



AUSTRALIAN COLLECTORS &  
DEBT BUYERS ASSOCIATION

## **Constitution**

**of**

**AUSTRALIAN COLLECTORS & DEBT BUYERS ASSOCIATION LIMITED**

**ACN 18 136 508 784**

(A public company limited by guarantee)

**Effective from 28 October 2014**

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## Preliminary

### 1 Defined terms & interpretation

#### 1.1 Dictionary

**Annual General Meeting** means an annual general meeting of the company held as required by the Corporations Act.

**Board** means the directors of the company as provided for in Rule 14.

**Business Day** means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the company's registered office is located.

**By-Laws** means the bylaws of the company prescribed adopted or amended by the directors from time to time in accordance with Rule 22.

**CEO** means the chief executive officer of the company appointed in accordance with rule 15.1.

**Cessation Event** means:

- a) in respect of a member of the company who is an individual:
  1. the death of the member;
  2. the bankruptcy of the member; or
  3. the member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- b) the member ceases to satisfy any eligibility criteria specified by the board; and
- c) in respect of a member of the company who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member.

**Chairperson** means the Chairperson of a general meeting appointed in accordance with rule 14.5.

**Corporations Act** means Corporations Act 2001 (Cth).

**Nominee** in relation to a member which is a body corporate, means a representative of the member appointed to exercise its voting rights in the company in accordance with rule 13.

**Person** means a natural person or a corporation including a company and any body corporate.

**Representative** in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act or a corresponding previous law.

**Round Table Conference** means a general meeting of the members as provided for in Rule 13.1 h).

**Secretary** means an executive officer of the company appointed in accordance with rule 15.2.

**Seal** means any common seal, duplicate seal, seal or certificate seal of the company.

#### 1.2 Intentions (unless otherwise appears)

- a) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or Representative.
- b) A director is to be taken to be present at a meeting of directors if the director is present in person.
- c) Where a provision of this constitution establishes an office of Chairperson, the Chairperson may be referred to as a chairman or chairwoman, as the case requires.
- d) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- e) In this constitution, headings and underlinings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
  1. words importing the singular include the plural and vice versa;
  2. words importing a gender include every other gender;
  3. words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  4. a reference to a person includes that person's successors and legal personal representatives;
  5. a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
  6. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

#### 1.3 Application of the Corporations Act

- a) This constitution is to be interpreted subject to the Corporations Act.
- b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, has the same meaning as in that provision.
- c) Subject to rule 1.2 unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Act has the same meaning as in that section.

## 1.4 Exercise of powers

- a) The company may exercise in any manner permitted by the Corporations Act any power which under the Corporations Act a company limited by guarantee may exercise if authorised by its constitution.
- b) Where this constitution provides that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- d) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
  1. to appoint a person to act in the office or position until a person is appointed to the office or position;
  2. subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
  3. to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- h) Where this constitution confers power on a person or body to delegate a function or power:
  1. the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
  2. the delegation may be either general or limited in any manner provided in the terms of delegation;
  3. the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
  4. the delegation may include the power to delegate;
  5. where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
  6. the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

## 1.5 Replaceable rules not to apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the company.

## 1.6 Single member company

If at any time the company has only one member then, unless the contrary intention appears:

- a) a reference in a rule to the "members" is a reference to that member; and
- b) without limiting rule (a), a rule which confers power or imposes an obligation on the members to do a particular act or thing confers that power or imposes that obligation on that member.

## 2 Nature of company and liability

### 2.1 Nature of company

The company is a public company limited by guarantee.

### 2.2 Liability of each member is limited

The liability of each member is limited. Each member guarantees to contribute up to a maximum of \$50.00 (fifty dollars) to the assets of the company if it is wound up while he or she is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

### **3 Objects of the company**

**The objects of the company are:**

- a) To represent the interests of members involved in the activities of debt collection and debt buying;
- b) To establish and maintain a code of practice governing the business activities of its members;
- c) To encourage the best practice of members in the performance of their professional activities;
- d) To provide opportunity for members to discuss and deliberate on matters affecting them professionally;
- e) To do such lawful things as are as likely to further the interests of its members;
- f) To publish and circulate communications desirable for the promotion of these objects;
- g) To facilitate representation for the furtherance of the professions of its members;
- h) To encourage public opinion and government policy in the development and advancement of the professions of its members; and
- i) To carry out such other functions and purposes which are necessary or incidental to the other objects of the company.

### **4 Legal capacity and powers of the company**

The company has all of the powers of a natural person and of a body corporate, including those set out in the Corporations Act.

### **5 Membership**

The directors may admit any Person as a member of the company on the terms and conditions in this Constitution and as prescribed in the By-Laws from time to time.

#### **5.1 Classes of membership**

The directors may establish different classes of membership and prescribe the qualifications required to become a member in a particular class and the rights, obligations and privileges of members of a class in the By-Laws from time to time.

Until otherwise resolved by the directors, the membership of the company will consist of:

- I. Members; and
- II. Affiliate members.

### **5.2 Specifications and Definitions of each class of members**

#### **I. Members**

The membership of the company shall consist of Persons, each one of which must be principally engaged in debt collections or debt purchasing activities.

A body corporate upon admission as a Member of the company shall in writing to the Secretary nominate a person as its Nominee - such person is to be the member's Chief Executive Officer or otherwise an executive of the member who "is effectively in charge of the member's debt collection or debt buying business". Appointment of any such Nominee may be withdrawn and/or replaced by the Member by notice in writing lodged with the secretary.

The board may request a Member to change its Nominee upon any of the events detailed in Schedule 1.

The Members of the company are the Members at the date of incorporation of the company and those Members who:

- a) have paid the membership fee; and
- b) have been admitted by the board to membership of the company as Members after making an application for membership and satisfying any eligibility criteria adopted by the board.

#### **II. Affiliates<sup>1</sup>**

Affiliate membership of the company shall consist of Persons which fail to meet the full criteria for membership of the company but otherwise may be engaged in or in some way are affiliated with debt collection or debt purchasing activities.

Affiliates shall be entitled and subject to all benefits, rights, privileges and obligations extended or imposed by the company but shall not be entitled to vote or stand for office except as may be otherwise provided for in this Constitution.

A body corporate upon admission as an Affiliate of the company shall in writing to the Secretary nominate a person as its Nominee. Appointment of any such Nominee may be withdrawn and/or replaced by the Affiliate by notice in writing lodged with the secretary.

