

**AMENDMENT TO CONSOLIDATED ARTICLES OF ASSOCIATION  
UNITED SUPER PTY LTD  
ACN 006 261 623**

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**Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013 No. 61, 2013.**

**An Act to amend the law in relation to superannuation, corporations and first home saver accounts, and for related purposes.**

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Change effective 2013: Relates to the ability of the Chair and Independent Director to vote – see clauses 6.0 and 35.4 of the Constitution. Statements to the effect that the Chair and the Independent Director cannot vote are now VOID.

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***68C Voting by a director of a corporate trustee—governing rules***

*(1) This section applies to a regulated superannuation fund, other than a self-managed superannuation fund, of which the trustee is a body corporate.*

***(2) A provision in the governing rules of the fund is void to the extent that it purports to preclude a director of the trustee from voting on a matter relating to the fund.***

*Exception:*

*(3) Subsection (2) does not apply to a provision in the governing rules of the fund to the extent that the provision:*

*(a) precludes a director of the trustee of the fund from voting on a matter in which the director has a material personal interest; or*

*(b) otherwise relates to voting by a director of the trustee of the fund on a matter in which the director has a material personal interest; or*

*(c) precludes a director of the trustee of the fund from voting where there is a conflict of a kind described in paragraph 52(2)(d) or 52A(2)(d); or*

*(d) otherwise relates to voting by a director of the trustee of the fund where there is a conflict of a kind described in paragraph 52(2)(d) or 52A(2)(d); or*

*(e) precludes a director of the trustee of the fund from exercising a casting vote; or*

*(f) ensures compliance by the trustee of the fund, or a director of the trustee of the fund, with a prudential standard that deals with conflicts of interest or duty.*

**CONSOLIDATED**  
**ARTICLES OF ASSOCIATION**  
**UNITED SUPER PTY LTD**  
**ACN 006 261 623**  
**(AS AT 26 OCTOBER 2006)**

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**Corporations Law**  
**A Company Limited by Shares**  
**ARTICLES OF ASSOCIATION**  
**OF**  
**UNITED SUPER PTY. LTD.**  
**ACN 006 261 623**

**1. Table "A" Not Applicable**

The regulations contained in Table A in Schedule 1 to the Corporations Law shall not apply to the company.

**2. Proprietary Company**

The company is a proprietary company and therefore:

- (a) The number of members for the time being of the company (exclusive of persons who are in the employment of the company or of any subsidiary of the company and of persons who, having been formerly in the employment of the company or of any subsidiary of the company, were, while in that employment and have continued after that employment to be, members of the company) is not to exceed fifty, but where two or more persons hold one or more shares in the company jointly, they shall for the purposes of this article be treated as a single member.
- (b) Any invitation to the public to subscribe for or to accept subscriptions for any shares in or debentures of the company or to deposit money with or to accept deposits of money with the company for fixed periods or payable at call, whether bearing or not bearing interest, is hereby prohibited.
- (c) The directors in their absolute and uncontrolled discretion may refuse to register any transfer of shares without assigning any reason therefor and shall refuse to register any such transfer if to do so would breach the Relevant Requirements.

**3. Interpretation - Definitions**

**3.1** In these articles:

**"Complying Superannuation Fund"** in relation to a year of income means a fund which is a regulated superannuation fund which complies with the Relevant Requirements;

**"Corporations Law"** means the Corporations Law as amended and includes reference to the regulations and the application orders;

**"Employer"** means the Employer as defined in the Trust Deed;

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**"Employer Body"** means an organisation representing the interests of an Employer or Employers in accordance with the Relevant Requirements;

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"**Equal Representation**" means an equal number of Employer Bodies and Fund Member Bodies as directors of the company or as members of a committee;

"**Fund**" means the Fund known as the CONSTRUCTION & BUILDING UNIONS SUPERANNUATION;

"**Fund Member**" means a person who is admitted to membership of the Fund in accordance with the Trust Deed and has not ceased to be a Member of the Fund in accordance with the Trust Deed;

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"**Fund Member Body**" means a trade union or a nominee of the Australian Council of Trade Unions representing the interests of Fund Members in accordance with the Relevant Requirements;

"**Meeting of Fund Members**" means a meeting of Fund Members convened in accordance with the terms of the Trust Deed or in accordance with the provisions of these articles;

"**Member**" means a shareholder of the company;

"**Relevant Requirements**" means the Relevant Requirements as defined in the Trust Deed;

"**Seal**" means the common seal of the company and includes any official seal of the company;

"**Secretary**" means any person appointed to perform the duties of a secretary of the company;

"**Trust Deed**" means the deed dated 29th day of May 1984, as amended from time to time, by which the Fund was established;

Unless the contrary intention appears, words and expressions defined in the Trust Deed shall have the same meaning when used in the memorandum of association and these articles of association.

