare sections 250R, 250S and 250T]

99.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (1) the consideration of the annual financial report, directors' report and auditor's report;
- (2) the election of directors;
- (3) the appointment of the auditor; and
- (4) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.

99.2 The business of the annual general meeting also includes any other business which under this constitution or the Act ought to be transacted at an annual general meeting.

99.3 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.

99.4 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting:

- (1) must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit, the preparation and content of the auditor's report, the accounting policies adopted by the Company in relation to the preparation of the financial statements and the independence of the auditor in relation to the conduct of the audit; and
- (2) must allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA of the Act.

100. Resolutions proposed by members

[compare sections 249N and 249O]

100.1 A member may not at any meeting move any resolution relating to special business unless:

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

Meetings of members holding shares in a class

101. Variation of class rights

[compare sections 246B and 246C]

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

- (1) by special resolution of the Company; and
- (2) either:
 - (a) by special resolution passed at a meeting of the members holding shares in the class; or
 - (b) with the written consent of members with at least 75% of the votes in the class.

101.2 Rule 101.1 applies whether or not the Company is being wound up.

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

101.4 The provisions of this constitution relating to general meetings apply to every meeting of members holding shares in a class except that:

- (1) a quorum is constituted by not less than 2 members who, between them, hold or represent 25% of the shares of the class; and
- (2) any member who holds or represents shares of the class may demand a poll.

Minutes

102. Minutes to be kept

[compare section 251A]

- 102.1 The directors must keep minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Company's members;
 - (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (3) resolutions passed by members without a meeting; and
 - (4) resolutions passed by directors without a meeting.
- 102.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
 - (2) the chair of the next meeting.
- 102.3 The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 102.4 Without limiting rule 102.1 the directors must record in the minute books:
- (1) all appointments of officers;
 - (2) the names of the directors and alternate directors present at all meetings of directors and the Company;
 - (3) in the case of a technology meeting, the nature of the technology; and
 - (4) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest.

Accounts, audit and records

103. Accounts

[compare sections 285-297, 314-317]

- 103.1 The directors must cause proper accounting and other records to be kept in accordance with the Act.
- 103.2 The directors must distribute copies of every profit and loss account and balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act.

104. Audit

[compare sections 301, 327-331]

- 104.1 A registered company auditor must be appointed.
- 104.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

Shares

105. Control of issue of shares

[compare sections 254A and 254B]

- 105.1 Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, the issue of shares in the Company is under the control of the directors.
- 105.2 Subject to the Act the directors may issue shares to persons at times and on terms and conditions the directors see fit.
- 105.3 Subject to the Act, any preference shares may, with the sanction of a special resolution of the Company in general meeting, be issued on the terms that they are, or at the option of the Company are, liable to be redeemed.
- 105.4 The directors may grant to any person options or other securities with rights of conversion to shares or pre-emptive rights to any shares for any consideration and for any period.
- 105.5 Upon giving 7 days' notice in writing of its intention to do so, the Company may redeem all or any redeemable preference shares. The notice must be given to the holder of the redeemable preference shares accompanied by a cheque for the amount paid up in respect of the shares to be redeemed. Redemption takes place 7 days after the notice is taken to be given (applying rule 146).

106. Ordinary shares

106.1 All shares of the Company which are not issued upon special terms and conditions are ordinary shares and confer on the holders:

- (1) the right to attend and vote at meetings of the Company and on a show of hands to 1 vote and on a poll to 1 vote for each share held;
- (2) the right to participate in dividends (if any) declared on the class of shares held; and
- (3) on the winding up of the Company, the right to repayment of the capital paid up on their shares and to participate in the division of any surplus assets or profits of the Company and in this regard to rank *pari passu* with all other shareholders having the same right.

107. Conversion of shares

[compare section 254H]

107.1 The Company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.

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

108. Calls on partly-paid shares

[compare section 254M]

108.1 If shares in the Company are partly-paid, the member is liable to pay calls on the shares in accordance with the terms on which the shares are on issue.

108.2 A call may be made payable by instalments.

108.3 A call may be revoked, postponed or extended as the directors determine.

108.4 A call must be treated as made at the time when the resolution of the directors authorising the call is passed.

108.5 Each member must pay the amount called on the member's shares according to the terms of the notice of call.

108.6 At least 30 business days before the due date for payment, the Company must send notices to all members on whom the call is made who are on the register of members when the call is announced. The notice must include each of the following:

- (1) the name of the member;

- (2) the number of shares held by the member;
- (3) the amount of the call;
- (4) the due date for payment of the call; and
- (5) the consequences of non-payment of the call.