The board may request an Affiliate to change its Nominee upon any of the events detailed in Schedule 1.

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<sup>1</sup> Refer also to By-Law created 11 October 2011

### 5.3 Members rights

Subject to 5.1 (b), a member has:

- a) the right to receive notices of and to attend and to be heard at any general meeting of the company; and
- b) the right to vote at any general meeting of the company.

### 5.4 Form of application

Any Person may apply in writing to be a member of the company. An application for membership must be:

- a) signed by the applicant;
- b) detail the related entities to the Person to be included under the membership of the Person; and
- c) accompanied by such documents or evidence as to eligibility as the board requires in accordance with rule 5.2.

### 5.5 Membership not transferable

No membership interest, benefit or right of any member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically cease if there is any purported sale or transfer or agreement to effect same.

### 5.6 Certificates

- a) The company may issue to each member, free of charge, one certificate each financial year upon payment of the membership fee evidencing that person as a member.
- b) The company may issue a replacement certificate to a member if the company receives and cancels the existing certificate for that person's membership or the company is satisfied that the existing certificate is lost or destroyed, and the member pays any fee as the directors resolve.

## 6. Admission to membership

### 6.1 Consideration of application by the board

If a Person makes an application that complies with rule 5.4 the board must consider that application for membership as soon as practicable after its receipt and determine, in their discretion, the acceptance or rejection of that application for membership.

### 6.2 Acceptance or rejection of membership application

- a) If an application for membership is accepted:
  1. the secretary must notify the applicant of admission; and

2. the name and details of the applicant must be entered in the register as membership details of the applicant in accordance with the Corporations Act.

- b) If an application for membership is rejected the secretary must notify the applicant that the application has been rejected.
- c) The directors do not have to give reasons for rejecting or accepting an application for membership.

## 7 Ceasing membership

- a) A member who has paid all moneys due and payable by a member may resign from membership of the company by leaving written notice to that effect at the registered office of the company addressed to the secretary.
- b) Unless the notice provides otherwise, the resignation of a member is deemed to take effect from the date such notice is left at the registered office.

## 8 Discipline, Suspension and Expulsion of members

8.1 Subject to this Constitution, if the directors are of the opinion that a member has refused or neglected to comply with this Constitution, or has been guilty of conduct unbecoming a member or prejudicial to the interests or reputation of the company, the directors may by resolution:

- a) fine that member an amount not exceeding \$2,000.00; or
- b) suspend that member from membership of the company for a specified period; or
- c) expel that member from the company if an expulsion event occurs.

8.2 A resolution of the directors under rule 8.1 does not take effect unless-

- a) at a meeting held in accordance with rule 8.3, the directors confirm the resolution; and
- b) if the member exercises a right of appeal to the company under this rule, the company confirms the resolution in accordance with this rule.

8.3 A meeting of the directors to confirm or revoke a resolution passed under rule 8.1 must be held not earlier than 14 days, and not later than 28 days, after notice has been given to the member in accordance with rule 8.4.

8.4 For the purposes of giving notice in accordance with rule 8.3, the secretary must, as soon as practicable, cause to be given to the member a written notice -

- a) setting out the resolution of the directors and the grounds on which it is based; and

- b) stating that the member, or its representative, may address the directors at a meeting to be held not earlier than 14 days and not later than 28 days after the notice has been given to that member;
  - c) stating the date, place and time of that meeting;
  - d) informing the member that it may do one or both of the following-
    1. attend that meeting;
    2. give to the directors before the date of that meeting a written statement seeking the revocation of the resolution; and
  - e) informing the member that, if at that meeting, the directors confirms the resolution, it may, not later than 48 hours after that meeting, give the secretary a notice to the effect that it wishes to appeal to the company in general meeting against the resolution.
- 8.5** At a meeting of the directors to confirm or revoke a resolution passed under rule 8.1 the committee must-
- a) give the member or its representative, an opportunity to be heard;
  - b) give due consideration to any written statement submitted by the member; and
  - c) determine by resolution whether to confirm or to revoke the resolution.
- 8.6** If at the meeting of the directors, the directors confirm the resolution, the member may, not later than 48 hours after that meeting, give the secretary a notice to the effect that it wishes to appeal to the company in general meeting against the resolution.
- 8.7** If the secretary receives a notice under rule 8.6, he or she must notify the directors and the directors must convene a general meeting of the company to be held within 21 days after the date on which the secretary received the notice.
- 8.8** At a general meeting of the company convened under rule 8.7-
- a) no business other than the question of the appeal may be conducted; and
  - b) the directors may place before the meeting details of the grounds for the resolution and the reasons for the passing of the resolution; and
  - c) the member or its representative, must be given an opportunity to be heard; and
  - d) the members present must vote by secret ballot on the question whether the resolution should be confirmed or revoked.
- 8.9** A resolution is confirmed if, at the general meeting, not less than two-thirds of the members vote in person, or by proxy, in favour of the resolution. In any other case, the resolution is revoked.

## **9 Return of Company Property**

### **9.1 Return of Company Property and Cessation of Display of Reference to the Company**

Upon the cessation of membership for any reason whatsoever, the former member shall immediately return to the company any property of the company in his possession and shall immediately cease to display in any form whatsoever, the symbol of the company or any reference to its former membership of the company, or hold itself out as being a member of the company.

## **10 Disputes and mediation**

**10.1** The grievance procedure set out in this rule applies to disputes under these Rules between-

- a) a member and another member; or
- b) a member and the company.

**10.2** The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.

**10.3** If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.

**10.4** The mediator must be-

- a) a person chosen by agreement between the parties; or
- b) in the absence of agreement-
  1. in the case of a dispute between a member and another member, a person appointed by the directors of the company; or
  2. in the case of a dispute between a member and the company, a person who is a mediator appointed or employed by need to decide who can mediate.

**10.5** A member of the Association can be a mediator.

**10.6** The mediator cannot be a member who is a party to the dispute.

**10.7** The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.

**10.8** The mediator, in conducting the mediation, must-

- a) give the parties to the mediation process every opportunity to be heard; and
- b) allow due consideration by all parties of any written statement submitted by any party; and
- c) ensure that natural justice is accorded to the parties to the dispute throughout the mediation.

**10.9** The mediator must not determine the dispute.

**10.10** If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

## **11 No profits for members**

### **11.1 Transfer of income or property**

Subject to the operation of rule 11.2, the assets and income of the company shall be applied solely in furtherance of the objects of the company and no portion of the income or assets of the company may be paid or transferred, directly or indirectly to any member, except as bona fide compensation for services rendered or expenses incurred on behalf of the company.