3.2 Division 10 of Part 1.2 of the Corporations Law applies in relation to these articles as if they were an instrument made under the Corporations Law as in force on the date on which these articles become binding on the company.

3.3 Except so far as the contrary intention appears in these articles, an expression has, in a provision of these articles that deals with a matter dealt with by a particular provision of the Corporations Law, the same meaning as in that provision of the Corporations Law.

#### 4. **Articles Subject to Relevant Requirements**

These articles shall be read and construed on the basis that the provisions of the Relevant Requirements are incorporated into these articles to the extent that they impose covenants or obligations on the company to enable the Fund to qualify as a Complying Superannuation Fund and these articles shall be further read and construed on the basis that where there is any inconsistency between a provision in these articles and a provision under the Relevant Requirements the latter shall prevail **PROVIDED THAT** these articles shall not be so read or construed and no such provision of the Relevant Requirements shall be so incorporated if to do so would contravene the Corporations Law.

## 5. Exercise of Powers

The company is to act as trustee of the Fund but nothing in this article shall be taken to restrict or limit in any way the powers of the company, other than as provided in the memorandum of association and to ensure compliance with the Relevant Requirements.

## 6. Share Capital and Variation of Rights

- 6.1 The capital of the company shall be divided into 100 "A" Class shares of \$1.00 each 100 "B" Class shares of \$1.00 each one non-voting share and the remaining shares shall be unclassified.

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- 6.2 Each holder of an "A" Class share and the non-voting share shall be a Fund Member Body whose membership is in accordance with the Relevant Requirements.

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- 6.3 Each holder of a "B" Class share shall be an Employer Body whose membership is in accordance with the Relevant Requirements.

- 6.4 The rights, privileges and conditions attached to the shares of the company include the following:

- (a) the "A" Class shares and "B" Class shares of the company shall confer on their holders the right to vote at general meetings of the company and shall be the only voting shares;
- (b) the shares of the company shall carry no right to a dividend.

- 6.5 In circumstances where a member ceases to be eligible to be a member in accordance with article 6.2 and article 6.3 that member must transfer the shares in that member's name in accordance with the provisions of these articles as soon as practicable after ceasing to be eligible to continue as a member.

- 6.6 The holders of the "A" Class shares, the "B" Class shares and the non-voting share are intended to be in the first instance the following shareholders:

Number of Shares	Shareholders
One "A" Class share	Communication, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia
One "A" Class share	AWU/FIME Amalgamated Union
Three "A" Class shares	Construction, Forestry, Mining and Engineering Union
One "A" Class share	Automotive, Food, Metals and Engineering Union
One "A" Class share and one non-	A nominee of Australian Council



voting share

of Trade Unions

Seven "B" Class shares

Master Builders Australia Inc.  
ARBN 008 383 483.

- 6.7 The "A" Class share and the non-voting share referred to in article 6.6 above as being held by a nominee of the Australian Council of Trade Unions shall be held by such nominee or nominees as the Australian Council of Trade Unions shall nominate from time to time and on such conditions as it determines from time to time.

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- 6.8 In the event of an existing Member ceasing to be an Employer Body or a Fund Member Body, that Member must transfer its shares to another organisation which the directors acknowledge to be an Employer Body or a Fund Member Body.
- 6.9 Save as otherwise provided in these articles, "A" Class shares and "B" Class shares shall be ordinary shares and shall rank equally with regard to voting rights and return of capital.

**7. Shares Issued by the Directors**

Where it is determined appropriate to issue additional shares in the company, the directors may issue those shares but only to those persons set out in articles 6.2 and 6.3 and subject to the Relevant Requirements.