108.7 The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any of the members does not invalidate the call.

108.8 In any action for the recovery of any money due for any call:

- (1) proof of the following matters is conclusive evidence of the debt or of the right to forfeit or sell shares for non-payment of a call:
 - (a) that the name of the member sued is entered in the register of members as the holder or 1 of the holders of the shares in respect of which the call was made;
 - (b) that the resolution making the call is recorded in the minute book;
 - (c) that:
 - (i) notice of the call was given to the registered holder of the shares in accordance with this constitution; or
 - (ii) in the case of calls or instalments payable at fixed times by the terms of issue of any share or otherwise, those terms apply; and
 - (d) that the sum or call has not been paid; and
- (2) it is not necessary to prove the appointment of the directors who made the call or the passing of the resolution or anything else.

108.9 The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

108.10 If a sum called is not paid on or before the date for payment, the person from whom the sum is due must pay interest on the sum (or on so much as remains unpaid) at the rate the directors determine calculated from the day payment is due till the time of actual payment. The directors may waive payment of that interest wholly or in part.

108.11 Any sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date, must be treated for the purposes of this constitution as a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In case of non-payment, the provisions of this constitution 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.

- 108.12 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.
- 108.13 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. The directors may authorise payment by the Company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at the rate agreed upon between the directors and the member paying the sum.
- 108.14 Any amount paid in advance of calls is not included or taken into account in ascertaining the amount of dividend payable upon the shares in respect of which the advance has been made.
- 108.15 The directors may at any time repay the amount so advanced upon giving to such member 1 month's notice in writing.
- 108.16 If a sum called in respect of a share is not paid before or on the due date for payment, the Company may recover the sum as a debt due with interest and expenses (if any), without prejudice to the right to forfeit the share of the member in arrears.

109. Right to lien

- 109.1 The Company has a 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.
- 109.2 The Company also has a paramount lien on all shares registered in the name of a member (whether solely or jointly with others) for all money presently payable by the member or the member's estate to the Company.
- 109.3 The directors may at any time exempt a share wholly or in part from the provisions of this rule 109.
- 109.4 The Company's lien (if any) on a share extends to all dividends payable in respect of the share.

110. Imposition of a liability

- 110.1 This rule 110 applies where any law for the time being of any country, State or place:

- (1) imposes or purports to impose any immediate or future or possible liability upon the Company to make any payment in respect of a member; or
- (2) empowers any government or taxing authority or government official to require the Company to make any payment in respect of a share registered in the register of members as held either jointly or solely by a member or in respect of any dividend or other money which is or may become due or payable or is accruing due to the member by the Company on or in respect of the share;

whether in consequence of:

- (3) the death of the member;
- (4) the liability of the member for income tax or other tax;
- (5) the liability of the executor or administrator of the member or of the member's estate for any estate, probate, succession, death, stamp or other duty; or
- (6) anything else.

110.2 If any liability contemplated by rule 110.1 is imposed on the Company, the Company:

- (1) must be fully indemnified by the member or the member's executor or administrator from all liability;
- (2) has a paramount lien upon all shares registered in the register of members as held either jointly or solely by the member and upon all dividends and other money payable in respect of the shares for any liability arising under that law and for any amount paid in complete or partial satisfaction of the liability and for interest on any amount so paid at the rate per annum set by the directors from the date of payment to the date of repayment. The Company may deduct from or set off against the dividends or other money payable any money so paid or payable by the Company together with interest;
- (3) may recover as a debt due from the member or the member's executor or administrator wherever situated any money paid by the Company under that law and interest at the rate and for the period referred to in rule 110.2(2) in excess of any dividend or other money then due or payable by the Company to the member; and
- (4) may, if the money is paid or payable by the Company under that law refuse to register a transfer of the shares by the member or the member's executor or administrator until the money with interest is set off or deducted or where that amount exceeds the amount of

the dividend or other money then due or payable by the Company to the member, until the excess is paid to the Company.

110.3 This rule 110 does not affect any right or remedy which that law may confer on the Company and the right or remedy is enforceable by the Company against the member and the member's executors, administrators and estate wherever situated.