### **11.2 Payments, services and information**

Nothing in rule 11.1 prevents the payment in good faith of:

- a) remuneration to any officers or employees of the company for services actually rendered to the company;
- b) an amount to any member in return for any services actually rendered to the company (whether by the member or any corporation or partnership in which the member has an interest or is a member) or for goods supplied in the ordinary and usual course of business;
- c) reasonable and proper interest on money borrowed from any member; or
- d) reasonable and proper rent for premises let by any member to the company.

## **12 Fees**

- a) The company may require the payment of any membership application fees, annual subscriptions and other membership levies by members in the amounts and at such times and in such manner as determined by the directors from time to time in accordance with the By-Laws.
- b) The directors may in their discretion:
  1. set different fees for different classes of membership;
  2. determine that no membership application fees, annual subscriptions or other membership levies are payable by a member or members (in whole or in part) for any year; and
  3. extend the time to payment of membership application fees, annual subscriptions and other membership levies by any member or class of members.

c) The company must give members at least ten (10) Business Days notice of fees payable by members. A notice of fees must be in writing and specify the amount of the fee, and the time and place of payment of the fee. A fee is not invalid if a member does not receive notice of the fee.

d) A member must pay to the company the amount of each fee levied on the member at the times and places specified in the notice of the fee.

e) A member must pay to the company interest at the rate of 10% per annum on any amount referred to in rule 12(d) which is not paid on or before the time appointed for its payment, from the time appointed for payment to the time of the actual payment, and expenses incurred by the company because of the failure to pay or late payment of that amount. The directors may waive payment of all or any part of an amount payable under this rule 12(e).

f) The company may recover an amount due and payable under rules 12(d) and 12(e) from a member by commencing legal action against the member for all or part of the amount due. A member resigning is not entitled to a refund of any portion of the period's membership fees and any unpaid fees for a membership period for any member resigning after two (2) calendar months into such period is immediately due and payable upon resignation, otherwise such unpaid fees for such membership period shall not be recoverable by the company.

g) The debt due in respect of an amount payable under rules 12(d) and 12(e) is sufficiently proved by evidence that the name of the member sued is entered in the company's register of members and there is a record in the minute books of the company of the resolution requiring payment of the fee or the fixed amount referred to in rule 12(d).

h) The company may accept from any member all or any part of the fees payable before that amount is due and payable.

## **13 General meetings**

### **13.1 Convening of general meetings**

a) A general meeting may be convened by:

1. the directors by resolution of the board; or
2. members or the court in accordance with sections 249E, 249F and 249G of the Corporations Act.

b) A general meeting must be convened by the directors in accordance with section 249D of the Corporations Act.

c) The Company must hold an annual general meeting if required by, and in accordance with, the Corporations Act.



- d) Subject to rule 13. 1 (f), the directors may postpone, cancel or change the venue for a general meeting by giving notice not later than five (5) Business Days before the time at which the general meeting was to be held to each person who is at the date of the notice:
  - 1. a member;
  - 2. a director; or
  - 3. an auditor of the company.
- e) A notice postponing or changing the venue for a general meeting must specify the date, time and place of the general meeting.
- f) A general meeting convened under section 249D of the Corporations Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the member or members who requested it.
- g) A meeting of members may be held in two (2) or more places linked together by any technology that gives the members as a whole in those places a reasonable opportunity to participate in proceedings, enables the Chairperson to be aware of proceedings in each place, and enables the members in each place to vote on a show of hands and on a poll.
- h) General meetings shall be known as Round Table Conferences and held on an as needed basis as provided in clause 13.1.

### 13.2 Notice of general meetings

- a) Subject to this constitution, notice of a general meeting must be given within the time limits prescribed by the Corporations Act to each person who is at the date of the notice:
  - 1. a member;
  - 2. a director; or
  - 3. an auditor of the company.
- b) A notice of a general meeting must specify the date, time and place of the meeting (and if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this) and, except as provided in rule 13.2(c), state the general nature of the business to be transacted at the meeting and any other matters required under the Corporations Act.
- c) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of the annual financial report and the reports of the directors and auditor, the election of directors or the appointment or fixing of the remuneration of the auditor of the company.
- d) A member may waive notice of any general meeting by notice in writing to the company.

- e) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 13.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
  - 1. the non-receipt or failure occurred by accident or error; or
  - 2. before or after the meeting, the person:
    - A. has waived or waives notice of that meeting under rule 13.2(d); or
    - B. has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.
- f) A person's attendance at a general meeting:
  - 1. waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
  - 2. waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in rule 13.2(c), unless the person objects to considering the matter when it is presented.

### 13.3 Admission to general meetings

- a) The Chairperson of a general meeting may refuse admission to a person, or require that person to leave and remain out of the meeting, if that person:
  - 1. has a camera, tape recorder or video camera, or another audio or visual recording device;
  - 2. has a placard or banner;
  - 3. has an article which the Chairperson considers to be dangerous, offensive or liable to cause disruption;
  - 4. refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
  - 5. behaves or threatens to behave in a dangerous, offensive or disruptive manner; or is not:
    - A. a proxy, attorney or Representative of a member;
    - B. a director; or
    - C. an auditor of the company.
- b) A person who is entitled to receive notice of a meeting or who is requested by the directors or the Chairperson to attend a general meeting is entitled to be present, whether the person is a member or not.

### 13.4 Quorum at general meetings

- a) No business may be transacted at any general meeting, except the election of a Chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business and remains present throughout the meeting.
- b) A quorum consists of:
  1. if the number of members entitled to vote is two (2) or more - two (2) of those members; or
  2. if only one (1) member is entitled to vote - that member, present at the meeting.
- c) If a quorum is not present within thirty (30) minutes after the time appointed for a general meeting:
  1. where the meeting was convened by, or at the request of, a member or members, the meeting must be dissolved; or
  2. in any other case:
    - A. the meeting stands adjourned to the day, time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
    - B. if, at the adjourned meeting, a quorum is not present within thirty (30) minutes after the time appointed for the meeting, the meeting must be dissolved.