**8. Share Certificates**

- 8.1 A person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the company in accordance with the Corporations Law but, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate.
- 8.2 Delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

**9. Transfer of Shares**

- 9.1 Subject to these articles, a member may transfer all or any of the member's shares by instrument in writing in any usual or common form or in any other form that the directors approve.
- 9.2 An instrument of transfer referred to in article 9.1 shall be executed by or on behalf of both the transferor and the transferee.
- 9.3 A transferor of shares shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.
- 9.4 The directors may in their absolute discretion decline to register any transfer or transmission of shares without assigning any reason therefor.
- 9.5 If, in any case, a proposing transferor member after having become bound to execute the transfer defaults in executing the transfer or completing the transfer of a share as is required under these articles, the company may receive the purchase money for that share and shall

thereupon cause the name of the transferee to be entered in the register as the holder of the share. The receipt by the company of the purchase money shall be a good discharge to the transferee. After the transferee's name has been entered in the register in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any person.

**10. Instrument of Transfer**

The instrument of transfer must be left for registration at the registered office of the company, together with such fee (if any) not exceeding \$1.00 as the directors require, accompanied by the certificates of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the company shall, subject to the powers vested in the directors by these articles, register the transferee as a shareholder.

**11. Suspended Registration of Transfers**

The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine not exceeding in the whole thirty days in any year.

**12. Restriction on Transfer of Shares**

No transfer of shares shall be permitted unless any share which is offered for transfer is transferred to a person described in article 6.2 and article 6.3. This article shall have effect notwithstanding the provisions of article 11.

**13. Transmission of Shares**

13.1 In the case of the death, bankruptcy, insolvency or other incapacity of a member, that member shall be deemed to have offered their shares for transfer to such a person nominated by the directors who qualifies as a person eligible to be a member under article 6.2 and article 6.3 the day before the death, bankruptcy, insolvency or other incapacity of the member. The provisions of articles 9, 10 and 11 shall then apply in respect of the transfer of those shares.

13.2 This article does not release the estate or legal personal representative of a deceased, bankrupt, insolvent or incapacitated member from any liability in respect of the share attributable to the period of membership prior to the death, bankruptcy, insolvency or other incapacity of the member.

**14. Alteration of Capital by Resolution**

The company may by resolution increase its authorised share capital by increasing the ordinary shares to such number as is specified in the resolution PROVIDED THAT to do so shall not breach the Relevant Requirements.

**15. Alteration of Capital by Special Resolution**

Subject to the Corporations Law the company may, by special resolution, reduce its share capital, PROVIDED THAT to do so shall not breach the Relevant Requirements.

**16. General Meetings**

16.1 The company shall in each calendar year hold an annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it.

Subject to any extension permitted under the Corporations Law the annual general meeting shall be held within the period prescribed by the Corporations Law.

- 16.2 Subject to article 16.1 the annual general meeting shall be held at such time and place as the directors determine.
- 16.3 All general meetings of members of the company other than the annual general meetings shall be called general meetings.
- 16.4 Subject to the Corporations Law the omission (whether by accident or error) to give notice of a meeting to, or the non-receipt of notice of a meeting by any member shall not invalidate the proceedings of any meeting.
- 16.5 Any director may whenever that director thinks fit convene a general meeting and general meetings shall be convened on requisition by one or more members of the company.

## **17. Notice of General Meetings**

- 17.1 A notice of a general meeting shall specify the place, the day and the hour of the meeting and, except as provided by article 17.2 of this article, shall state the general nature of the business to be transacted at the meeting.
- 17.2 It shall not be necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting will include the declaring of a dividend, the consideration of accounts and the reports of the directors and auditors or the appointment and fixing of the remuneration of the auditors.

## **18. Quorum at General Meetings**

- 18.1 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and at the time when the business of the meeting is voted upon.
- 18.2 Two members being one "A" Class share holder and one "B" Class share holder present shall constitute a quorum.
- 18.3 For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a corporation that is a member, shall be deemed to be a member.
- 18.4 If a quorum is not present within half an hour from the time appointed for the meeting:
  - (a) where the meeting was convened upon the requisition of members - the meeting shall be dissolved; or
  - (b) in any other case - the meeting shall stand adjourned to such day, and at such 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 if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall be dissolved.

## **19. Chairman at General Meetings**

- 19.1 The Chairman of directors shall be the chairman.

- 19.2 Where a general meeting is held and the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.