111. Sale of shares the subject of lien

111.1 Subject to rule 111.2, the Company may sell, in the manner the directors see fit, any shares on which the Company has a lien.

111.2 A share on which the Company has a lien may not be sold unless:

- (1) a sum in respect of which the lien exists is presently payable; and
- (2) the Company has, not less than 14 days before the date of the 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 of the registered holder a notice in writing setting out, and demanding payment of, the sum presently payable in respect of which the lien exists.

111.3 To give effect to a sale of shares under rule 111, the directors may authorise a person to transfer the shares sold to the purchaser of the shares.

111.4 The Company must register the purchaser as the holder of the shares comprised in the transfer and the purchaser is not bound to see to the application of the purchase money.

111.5 The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

111.6 The proceeds of a sale under rule 111 must be applied by the Company as follows:

- (1) in payment of the sum presently payable in respect of which the lien existed;
- (2) if there was a lien on the shares for sums not presently payable, the Company may retain any residue of the proceeds of sale and apply the residue to pay those sums when they become presently payable;
- (3) subject to rule 111.6(2), the Company must pay the residue to the person entitled to the shares immediately before the sale.

112. Surrender of shares

112.1 The directors may accept the surrender of any paid-up share by way of compromise of any question as to the holder being properly registered in respect of the share. Any share so surrendered may be disposed of in the same manner as a forfeited share.

113. Power to capitalise and issue debentures to members

[compare section 254S]

113.1 The Company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.

113.2 The directors, or the Company in general meeting on the recommendation of the directors, may apply profits, including reserves and sums otherwise available for distribution to members, to:

- (1) pay up any amount unpaid on shares;
- (2) issue shares, debentures or unsecured notes to members credited as fully paid up; or
- (3) partly as mentioned in rule 113.2(1) and partly as mentioned in rule 113.2(2).

113.3 The amount applied under rule 113.2 must be applied for the benefit of members in the proportions in which the members are entitled to dividends.

113.4 For the purpose of rule 113.3 the directors may to the extent necessary to adjust the rights of the members among themselves:

- (1) issue fractional certificates or make cash payments in cases where shares, debentures or unsecured notes become issuable in fractions;
- (2) fix the value for distribution of any specific assets or any part of them;
- (3) round down any payment to the nearest dollar; and
- (4) vest any cash or specific assets in trustees upon trust for the persons entitled to the dividend or capitalised fund.

114. Joint holders

114.1 Where 2 or more persons are registered as the holders of a share, they must be treated as holding the share as joint tenants with benefits of survivorship subject to rule 114.2 and to the following:

- (1) the Company is not bound to register more than 3 persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the share;
- (2) the joint holders of the share are liable severally as well as jointly in respect of all payments which ought to be made in respect of the share;
- (3) on the death of any 1 of the joint holders, the survivor or survivors are the only person or persons recognised by the Company as having any title to the share, but the directors may require such evidence of death as they see fit;
- (4) any 1 of the joint holders may give effective receipts for any dividend, bonus or return of capital payable to the joint holders; and
- (5) only the person whose name stands first in the register of members as 1 of the joint holders of the share is entitled to delivery of the certificate relating to the share or to receive notices from the Company and a notice given to that person must be treated as notice to all the joint holders.

114.2 Where 3 or more persons are registered holders of a share in the register of members (or a request is made to register more than 3 persons) only the first 3 named persons are regarded as holders of the share and all other named persons must be disregarded for all purposes except in the case of executors or trustees of a deceased shareholder.

Loans to shareholders

115. Terms of loans to shareholders

115.1 Subject to the Act the Company may make a secured or unsecured loan to a member.

115.2 Unless otherwise agreed in writing by the Company and the member, the following terms apply to an unsecured loan by the Company to a member:

- (1) the loan is for a term of 7 years from the date of the loan;
- (2) the member may repay the loan in full at any time before the end of the term;
- (3) the Company, by written notice to the member, may require the repayment of the loan in whole or in part at any time before the end of the term; and

- (4) minimum yearly repayments (including interest at the rate of interest prescribed for each applicable financial year) in accordance with Division 7A of Part III of the *Income Tax Assessment Act 1936* or any applicable substituted or re-enacted provisions in any act, are required to be made by 30 June each financial year, commencing the financial year following the financial year in which the loan is made.