### 13.5 Chairperson of general meetings

- a) The Chairperson of directors must preside as Chairperson at each general meeting if present within fifteen (15) minutes after the time appointed for the meeting and willing to act.
- b) The directors present at a general meeting may elect a person present to Chairperson the meeting if:
  1. there is no Chairperson of directors;
  2. the Chairperson of directors is not present within fifteen (15) minutes after the time appointed for the meeting; or
  3. the Chairperson of directors is present within that time but is not willing to act as Chairperson of the meeting.
- c) Subject to rules 13.5(a) and (b), if at a general meeting:
  1. a Chairperson has not been elected by the directors; or
  2. an elected Chairperson is not available or is not willing to act as a Chairperson of the meeting (or part of the meeting), the members present must elect as Chairperson of the meeting another person who is present and willing to act.

### 13.6 Conduct of general meetings

- a) The Chairperson of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:
  1. proper and orderly debate or discussion, including limiting the time that a person present may speak on a motion or other item of business before the meeting; and
  2. the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- b) Subject to sections 250S and 250T of the Corporations Act, the Chairperson of a general meeting may at any time he or she considers it necessary or desirable for the proper and orderly conduct of the meeting:
  1. terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present; or
  2. allow debate or discussion on any business, question, motion or resolution being considered by the meeting to continue.
- c) Subject to sections 250S and 250T of the Corporations Act, the Chairperson of a general meeting may:
  1. refuse to allow debate or discussion on any business, question, motion or resolution which is not within the business referred to in the notice of meeting or rule 13.2(c); and
  2. refuse to allow any amendment to be moved to a resolution of which notice has been given under rule 13.2(a).
- d) A decision by a Chairperson under rules 13.6(a), (b) or (c) is final.
- e) The Chairperson of a general meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.
- f) If the Chairperson exercises his or her right under rule 13.6(e), it is in the Chairperson's sole discretion whether to seek the approval of the members present to the adjournment.
- g) If the Chairperson does seek the members' approval, the Chairperson must adjourn the meeting if the members present with a majority of votes agree or direct that the Chairperson must do so.

- h) The Chairperson's rights under rule 13.6(e) are exclusive and, unless otherwise required by the Chairperson, no vote may be taken or demanded by the members present in respect of any adjournment.
- i) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- j) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting the subject of the adjournment.
- k) Subject to rule 13.1(f), where a meeting is adjourned, the directors may postpone, cancel or change the venue of the adjourned meeting.

### 13.7 Decisions at general meetings

- a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and that decision is for all purposes a decision of the members.
- b) Subject to the Corporations Act, in the case of an equality of votes upon any proposed resolution at a meeting of members, unless the members present resolve that the Chairperson ought to have a second or casting vote in addition to any vote the Chairperson may have in his or her capacity as a member:
  1. the Chairperson of the meeting does not have a second or casting vote; and
  2. the proposed resolution is taken as having been lost.
- c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before a vote being decided by show of hands is taken or before or immediately after the declaration of the result of the show of hands:
  1. by the Chairperson of the meeting;
  2. by at least five (5) members present and entitled to vote on the relevant resolution; or
  3. by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- e) Unless a poll is duly demanded, a declaration by the Chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings

of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

1. If a poll is duly demanded at a general meeting, it will be taken when and in the manner the Chairperson of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
2. A poll cannot be demanded at a general meeting on the election of a Chairperson of the meeting.

- f) The demand for a poll may be withdrawn.

### 13.8 Voting rights

- a) Members have the following voting rights:
  1. on a show of hands, every person present who is representing a member has one vote; and
  2. on a poll, every member represented in person or by proxy or attorney has one vote.
- b) A member represented at a general meeting is not entitled to vote on any resolution if any fees or any other amount due and payable by that member to the company under this constitution have not been paid, or where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction. The company must disregard any vote on a resolution purported to be cast by a member represented at a general meeting where that member is not entitled to vote on that resolution.
- c) Where a person present at a general meeting represents by proxy, attorney or Representative more than one member, the following rules apply to a vote taken on a show of hands:
  1. the person is entitled to one vote only despite the number of members the person represents; and
  2. the person's vote will be taken as having been cast for all the members the person represents.
- d) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
  1. by its Nominee;
  2. by proxy; or
  3. by attorneys.
- e) An objection to the qualification of a person to vote at a general meeting:
  1. must be raised before or immediately after the result of the motion on which the vote objected to is given or tendered; and
  2. must be referred to the Chairperson of the meeting, whose decision is final.

- f) A vote not disallowed by the Chairperson of a meeting under rule 13.8(e) is valid for all purposes.

### 13.9 Representation at general meetings

- a) A proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- b) Unless otherwise provided in the Corporations Act or in the appointment, an appointment of a proxy, attorney or Representative is taken to confer authority:
  - 1. to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this constitution;
  - 2. to speak to any proposed resolution on which the proxy, attorney or Representative may vote;
  - 3. to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;
  - 4. even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions:
    - A. to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
    - B. to vote on any procedural motion, including any motion to elect the Chairperson, to vacate the Chairperson or to adjourn the meeting; and
    - C. to act generally at the meeting; and
  - 5. even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the rescheduled or adjourned meeting or at the new venue.
- c) The Chairperson of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the Chairperson that the person has been validly appointed as a proxy, attorney or Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- d) Where a member appoints two (2) proxies to vote at the same general meeting and the authority of one is not conditional on the other failing to attend or vote, the following rules apply:
  - 1. where the appointment does not specify the proportion or number of the member's votes which each proxy may exercise, each proxy may exercise half of the member's votes;
  - 2. on a show of hands, neither proxy may vote; and

- 3. on a poll, each proxy or attorney may only exercise the voting rights the proxy represents.

- e) An instrument appointing an attorney or Representative must be in a form as the directors may prescribe or accept. An instrument appointing a proxy is valid if it is signed by the member making the appointment and contains the name and address of that member, the name of the company, the name of the proxy or the name of the office of the proxy, and the meetings of members at which the proxy may be used. The Chairperson of a meeting of members may determine that an instrument appointing a proxy is valid even if it contains only some of this information.
- f) If the name of the proxy or the name of the office of the proxy in a proxy form of a member is not filled in, the proxy of that member is the person specified by the company in the form of proxy in the case the member does not choose, or if no person is so specified, the Chairperson of that meeting.
- g) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- h) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received:
  - 1. at the registered office of the company, at the facsimile number at its registered office or at another place, facsimile number or electronic address specified for that purpose in the notice convening the meeting; and
  - 2. at least forty eight (48) hours before the time scheduled for the commencement of the meeting, as specified in the notice of meeting.
- i) Unless the company has received written notice of the matter by the time and at the place or in the manner set out in rules 13.9(j)1 and 13.9(j)2, a vote cast by a proxy or attorney is valid even if, before the proxy or attorney votes:
  - 1. a Cessation Event occurs in relation to the appointer; or
  - 2. the member revokes the proxy's or attorney's appointment; or
  - 3. the member revokes the authority under which a third party appointed the proxy or attorney.
- j) The authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while the member is present at the meeting.