## **20. Adjournment of General Meetings**

- 20.1 The chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 20.2 When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- 20.3 Except as provided by article 20.2, it shall not be necessary to give any notice of any adjournment or of the business to be transacted at an adjourned meeting.

## **21. Resolutions of General Meetings**

- 21.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on declaration of the result of the show of hands) demanded by -
- (a) the chairman;
  - (b) by at least two members present in person or by proxy; or
  - (c) by a member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having a right to vote at the meeting.
- 21.2 No resolution at any general meeting shall be effective unless carried by two-thirds of the members representing not less than all of the total voting rights of all the members having a right to vote at the meeting.
- 21.3 Unless a poll is so demanded, a declaration by the chairman shall be made that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 21.4 The demand for a poll may be withdrawn.

## **22. Demand for Poll**

- 22.1 If a poll is duly demanded, it shall be taken in such manner and subject to article 22.2 either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- 22.2 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

**23. No Casting Vote**

Whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not have a casting vote.

**24. Voting Entitlement**

At meetings of members each member entitled to vote may vote in person or by proxy or attorney and on a show of hands or on a poll. Every person present who is a member or a representative of a member shall have one vote.

**25. Exercise of Member's Rights**

If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the committee or trustee of the member or such other person as properly has the management of the estate of the member may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

**26. Voting Objections**

- 26.1 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 26.2 Any such objection shall be referred to the chairman of the meeting, whose decision shall be final.
- 26.3 A vote not disallowed pursuant to such an objection shall be valid for all purposes.

**27. Proxies**

- 27.1 An instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- 27.2 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy shall not be entitled to vote on the resolution except as specified in the instrument.
- 27.3 An instrument appointing a proxy shall be deemed to confer authority to vote on a show of hands and demand or join in demanding a poll.
- 27.4 A proxy may be appointed as follows:
  - (a) In circumstances where a Member is unable to attend a general meeting of the company or a director is unable to attend a meeting of directors:
    - i. in the case of a member, he or she may appoint any other person; and
    - ii. In the case of a director, he or she may appoint any other director, including an alternate director

As his or her proxy to attend and vote at the relevant meeting.<sup>1</sup>

(b) In circumstances where a voting committee member is unable to attend a committee meeting, that committee member may appoint another member of that committee as his or her proxy, where possible, or if not may appoint as his or her proxy another member of the board.

(c) A proxy cannot be used at any meeting of a sub-committee.<sup>2</sup>

27.4A A Director may not accept appointment as proxy at a meeting of Directors for more than one Director<sup>3</sup>.

27.5 An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allows:

UNITED SUPER PTY. LTD

I, [ ] of [ ]  
being a member of the abovenamed company, hereby appoint [ ]  
of [ ]  
or, in his or her absence [ ] of  
[ ] as my proxy to vote for me on my behalf at  
the \*annual general/general meeting of the company to be held on the [ ]  
day of [ ] 19 and at any adjournment of that meeting.

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

Signed this day of 19 .

\* Strike out whichever is not desired.

# To be inserted if desired.

## 28. Deposit of Proxy

An instrument appointing a proxy will be valid at any Board meeting, meeting of members or committee meeting if it is in the hands of the relevant chairperson by the start of the meeting

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<sup>1</sup> Clause 27.4 (a) replaced by clause 1 of Resolution dated 14 December 2000.

<sup>2</sup> Clause 27.4 replaced by clause 1.1 of Resolution dated 21 October 1999.

<sup>2</sup> Clause 27.4 replaced by clause 1.1 of Resolution dated 21 October 1999.

<sup>3</sup> Clause 27.4A inserted by Resolution dated 26 October 2006.

at which the proxy is to be exercised. A proxy vote may be sent by facsimile or any other method by which notices may be sent under this constitution.<sup>4</sup>

## 29. Proxy Valid

- 29.1 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney shall be valid notwithstanding the death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power was given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.<sup>5</sup>
- 29.2 At any meeting of directors, meeting of Members or committee meeting, a valid proxy will be included in determining whether or not there is a quorum and can be used for voting purposes.<sup>5</sup>

## 30. Number of Directors

The number of the directors shall not be less than 6 in number and may be any larger number as the directors may from time to time determine which shall enable Equal Representation on the board of directors but may subject to that qualification also include an appointment of an independent director in accordance with article 35.

## 31. Qualifications of Director

A director shall not be required to hold any share qualification.