Dividends and reserves

116. Payment of dividends

[compare replaceable rules 254U and 254W]

116.1 The directors may pay dividends (both interim and final) and may fix:

- (1) the amount;
- (2) the time for payment; and
- (3) the method of payment.

116.2 The Company in general meeting may resolve to pay a dividend, but may do so only if the directors have recommended a dividend.

116.3 A dividend which the Company in general meeting resolves to pay must not exceed the amount recommended by the directors.

116.4 Interest is not payable on a dividend.

117. Change decision to pay dividend

117.1 The directors may amend or revoke a decision by them to pay a dividend, at any time before the time fixed for payment arrives.

118. Power to employ reserves

118.1 The directors may, before recommending or deciding to pay any dividend, set aside out of the profits of the Company those sums they think proper as reserves, to be applied, at the discretion of the directors, for any purpose to which the profits of the Company may be properly applied.

118.2 Pending the application of reserves under rule 118.1, the reserves may, at the discretion of the directors, be used in the business of the Company or be invested as the directors see fit.

118.3 The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

119. Crediting of dividends

119.1 Subject to the rights of persons (if any) entitled to shares with special rights as to dividend and to this rule 119, all dividends are apportioned and paid proportionately to the amounts paid or credited as paid on the shares.

119.2 If a share is issued on terms that it will rank for dividend as from a particular date, that share ranks for dividend only from that date.

119.3 An amount paid or credited as paid on a share during the period for which a dividend is declared only entitles the holder of the share to an apportioned amount of the dividend as from the date of payment.

119.4 An amount paid or credited as paid on a share in advance of a call is not to be taken for the purposes of this constitution to be paid or credited as paid on the share.

120. Dividends where different classes of shares

120.1 If there is more than 1 class of shares, any dividend whether interim or otherwise may be paid on the shares of any 1 or more class or classes to the exclusion of the shares of any other class or classes.

120.2 If dividends are to be paid on more than 1 class, the dividend on the shares of 1 class may be at a higher or lower rate than or at the same rate as the dividend on the shares of another class, but the shares within each class must share equally in any dividend in respect of that class.

120.3 An objection may not be raised to any resolution which:

- (1) determines a higher rate of dividend on the shares of any class than the dividend declared on the shares of any other class; or
- (2) determines a dividend on the shares of any class to the exclusion of the shares of any other class;

on the ground that:

- (3) the resolution was passed by the votes of the holders of the shares of a class to receive the higher rate of dividend or to receive the dividend (as the case may be); and

- (4) the resolution was opposed by the holders of the shares of a class to receive the lower rate of dividend or to be excluded (as the case may be).

121. Deductions from dividends

- 121.1 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.

122. Unclaimed dividends

- 122.1 Unclaimed dividends may be invested or otherwise made use of by the directors for the benefit of the Company until claimed.

123. Entitlement to dividends

- 123.1 Unless otherwise specified in the decision to pay a dividend, all dividends are payable to the members who are upon the register of members on the date fixed for payment.

124. Payment of dividends on transmission

- 124.1 The directors may retain the dividends or bonuses payable on any share to which rule 136 applies until the successor elects to be registered as holder of the share or transfers the share.

125. Payment of dividends by asset distribution

- 125.1 Any general meeting determining or the directors deciding to pay a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, the Company or any other body corporate, and the directors must give effect to that resolution.

- 125.2 Where a difficulty arises in regard to a distribution of specific assets, the directors may resolve the difficulty as they see fit.

- 125.3 The directors may:

- (1) fix the value for distribution of the specific assets or any part of those assets;
- (2) determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and

- (3) vest any of those specific assets in trustees;
as the directors see fit.

126. Manner of payment of dividends

126.1 Any dividend, interest or other money payable in cash in respect of shares may be paid:

- (1) directly into an account, with a bank or some other financial institution, as directed in writing by the holder or joint holders; or
- (2) by cheque sent through the post directed to:
 - (a) the address of the holder as shown in the register of members, or in the case of joint holders, the address shown in the register of members as the address of the joint holder first named in the register; or
 - (b) any other address as directed in writing by the holder or joint holders.

127. Power to make concurrent call

127.1 The directors, when making a decision to pay a dividend, may make a call on the members of such amount as they see fit, not exceeding the dividend payable to the member, and payable at the same time as the dividend, with the dividend to be set off against the call.