### **13.10 Resolutions without meetings**

- a) Subject to rule 13.10(c), the company may pass a resolution without a general meeting being held, if all of 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.
- b) For the purposes of rule 13.10(a):
  - 1. the document may be sent to members in any manner described in rule 18;
  - 2. the resolution is passed when the last member signs;
  - 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;
  - 4. a signature of a member transmitted to the company by facsimile is sufficient evidence of signature so long as the original is produced within thirty (30) days of signing;
  - 5. where a share is held jointly, each joint member must sign.
- c) Rule 13.10(a) does not apply to a resolution to remove an auditor.
- d) Where a document is signed in accordance with rule 13.10(a) the document is to be taken as a minute of the passing of the resolution.

## **14 Directors**

### **14.1 Appointment of directors**

- a) The minimum number of directors is three (3). The maximum number of directors is to be fixed by the directors, but must not be more than five (5) unless the company in general meeting determines otherwise.
- b) The initial directors of the Company are the persons who have consented to act as directors and are set out in the Company's application for registration as a company. Those persons hold office subject to the Constitution.
- c) All Directors, other than the initial Directors and the CEO, must be appointed by the Members by election at a general meeting.
- d) An election must be conducted at each annual general meeting at which a Director is scheduled to retire.
- e) In the case of a casual vacancy, the remaining Directors may appoint a successor to fill such casual vacancy to hold office until the next election at the annual general meeting and until such appointment is made the continuing members of the board shall act notwithstanding such vacancy.
- f) Voting rights for Members for election of Directors are the same as for any other resolution at general meetings.

### **14.2 Retirement of directors**

- a) Subject to rule 14.2(c) at the close of every annual general meeting (not including the company's first annual general meeting), one third of the Directors (not including the CEO) or, if their number is not a multiple of three, then the number nearest to but not more than one third of the Directors (not including the CEO), must retire.
- b) The Directors to retire by rotation at an annual general meeting are those Directors who have been longest in office since their last appointment (not including the CEO). Directors appointed on the same day may agree amongst themselves or determine by lot which of them must retire.
- c) A retiring Director remains in office until the end of the relevant meeting and will be eligible for reappointment at the meeting.

### **14.3 Nomination of Director**

**14.3.1** A person other than a retiring Director is not eligible for election as a Director at a general meeting unless a written notice has been left at the Office of the company by or on behalf of a Member ("the nominating Member"):

- a) stating that the nominating Member nominates a person ("the candidate") not being the nominating Member himself or a Nominee, employee, partner or shareholder of the nominating Member for election as a Director; and
- b) stating that the candidate consents to the nomination; and
- c) signed by the nominating Member and the candidate.

**14.3.2** A notice given in accordance with Rule 14.3.1 must be left at the Office of the company at least 14 days before the relevant general meeting.

**14.3.3** A written notice referring to all Director vacancies and each candidate for election must be sent to all members at least 7 days before every general meeting at which an election of a Director will take place.

### **14.4 Vacation of office**

The office of a Director immediately becomes vacant if the Director:

- a) is prohibited by the Corporations Act or other legislation from holding office or continuing as a Director;
- b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it;
- c) resigns by notice in writing to the company;

- d) is removed by resolution of the company in general meeting;
- e) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of the interest is required by the Corporations Act; or
- f) is an employee or officer of a Member that ceases to be a Member.

## **14.5 Chairperson**

- 14.5.1**
- a) In the absence of an existing Chairperson appointed pursuant to this subclause, the Directors may at the first Director's Meeting following any Annual General Meeting, appoint a person who at that time may be neither a member nor a director of the company, to be an independent Chairperson of the company.
  - b) Notwithstanding the provisions of clause 14.1 upon appointment pursuant to subclause (a) the Chairperson shall be granted the rights of membership of the company and shall assume the rights of a director of the company including rights to vote as a member and as a director.
  - c) In making the appointment of a Chairperson pursuant to subclause (a) hereof the directors shall negotiate with the Chairperson an Executive Service Agreement specifying the terms of appointment, all conditions of appointment all the functions and expectations of the Chairperson role.
  - d) The Chairperson so appointed pursuant to subclause (a) hereof shall remain as Chairperson of the company during the term of appointment as agreed by the Directors pursuant to this clause.
  - e) A Chairperson appointed pursuant to this clause 14.5.1 shall both in meetings of members and in meetings of directors have a second or casting vote in addition to any vote the Chairperson may have in his or her capacity as a member or as a Director in the event of an equality of votes in respect of any proposed resolution at a meeting of members or meeting of Directors.

**14.5.2** In the event that, following any Annual General Meeting there is no existing Chairperson appointed pursuant to clause 14.5.1 and the Directors do not propose to appoint a Chairperson pursuant to that clause then the provisions of clause 14.5.3 shall apply in relation to the role of Chairperson.

**14.5.3** a) The directors shall at the first Directors meeting following each annual general meeting, elect by ordinary majority resolution a director as Chairperson, who shall be the President of the company.

- b) The Chairperson's term of office as Chairperson shall expire on the earlier to occur of the conclusion of the first annual general meeting after he or she was last elected as Chairperson or the expiry of the Chairperson's term of office as a Director where not re-elected as a Director.
- c) A retiring Chairperson is eligible for re-election as Chairperson.
- d) The Directors may elect a Director as Deputy Chairperson to act as Chairperson in the Chairperson's absence.
- e) The Directors present may elect a Director as chairperson of a Directors' meeting if:
  1. There is no Chairperson or Deputy Chairperson; or
  2. neither of the Chairperson or Deputy Chairperson is present within fifteen (15) minutes after the time appointed for holding the Directors' meeting; or
  3. the Chairperson and Deputy Chairperson are unwilling to act as chairperson of the Directors' meeting.