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## 32. Appointment and Removal of Employer Body Directors

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- 32.1 Each Employer Body shall be entitled to appoint one director for each "B" Class share that it holds.

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- 32.2 Each Employer Body may from time to time fill a casual vacancy occurring in the office of one of its appointees as a director and may from time to time remove any of its appointees and appoint a replacement.

12.03.98

- 32.3 Removals and appointments under this Article 32 must be in writing and executed by the appointor or by its duly authorised attorney or agent and will take effect only after:
- (a) all relevant police checks and searches regarding the appointee's suitability to act as a director have been completed;

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<sup>4</sup> Clause 28 replaced by clause 1.2 of Resolution dated 21 October 1999.

<sup>5</sup> Clause 29 renumbered as clause 29.1 by clause 1.3 of Resolution dated 21 October 1999.

<sup>5</sup> Clause 29.2 replaced by clause 2 of Resolution dated 14 December 2000.

- (b) the Board is satisfied that the appointee is not disqualified from acting as a director pursuant to the requirements of the Relevant Requirements and the Corporations Law;
- (c) the appointee has executed a duly completed consent to act as a director; and
- (d) notification of the appointee's appointment or removal has been delivered to the Board.

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### 33. **Appointment and Removal of Fund Member Body Directors**

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- 33.1 Each Fund Member Body shall be entitled to appoint one director for each "A" Class share that it holds.

05.09.94

- 33.2 Each Fund Member Body may from time to time fill a casual vacancy occurring in the office of one of its appointees as a director and may from time to time remove any of its appointees and appoint a replacement.

12.03.98

- 33.3 Removals and appointments under this Article 33 shall be in writing and executed by the appointor or by its duly authorised attorney or agent and will take effect only after:
  - (a) all relevant police checks and searches regarding the appointee's suitability to act as a director have been completed;
  - (b) the Board is satisfied that the appointee is not disqualified from acting as a director pursuant to the requirements of the Relevant Requirements and the Corporations Law;
  - (c) the appointee has executed a duly completed consent to act as a director; and
  - (d) notification of the appointee's appointment or removal has been delivered to the Board.

### 34. **Equal Representation**

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- 34.1 The number of directors appointed by Employer Bodies and the number of directors appointed by Fund Member Bodies shall be equal.

### 35. **Independent Director**

- 35.1 The directors may appoint a person to hold office as an independent director upon such terms and conditions and for such term as the directors shall determine.
- 35.2 A person shall only be eligible to be appointed an independent director if and for so long as that person is not a Fund Member, an officer or employee of an Employer or an official of a trade union or any like organisation which represents employees or any group thereof.



35.3 There shall only be one independent director at any time.

35.4 An independent director shall not be entitled to vote in any proceedings of the board but if he or she is also a member of the investment committee, then they will be entitled to vote at a meeting of the investment committee.<sup>6</sup>

**36. Remuneration of Directors**

The remuneration for the service of any director shall be fixed by the directors from time to time having regard to the Relevant Requirements.

**37. Office of Director Shall Become Vacant**

In addition to the circumstances in which the office of a director becomes vacant by virtue of the Corporations Law, the office of a director (which for this purpose shall also include an independent director appointed pursuant to article 35) shall become vacant if the director;

- (a) dies;
- (b) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (c) becomes physically incapacitated to such a degree that all other directors resolve that such director is not able to carry out its duties as a director;
- (d) resigns from the office of director by notice in writing to the board;

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- (e) is removed by the Employer Body which appointed him or her or by any previous holder of that share;

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- (f) is removed by the Fund Member Body which appointed him or her or by any previous holder of that share;
- (g) is absent without the consent of the directors from meetings of the directors held during a period of three consecutive months;
- (h) is classified as a disqualified person or becomes prohibited from being a director by reason of an order or notice made pursuant to the Corporations Law or the Relevant Requirements; or
- (i) becomes an insolvent under administration;

PROVIDED THAT to do so is in accordance with the Relevant Requirements.

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<sup>6</sup> Text added to clause 35.4 by clause 2 of Resolution dated 21 October 1999.

### **38. Vacancy in the Board of Directors**

38.1 Subject to articles 38.2 and 38.3 any vacancy arising in the board of directors shall be filled within the time period required under the Relevant Requirements by a person or persons so that Equal Representation is maintained.