128. Dividend reinvestment, bonus share and employee incentive plans

128.1 A general meeting of the Company or the directors may:

- (1) establish a plan under which a member may elect in terms of 1 or more of the following for a period provided in the plan:
 - (a) that dividends to be paid in respect of some or all of the shares held by the member may be satisfied by the issue of fully paid ordinary shares; and
 - (b) that dividends are not to be declared or paid in respect of some or all of the shares held by the member, but that the member is to receive an issue of fully paid ordinary shares; and
- (2) vary, suspend or terminate the plan.

128.2 A general meeting of the Company or the directors may:

- (1) establish a plan that shares be offered or issued to some or all employees of the Company whether or not for consideration; or
- (2) vary, suspend or terminate a plan established under rule 128.2(1).

128.3 Any plan has effect in accordance with its terms and the directors must do all things necessary for the purpose of implementing the plan, including the making of each necessary allotment of shares.

128.4 For the purpose of giving effect to any plan:

- (1) the directors may make any lawful appropriation, capitalisation, application, payment or distribution; and
- (2) the powers of the directors may be exercised even if only some of the members or holders of shares of any class participate in the appropriation, capitalisation, application, payment or distribution.

128.5 In offering opportunities to members or employees to participate in any plan, the directors may give any information that in their opinion may be useful to assist members or employees in assessing the opportunity and making requests to their best advantage. The directors, the Company and its officers are not responsible for, nor are they obliged to provide, any legal, taxation or financial advice in respect of the choices available to members or employees.

128.6 The directors are under no obligation:

- (1) to admit any member or employee as a participant in any plan; or
- (2) to comply with any request made by a member or employee who is not admitted as a participant in any plan.

128.7 In establishing and maintaining any plan, the directors must act in accordance with this constitution and may exercise the powers conferred on them by the terms of the plan, by this constitution or by the Act.

Transactions affecting share capital

129. Brokerage or commission

[compare section 258C]

129.1 The Company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the Company.

129.2 Payments by way of brokerage or commission may be satisfied:

- (1) by the payment of cash;

- (2) by the issue of fully or partly paid shares or other securities; or
- (3) partly by the payment of cash and partly by the issue of fully or partly paid shares or other securities.

Title to and transfer of shares

130. Entitlement to share certificates

[compare sections 1070B and 1070C]

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

131. Replacement of certificates

[compare section 1070D]

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

132. Recognition of ownership

- 132.1 Except as required by law, the Company is not bound to recognise a person as holding a share upon any trust.

132.2 The Company is not bound to recognise any equitable, contingent, future or partial interest or any other right in respect of a share except an absolute right of ownership in the registered holder.

132.3 Rule 132.2:

- (1) applies whether or not the Company has notice of the interest or right; but
- (2) does not apply where the Company is bound to recognise the interest or right by another provision of this constitution or by law.

133. Transfer of shares

[compare section 1071B]

133.1 Subject to this constitution, a member may transfer all or any of the member's shares by instrument in writing in any form that the directors approve.

134. Registration of transfers – directors' discretion

[compare replaceable rule 1072G]

134.1 The directors may in their discretion refuse to register a transfer of shares without giving any reason for refusal.

135. Registration of transfers – procedure

[compare replaceable rule 1072F]

135.1 A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.

135.2 Before a transfer of shares is registered:

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

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

135.4 The directors may in their discretion dispense with any of the requirements of rule 135.2.

- 135.5 The instrument of transfer must be executed by or on behalf of both the transferor and the transferee.
- 135.6 All powers of attorney granted by members which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company are deemed as between the Company and the grantor of the powers to remain in full force and may be acted upon until express notice in writing of their revocation or of the death of the grantor is lodged at the registered office of the Company.

136. Transmission of shares

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

- 136.1 If a shareholder dies, and the shareholder is not a joint holder, the Company is not obliged to recognise anyone except the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
- 136.2 If the person entitled to shares as the personal representative of a deceased shareholder or because of the bankruptcy or mental incapacity of a shareholder (**successor**) gives the directors the information they reasonably require to establish the successor's entitlement to be registered as holder of the shares:
- (1) the successor may:
 - (a) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the Company, transfer the shares to another person; and
 - (2) the successor, whether or not registered as the holder of the shares, is entitled to the same rights, and is subject to the same liabilities, as if the successor were registered as holder of the shares.
- 136.3 On receiving an election under rule 136.2(1)(a), the Company must register the successor as the holder of the shares.
- 136.4 A transfer under rule 136.2(1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- 136.5 If a shareholder dies, and the shareholder is a joint holder, the Company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.
- 136.6 This rule 136 has effect subject to the *Bankruptcy Act 1966*.