## **14.6 Remuneration of Directors**

### **14.6.1 Remuneration of Non-Executive Directors**

- a) Non-executive directors shall not be paid remuneration for their services as directors.
- b) A non-executive director may be paid for any service rendered to the company by the non-executive director in a professional or technical capacity, other than in the capacity as director, where the provision of the service has the prior approval of the directors and where the amount payable is approved by the directors and is not more than an amount which commercially would be reasonable payment for the service.
- c) The directors are entitled to be paid all travelling and other expenses properly and reasonably incurred by them in connection with the affairs of the company, including attending and returning from meetings of the directors or of committees of the directors.
- d) The company may also pay a premium for a contract insuring a person who is or has been a non-executive director against liability incurred by the person as a director, except in circumstances prohibited by the Corporations Act.

### **14.6.2 Remuneration of Executive Directors**

The directors may appoint a director to any executive position in the company, including a CEO, on such terms as they think fit, including but not limited to:

1. The remuneration of an executive director from time to time will be fixed by the directors.

2. The company may reimburse an executive director his or her expenses properly and reasonably incurred as a director or in the course of his or her office.
3. Except in circumstances prohibited by the Corporations Act, the company may pay a premium for a contract insuring a person who is or has been an executive director against liability incurred by the person as a director.
4. Upon ceasing to hold the executive position in the company for whatever reason, that director shall also cease to be a director of the company creating a vacancy in the office of director.

**14.7** (i) Directors of the Company may be either Non-Executive directors or Executive directors

(ii) A Non-Executive director is required to be either a member of the company or the Nominee of a member of the company to qualify for appointment.

(iii) An Executive director may be a member of the company or the Nominee of a member of the company but is not required to be so.

#### **14.8 Interested directors**

a) A director may hold any other office or place of profit, other than as auditor, in the company or a related body corporate in conjunction with his or her directorship. A director may be appointed to that office or place of profit on the terms as to remuneration, tenure of office and otherwise as the directors think fit.

b) A director of the company may be a director or other officer of:

1. a related body corporate;
2. a body corporate promoted by the company; or
3. a body corporate in which the company is interested, as shareholder or otherwise,

or be otherwise interested in any of those bodies corporate. A director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of that body corporate or from having an interest in that body corporate.

c) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company as the directors think fit. This includes voting in favour of any resolution appointing a director as a director or other officer of that body corporate, or voting for the payment of remuneration to the directors or other officers of that body corporate. A director may, if permitted by law, vote in favour of the exercise of those voting rights even if he or she is, or may be about to be appointed, a director or other officer of that other body corporate.

d) A director is not disqualified merely because of being a director from contracting with the company in any respect including, without limitation:

1. selling any property to, or purchasing any property from, the company;
2. lending any money to, or borrowing any money from, the company with or without interest and with or without security;
3. guaranteeing the repayment of any money borrowed by the company for a commission or profit;
4. underwriting or guaranteeing the subscription for securities in the company or in a related body corporate or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise, for a commission or profit; or
5. being employed by the company or acting in any professional capacity, other than auditor, on behalf of the company.

e) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.

f) No director contracting with the company or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under a contract or arrangement of that kind merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.

g) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with section 195(2) of the Corporations Act, or another exception applies under the Corporations Act, which permits that director to do so.

h) Subject to rules 14.8(i) and 14.8(j), a director who is in anyway interested in a contract or arrangement or proposed contract or arrangement (other than by having a material personal interest) may, despite that interest:

1. be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
2. sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
3. vote in respect of the contract or arrangement or proposed contract or arrangement or any matter arising out of those things.

i) Rule 14.8(h) does not apply if, and to the extent that, it would be contrary to Chapter 2D.1, Division 2 of the Corporations Act or any other provision of the Corporations Act.

- j) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this rule bind all directors and apply in addition to any obligations imposed on the directors by the Corporations Act to disclose interests to the company.

#### **14.9 Powers and duties of directors**

- a) The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required by the Corporations Act or this constitution to be exercised by the company in general meeting.
- b) Without limiting the generality of rule 14.9(a), the directors may exercise all the powers of the company to borrow or otherwise raise 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.
- c) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments or other documents must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.
- d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- e) The directors may:
  1. appoint or employ any person to be an officer, agent or attorney of the company for the purposes, for the period and on the conditions as they think fit;
  2. resolve to delegate any of their powers to an officer, agent or attorney and the officer, agent or attorney must exercise the powers delegated in accordance with any directions of the directors;
  3. authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  4. subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer (excluding a director of the company), agent or attorney of the company at any time, with or without cause.
- f) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

#### **14.10 Proceedings of directors**

- a) The directors may hold meetings for the conduct of business and adjourn and otherwise regulate their meetings as they think fit.
- b) Subject to the Corporations Act, the contemporaneous linking together by a form of technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors held using a form of technology.

#### **14.11 Convening of meetings of directors**

- a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- b) A secretary must, on the requisition of a director, convene a meeting of the directors.

#### **14.12 Notice of meetings of directors**

- a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice is a director, other than a director on leave of absence approved by the directors.
- b) A notice of a meeting of directors:
  1. must specify the time and place of, or form of technology for, the meeting;
  2. must state the nature of the business to be transacted at the meeting; and
  3. may be given in person, by post or, subject to the Corporations Act, by a form of technology.
- c) A director may waive notice of a meeting of directors by notifying the company to that effect in person, by post or by a form of technology.
- d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  1. the non-receipt or failure occurred by accident or error;
  2. before or after the meeting, the director:
    - A. has waived or waives notice of that meeting under rule 14.12(c); or
    - B. has notified or notifies the company of his or her agreement to that act, matter, thing or resolution personally, by post or by a form of technology; or
  3. the director attended the meeting.
- e) Attendance by a person at a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.



### **14.13 Quorum at meetings of directors**

- a) No business may be transacted at a meeting of directors unless there is a quorum of directors at the time the business is dealt with.
- b) A quorum consists of:
  - 1. if the directors have fixed a number for the quorum, that number of directors; and
  - 2. in any other case, two directors.
- c) If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the company.

### **14.14 Written resolutions**

- a. The directors may pass a resolution without a directors meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed in the last director signs.
- b. For the purposes of rule 14.14(a) 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.
- c. Any document referred to in this rule may be in the form of a facsimile or electronic transmission.
- d. The minutes of directors' meeting must record that a meeting was held in accordance with this rule 14.14.

### **14.15 Committees of directors**

- a) The directors may establish either or both of the following:
  - 1. Committees with powers delegated by the directors, to be known as "Board Committees"; and
  - 2. Advisory committees, with no delegated powers, to advise directors on specified matters, and to be known as "Advisory Committees".
- b) Board Committee members and Advisory Committee members will be appointed by the directors.
- c) At least one member of each Board Committee must be a director.