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38.2 In the event of a vacancy of an Employer Body director, a new Employer Body director shall be appointed in accordance with article 32 to fill that vacancy within the time period required under the Relevant Requirements after the date on which the vacancy occurs so that Equal Representation is maintained.

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38.3 In the event of a vacancy in the office of a Fund Member Body director, a new Fund Member Body director shall be appointed in accordance with article 33 to fill the vacancy, within the time period required under the Relevant Requirements after the date on which the vacancy occurs so that Equal Representation is maintained.

38.4 Notwithstanding any 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;

(a) increasing the number of directors in accordance with this article 38 to a number sufficient to constitute such a quorum; or

(b) convening a general meeting of the company.

### **39. Powers and Duties of Directors**

39.1 Subject to the Corporations Law, the Relevant Requirements and any other provision of these articles, the business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by the Corporations Law or by these articles, required to be exercised by the company in general meeting **PROVIDED THAT** to do so shall not breach the Relevant Requirements.

39.2 Without limiting the generality of article 39.1, the directors may exercise all the powers of the company to borrow and 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 **PROVIDED THAT** to do so shall not breach the Relevant Requirements.

39.3 Without limiting the generality of article 39.1 the directors may insure themselves against any liability that by law would otherwise attach to the director in respect of any negligence, default, breach of duty or breach of trust **PROVIDED THAT** to do so shall not breach the Relevant Requirements and or the Corporations Law.

### **40. Power of Attorney**

40.1 The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.

40.2 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

#### 41. **Negotiable Instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such persons and in such manner as the directors may from time to time determine provided such is in accordance with the provisions of the Trust Deed of the Fund.

#### 42. **Proceedings of Directors**

42.1 The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

42.2 A director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.

- 42.3
- (a) Provided that all of the directors agree, the directors may participate in a meeting of the directors by means of a telephone conference, closed circuit television or other communications equipment allowing all persons participating in the meeting to hear each other at the same time. Any director participating in such a meeting shall for the purposes of these articles be deemed to be personally present at the meeting.
  - (b) Each of the directors taking part in the meeting by electronic communication devices must be able to hear each of the other directors taking part during the meeting.
  - (c) At the commencement of the meeting, each director must acknowledge their presence for the purposes of the meeting to all the other directors taking part.
  - (d) A director may not leave the meeting by disconnecting his or her electronic communications devices monitor unless the director has previously obtained the consent of the chairman of the meeting.
  - (e) A meeting of directors by electronic communications devices shall not be invalidated by any voluntary or involuntary disconnection of a participant, provided there shall remain or be reconnected sufficient directors able to hear each other as constitutes a quorum.
  - (f) A minute of the proceedings of meeting by electronic communication devices shall be prepared and shall be prima facie evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairman of the meeting.
  - (g) The provisions of this article shall apply mutatis mutandis to meetings of any committee of directors established under article 50 and shall apply to the same extent where one or more directors are linked up by electronic communications devices with the body of directors convened in person at a particular place as to where all directors take part by electronic communications devices.

### 43. **Alternate Directors**

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43.1 Subject to the Corporations Law, an Employer Body or Fund Member Body may by writing under the common seal of the Employer Body or Fund Member Body or the hand of its representative or by facsimile transmission so sealed or signed or other form of visible communication duly authenticated, appoint a person to act as an alternate director in the place of a director nominated by that Employer Body or Fund Member Body whether for a stated period or periods or until the happening of a specified event or from time to time.

43.2 An alternate director -

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- (a) may be removed or suspended from office by writing under the common seal of the Employer Body or Fund Member Body by whom he or she was appointed or under the hand of its representative or by facsimile transmission so sealed or signed or other form of visible communication duly authenticated;
- (b) is entitled to receive notice of meetings of the directors and to attend and vote thereat if the director in whose place he was appointed is not present and, where he is also a director in his own right or alternate director for another director as well, to have a separate vote on behalf of the director he is representing in addition to his own or that other director's vote;
- (c) may exercise all the powers and, subject to the Corporations Law, perform all the duties of the director in whose place he or she was appointed insofar as the latter has not exercised or performed them;
- (d) automatically ceases to be an alternate director if the director in whose place he or she was appointed ceases to be a director;
- (e) whilst acting as a director is responsible to the company for his or her own acts and defaults and the director in whose place he or she was appointed is not responsible therefor; and
- (f) is entitled to receive such remuneration (if any) from the company as the directors determine from time to time.