137. Procedure for forfeiture

- 137.1 If a member fails to pay a call or instalment of a call on the due date or fails to pay any money payable under rule 110 the directors may serve a notice on the member requiring payment of the unpaid call or instalment or other money together with any interest accrued.
- 137.2 The notice must:
- (1) specify a further date (not earlier than 14 days after the date of service of the notice) on or before which the payment required by the notice is to be made; and
 - (2) state that, in the event of non-payment at or before the further date, the shares in respect of which the call was made will be liable to be forfeited.
- 137.3 If the payment required by a notice served under rule 137.1 has not been made, and the time given for payment by the notice has expired, any share in respect of which the notice has been given may be forfeited by a resolution of the directors to that effect.
- 137.4 The forfeiture includes all dividends declared or payable in respect of the forfeited share and not actually paid before the forfeiture.
- 137.5 The Company may sell a forfeited share or otherwise dispose of it on terms and in a manner the directors see fit.
- 137.6 The directors may at any time before a forfeited share has been sold or otherwise disposed of, annul the forfeiture upon conditions they see fit.
- 137.7 A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but (unless the ordinary shareholders resolve otherwise) remains liable to pay and must immediately pay to the Company all calls, instalments, interest and expenses payable in respect of the shares at the time of forfeiture together with interest from the time of forfeiture until payment at the rate determined by the directors. The directors may enforce payment of the money as they see fit but are not under any obligation to do so.
- 137.8 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, is prima facie evidence of the facts as against all persons claiming to be entitled to the share.
- 137.9 The provisions of this constitution 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.

138. Transfer of forfeited share

- 138.1 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.
- 138.2 Upon the execution of the transfer, the transferee is entitled to be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- 138.3 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.

Execution of documents

139. Common seal

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

140. Share seal

[compare section 123(2)]

- 140.1 The Company may have a duplicate common seal. It must be a copy of the common seal with the words **duplicate seal, share seal or certificate seal** added.
- 140.2 Any certificate may be issued under the share seal.
- 140.3 The signature of any director or company secretary and the share seal may be fixed to a certificate by some mechanical or other means but if the signatures are fixed by mechanical or other means, the certificate must bear evidence of examination by the auditor, or other person appointed for that purpose by the Company.
- 140.4 For the purposes of the rules 140.2 and 140.3 **certificate** means a certificate in respect of shares, debentures, registered unsecured notes, convertible notes, certificates of debenture or any certificate or other document evidencing any options or rights to take up shares or other interests in the Company.

141. Use of common seal

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

- 141.1 If the Company has a common seal the directors must provide for its safe custody.

141.2 The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.

141.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:

- (1) 2 directors of the Company; or
- (2) a director and a company secretary of the Company.

142. Execution of documents without common seal

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

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

- (1) 2 directors of the Company; or
- (2) a director and a company secretary of the Company.

143. Execution of document as a deed

[compare section 127(3)]

143.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 141 or rule 142.

144. Execution – general

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

144.1 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.

144.2 Rules 141 and 142 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

Inadvertent omissions

145. Formalities omitted

[compare section 1322]

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

Notices

146. Notices other than notices of meeting

- 146.1 Any notice by the Company to a member, including a notice in connection with a call or forfeiture, may be given in the same way as a notice of meeting may be given under rule 68, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 69.
- 146.2 The references in rule 67.2 to notices to persons entitled to a share in consequence of the death or bankruptcy of a member, and in rule 114.1(5) to notices to joint holders of a share apply to any notice given by the Company.

Winding up

147. Shareholders' rights on distribution of assets

- 147.1 If the Company is wound up, the liquidator may, if authorised by a special resolution, divide among the members in kind the whole or any part of the property of the Company and may for that purpose set the value the liquidator considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.
- 147.2 The liquidator may, if authorised by a special resolution, vest the whole or any part of the property referred to in rule 147.1 in trustees upon trusts for the benefit of the contributories that the liquidator sees fit, but so that no member is compelled to accept any shares or other securities on which there is any liability.