- f) Meetings of any Board Committee or Advisory Committee will be governed by the provisions of this Constitution which deal with directors' meeting so far as they are applicable and are not inconsistent with any directions of the directors. The provisions apply as if each Board Committee or Advisory Committee member was a director.
- e) Rule 14.14 regarding written resolutions applies to resolutions of Board Committees and Advisory Committees as if each Board Committee or Advisory Committee member was a director.

### **14.16 Delegation**

- a) The directors may, upon any terms and conditions or restrictions as they see fit, delegate any of their powers, other than those which by law must be dealt with by the directors as a board, to:
  - 1. a board committee;
  - 2. a director;
  - 3. an employee of the company; or
  - 4. any other person
- b) A Board Committee to which, or person to whom, any powers have been delegated must exercise their powers in accordance with any directions of the directors and a power exercised in that way is taken to have been exercised by the directors.
- c) A Board Committee to which, or person to whom, any powers have been delegated may be authorised by the directors to sub-delegate all or any of the powers for the time being vested in it.
- d) The directors may at any time revoke any delegation of power.

### **14.17 Validity of acts**

If it is discovered that:

- a) there was a defect in the appointment of a person as a director; or
- b) any of the circumstances specified in rule 14.4 applied to a person appointed as a director,

all acts of the directors before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## **15 Executive officers**

### **15.1 Chief Executive Officer**

The directors may appoint any person, including a director, to the position of Chief Executive Officer (CEO) for the period and on the terms (including as to remuneration) that the directors sees it.

## 15.2 Secretaries

- a) There must be at least one secretary of the company, appointed by the directors for a term and at remuneration and conditions determined by them.
- b) The secretary is entitled to attend and be heard on any matter at all directors' and general meetings but shall have no voting rights.
- c) The directors may, subject to the terms of the secretary's employment or engagement contract, suspend, remove or dismiss the secretary.
- d) If the CEO is appointed as secretary, the CEO will not be entitled to any remuneration in addition to his or her remuneration as CEO.

## 15.3 Provisions applicable to all executive officers

- a) A reference in this rule 15.3 to an executive officer is a reference to a CEO or secretary appointed under rule 15.
- b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the directors think fit.
- c) Subject to any contract between the company and the relevant executive officer, an executive officer of the company may be removed or dismissed by the directors at any time, with or without cause. Such removal or dismissal does not remove that person from office as a director.
- d) The directors may:
  1. confer on an executive officer the powers, discretions and duties as they think fit, and may resolve to delegate any powers, discretions and duties vested in or exercisable by the directors;
  2. withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
  3. authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- e) An executive officer is not required to be a member to qualify for appointment.
- f) An act done by a person acting as an executive officer is not invalidated by reason only of:
  1. a defect in the person's appointment as an executive officer; or
  2. the person being disqualified to be an executive officer,

if that circumstance was not known by the person when the act was done.

## 16 Seals

### 16.1 Adoption of common seal

- a) The directors may determine that the company have a common seal or for the company to no longer have a common seal.
- b) Rules 16.2, 16.3, 16.4, 16.5 and 16.6 only apply if the company has a common seal.

### 16.2 Safe custody of Seal

The directors must provide for the safe custody of the Seal.

### 16.3 Use of Seal

- a) The Seal must be used only by the authority of the directors or a committee of the directors authorised by the directors to authorise the use of the Seal.
- b) The authority to use the Seal may be given before or after the Seal is used.
- c) Subject to rule 16.5, until the directors otherwise determine, the fixing of the Seal to a document must be witnessed by a director and by another director, a secretary or another person appointed by the directors to witness that document or a class of documents in which that document is included.

### 16.4 Duplicate seal

- a) The company may have for use in place of its common seal one or more duplicate seals, each of which must be a facsimile of the common seal of the company with the addition on its face of the words "duplicate seal" and the name of the place where it is to be used.
- b) A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the company.

### 16.5 Certificate seal

- a) The company may have for use on certificates for securities of the company in place of its common seal one or more duplicate seals, each of which must be a facsimile of the common seal of the company with the addition on its face of the words "certificate seal".
- b) A certificate for securities of the company sealed with a certificate seal is to be taken as having been sealed with the common seal of the company.

### 16.6 Sealing and signing of certificates

The directors may determine either generally or in a particular case that the seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the company by some mechanical or other means.

## **17 Winding up**

Upon the winding up or dissolution of the company, any assets remaining after satisfaction of all of the company's debts and liabilities, will not be paid to or distributed among the members, but will be transferred to some other organisation determined by the board at or before the time of winding up or dissolution of the company and, in default of any determination, by the Supreme Court of New South Wales, Australia:

- a) which has objectives similar to the objectives of the company;
- b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of rule 11; and
- c) which, if the company is a public benevolent institution for the purposes of any Commonwealth taxation law, is a public benevolent institution for the purposes of any Commonwealth taxation law.

## **18 Minutes and records**

### **18.1 Minutes**

The directors must cause minutes to be made of:

- a) the names of the directors present at all directors meetings and meetings of Board Committees;
- b) all proceedings and resolutions of general meetings, directors' meetings and meetings of Board Committees;
- c) all resolutions passed by directors in accordance with clause 14.14;
- d) all appointments of officers; and
- e) all orders made by the directors and Board Committees; and
- g) all disclosures of interests made.

### **18.2 Signing of minutes**

- a) Minutes of a meeting must be signed by the Chairperson of the meeting or the Chairperson of the next meeting within a reasonable time after the meeting.
- b) Minutes of the passing of a resolution without a meeting must be signed by a director within a reasonable time after the resolution is passed.

### **18.3 Minutes as evidence**

A minute that is recorded and signed in accordance with rules 18.1 and 18.2 is evidence of the proceeding, a resolution to which it relates, unless the contrary is proved.

## **18.4 Inspection of records**

- a) Subject to the Corporations Act, the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of members other than directors.
- b) A member other than a director does not have the right to inspect any books, records or documents of the company except as provided by law or authorised by the directors.
- c) The company must establish and administer all registers required to be kept by the company in accordance with the Corporations Act and each member must provide the company with such information as is required for the company to comply with this rule 18.4(c). If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days of the date of such change occurring.
- d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- e) The company must keep the financial records required by the Corporations Act.