### 44. **Quorum**

At a meeting of directors, the number of directors whose presence in person or by proxy<sup>7</sup> is necessary to constitute a quorum shall be not less than two-thirds of the total number of directors.

### 45. **Chairman**

45.1 The holder of the non-voting share referred to in article 6.6 shall be chairman.

45.2 Where a meeting of directors is held and the chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting.

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<sup>7</sup> Clause 44 amended by Resolution dated 26 October 2006.

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- 45.3 (1) Where the Chairman of directors is of the opinion that there has been, since the 29th day of May, 1984, a reduction (whether by reason of a decrease in its membership or for any reason) in the capacity of a member to effectively represent a substantial number of Fund Members or potential Fund Members or of Employers or potential Employers (as the case may be), or that a member has ceased to be an Employer Body or a Fund Member Body, then he or she shall give notice in writing to that effect to all members and to the member in question.
- (2) The member referred to in sub-clause (1) (hereinafter called "the relevant member") may, within 14 days after the Chairman's notice has been given, give notice in writing to the Secretary requiring the calling of a General Meeting of members for the sole purpose of considering a resolution to veto the Chairman's notice, and thereupon the directors shall convene a General Meeting for that purpose to be held not later than 7 days prior to the expiry of the period of 40 days specified above. The relevant member shall be given notice of the General Meeting and shall by its officer be permitted to address that meeting.
- (3) At the expiration of 40 days after the Chairman's notice is given to the relevant member, the relevant member shall forthwith cease to be a member unless within that Period:
- (a) the company at the General Meeting (if any) referred to in sub-Clause (2) above resolves to veto the Chairman's notice; or
  - (b) the holder or holders of a majority of shares of the same class as those held by the relevant member have signed and delivered to the Secretary a veto in writing of the Chairman's notice.
- (4) If the relevant member ceases to be a Member, then:
- (a) any Director appointed solely by the relevant member or by any previous holder of that share shall immediately cease to be a Director of the company, and the relevant member's right to appoint a Director pursuant to article 32.1 and 33.1 respectively shall cease; and

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- (b) the remaining holder or holders of a majority of shares of the same class as those held by the relevant member may at any time thereafter by notice in writing given to the relevant member require the relevant member to transfer at par value all shares in the company held by the relevant member to a person named in the notice who is an Employer Body or a Fund Member Body which shall be selected as follows:

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- (i) In the event that the relevant member is then the holder of an A Class share, the new Fund Member Body shall be a trade union or a nominee of the Australian Council of Trade Unions which, in the opinion of the majority of directors appointed by the A Class shareholders, may or does effectively represent a substantial number of the Fund Members and potential Fund Members referred to in sub-clause (1);

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- (ii) In the event that the relevant member is then the holder of a B Class share, the new Employer Body shall be an organisation which, in the opinion of the majority of directors appointed by the B Class shareholders, may or does effectively represent the Employers and potential Employers referred to in sub-clause (1);
- (iii) In any event, if the directors are equally divided, the Chairman of directors shall have a casting vote;

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- (iv) An existing member which is an Employer Body or Fund Member Body shall be eligible to be a new Employer Body or Fund Member Body respectively;
- (5) Within 10 days after receipt of any notice referred to in sub-clause (4)(b) and of a sum equal to the said par value the relevant member shall execute a transfer in accordance with the notice and deliver the same, together with any relevant share certificate, to the Secretary for registration.
- (6) If the relevant member fails to comply with the relevant member's obligations under sub-clause (5) the directors may appoint a person to execute a transfer of the relevant member's share or shares on the relevant member's behalf in accordance with the notice and, in that case, the name of the transferee shall be entered in the register as the holder of the share or shares and thereupon the validity of the transferee's title to the share or shares shall not be questioned by any person.

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- (7) For the purposes of a new Employer Body or Fund Member Body, sub-clause (1) shall be read as if in lieu of the words "the 29th day of May, 1984" there were inserted the words "the date of which it was selected as a new Employer Body or Fund Member Body pursuant to sub-clause (4)".