## **19 Indemnity and insurance**

### **19.1 Persons to whom rules 19.2 and 19.4 apply**

Rules 19.2 and 19.4 apply:

- a) to each person who is or has been a director or executive officer (within the meaning of rule 14) of the company;
- b) to such other officers or former officers of the company or of its related bodies corporate as the directors in each case determine; and
- c) if the directors so determine, to any auditor or former auditor of the company or of its related bodies corporate.

### **19.2 Indemnity**

The company may indemnify, to the extent permitted by law, each person to whom this rule 19.2 applies for all losses or liabilities incurred by the person as an officer and, if the directors so determine, an auditor of the company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

### **19.3 Extent of Indemnity**

The indemnity in rule 19.2

- a) is a continuing obligation and is enforceable by a person to whom rule 19.2 applies even though that person may have ceased to be an officer or auditor of the company or of a related body corporate;
- b) applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- c) operates only to the extent that the loss or liability is not paid by insurance.

### **19.4 Insurance**

The company may, to the extent permitted by law:

- a) purchase and maintain insurance; or
- b) pay or agree to pay a premium for insurance,

for any person to whom this rule 19.4 applies against any liability incurred by the person as an officer or auditor of the company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

### **19.5 Savings**

Nothing in rule 19.2 or 19.4

- a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- b) limits the capacity of the company to indemnify or provide insurance for any person to whom those rules do not apply.

## **20 Audit and accounts**

- a) The directors must cause the company to keep written financial records in relation to the business of the company in accordance with the requirements of the Corporations Act.
- b) The directors must cause the financial records of the company to be audited in accordance with the requirements of the Corporations Act.

## **21 Notices**

### **21.1 Notices by the company to members**

- a) A notice may be given by the company to a member:
  1. by serving it personally at, or by sending it by post in a prepaid envelope to, the member's address as shown in the register of members or any other address, or by facsimile or electronic mail to a facsimile number or electronic address, as the member has supplied to the company for the giving of notices; or
  2. if the member does not have a registered address and has not supplied another address to the company for the giving of notices, by exhibiting it at the registered office of the company.
- b) The fact that a person has supplied a facsimile number for the giving of notices does not require the company to give any notice to that person by facsimile.
- c) A signature to any notice given by the company to a member under this rule 18 may be in writing or a facsimile printed or fixed by some mechanical or other means.
- d) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

### **21.2 Notices by the company to directors**

Subject to this constitution, a notice may be given by the company to any auditor or director either by serving it personally at, or by sending it by post in a prepaid envelope to, the auditor's or director's usual residential or business address, or such other address, or by facsimile or electronic mail to such facsimile number or electronic address, as the auditor, or director has supplied to the company for the giving of notices.

### **21.3 Notices by members or directors to the company**

- a) Subject to this constitution, a notice may be given by a member or director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by facsimile or electronic mail to the principal facsimile number or electronic address at the registered office of the company.
- b) The directors may resolve generally, or on a case by case basis, that a notice that is to be received by the company is not to be accepted if given by electronic means (excluding by facsimile).

- c) If a resolution of directors is passed under rule 21.3(b), the company must give sufficient notice of the resolution to those required to give the particular notice to allow for the giving of notice by other means.

#### **21.4 Notices to members outside Australia**

A notice to be sent to a member outside Australia and its external territories must be sent by airmail, by facsimile or by electronic mail, or in another way that ensures it will be received quickly.

#### **21.5 Time of service**

- a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
  1. in the case of a notice of a general meeting, on the day after the date of its posting; or
  2. in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- b) Where a notice is sent by facsimile, the notice is to be taken to be given on the Business Day after it is sent.
- c) Where a notice is sent by electronic mail, service of the notice is taken to be effected if the sender receives a confirmation of delivery and is to have been effected on the Business Day after it is sent.
- d) Where the company gives a notice under rule 21.1(a)(ii) by exhibiting it at the registered office of the company, service of the notice is to be taken to be effected when the notice was first so exhibited.

#### **21.6 Other communications and documents**

Rules 21.1 to 21.5 (inclusive) apply, so far as they can and with necessary changes, to the service of any communication or document.

#### **21.7 Notices in writing**

A reference in this constitution to a notice in writing includes a notice given by facsimile or another form of written communication.

### **22 Rules**

#### **22.1 Power to formulate rules of the company**

Without limiting the board's powers under this constitution, the board may from time to time pass resolutions to make regulations and rules relating to;

- a) the qualifications of members and applicants for membership;
- b) the procedure and timing of an application for admission;

- c) procedure for nomination of directors;
- d) the delegation by the board of its powers to committees;
- e) the powers, role and function of any committee members, executive or directors (including the terms of appointment of any executive director);
- f) any other matter not being inconsistent with this constitution which relates to the operations or conduct of the company.

#### **22.2 Inconsistency**

In the event of any inconsistency between rules or regulations formulated pursuant to rule 19.1 and the provisions of this constitution or the provisions of the Corporations Act, the provisions of this constitution and the Corporations Act shall prevail.

### **23 General**

#### **23.1 Submission to jurisdiction**

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the registered office of the company is located, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

#### **23.2 Prohibition and enforceability**

Any provision of, or the application of any provision of, this constitution which is void, illegal, prohibited or unenforceable in any place:

- a) is, in that place, ineffective only to the extent to which it is void, illegal, prohibited or unenforceable; and
- b) does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

## **Schedule 1**

### **Events affecting the suitability of an individual to hold the position of Nominee of a Member or Affiliate Member**

If the individual:

1. dies;
2. becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
3. becomes of unsound mind or becomes liable to be dealt with in any way under a law relating to mental health;
4. is convicted of a criminal offence;
5. in any civil proceedings in a court in Australia or elsewhere, is found to have acted dishonestly;
6. is the subject of an adverse finding in relation to his or her conduct, competence or recognition by any body or authority having jurisdiction to do so;
7. becomes prohibited from being a company director or manager by reason of any order made under the Corporations Act; or
8. would fail in his or her own right to meet the criteria for membership of the company or a class of membership of the company

**BY-LAWS of Australian Collectors & Debt Buyers Limited**

**By-Law created 11 October 2011      Affiliate Membership**

Pursuant to Rule 5.1 the directors have resolved that notwithstanding the provisions of Rule 5.2.ii any applicant for Affiliate Membership shall be an entity whose purpose and business aligns with and not in competition with or in contradiction to the interests of the Company, its members and their businesses.