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- 45.4 (1) If, in the opinion of the Chairman, a representative body exists or comes into being which has as its members a significant majority of contributing national employer companies (such companies not also being members of Master Builders Australia Inc., or of one of its members), and that body has signified its willingness to become an Employer Body, Master Builders Australia Inc. shall, upon request by the Chairman, and subject to this clause, thereupon transfer three of its shares referred to in Article 6.6 to that body.
- (2) Master Builders Australia Inc. may, within thirty (30) days after any request is made pursuant to sub-clause (1), notify the Chairman that it does not concur with the Chairman's opinion formed under that sub-clause, and in any such case, the obligations of Master Builders Australia Inc. under sub-clause (1) shall be suspended until the Chairman has referred the matter for decision to the Board of Directors and the matter has been resolved pursuant to sub-clause (3) of this clause.
- (3) Where an opinion has been referred to the Board of Directors under sub-clause (2), the Board may:

- (a) by a majority vote, confirm the Chairman's opinion; or
- (b) refer the matter for arbitration to an independent Arbitrator;

and Master Builders Australia Inc. shall comply with the decision of the Board, or of the Arbitrator, as the case may be.

#### 46. **Resolutions**

- 46.1 Subject to these articles, questions arising at a meeting of directors shall be decided by a resolution of directors PROVIDED THAT no such resolution shall be effective unless carried by two-thirds of the total number of directors.
- 46.2 The chairman of the meeting shall not have a casting vote.

#### 47. **Resolutions in Documents**

- 47.1 If two-thirds or more of the directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the directors held on the day on which and at the time at which the document was last signed by a director.
- 47.2 For the purposes of article 47.1, two or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.
- 47.3 A reference in article 47.1 to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.
- 47.4 In this article a reference to a document shall include a reference to a facsimile copy of a document.

#### 48. **Resolutions of a Defectively Constituted Board**

All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, (notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of the committee, or to act as a director, or that a person so appointed was disqualified), be as valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee.

#### 49. **Directors' Interests<sup>8</sup>**

- 49.1 A Director may:
  - (a) hold any office or place of profit or employment other than that of the company's auditor or any director or employee of the auditor;
  - (b) be a member of any corporation (including the company) or partnership other than the company's auditor;

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<sup>8</sup> Clause 49 substituted by resolution dated 26 October 2006.

- (c) be a creditor of any corporation (including the company) or partnership; or
- (d) enter into any agreement with the company.

49.2 Each Director must comply with section 191 in relation to disclosure of interests.

49.3 Subject to article 49.4, where a Director has a material personal interest in a matter:

- (a) the Director must not be present while the matter is considered at a meeting of the Board or a committee while the matter is being considered, or vote on the matter, unless paragraph (b) applies;
- (b) the Director may be present at a meeting, and may vote, if Directors who do not have material personal interest in the matter have resolved that the Board is satisfied that the interest specified in the resolution should not disqualify the Director from being present, or being present and voting.

49.4 For the purposes of article 49.3:

- (a) **(controlled entities)** – an interest arising from being a member of the governing body of an entity that is a subsidiary or is controlled by the company is not an interest to which article 49.3 applies. In those cases the Director may be present in person or by proxy, counted in a quorum at a Board or committee meeting that considers, and may vote on, any matter that relates to the interest;
- (b) **(nominees)** – a Director who has an interest arising from being nominated by the company as a member of the governing body of an entity in which the company has an interest, but which is not a subsidiary or controlled by the company, may be present at a Board or committee meeting and counted in a quorum while a matter relevant to that entity is being considered and may participate in deliberations, but may not vote unless a resolution referred to in paragraph 49.3(b) has been passed in respect of the Director's interest;
- (c) **(other investments of the company)** – where a Director is a member of the governing body of an entity in which the company has an interest, but which is not a subsidiary or controlled by the company-
  - (i) the Director must not be present while the matter is considered at a meeting of the Board or a committee while the matter is being considered, or vote on the matter, unless paragraph 49.4(b) applies;
  - (ii) the director may be present at a meeting, and may vote, if directors who do not have material personal interest in the matter have resolved that the Board or committee is satisfied that the interest specified in the resolution should not disqualify the Director from being present, or being present and voting.
- (d) **(statutory exceptions)** – an interest that need not be disclosed under section 191 is not an interest to which article 49.3 applies.

49.5 Subject to the Director complying with article 49.3 and 49.4:



- (a) the company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the company;
- (b) the Director may retain benefits under the transaction even though the Director has the interest; and
- (c) the company cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191, paragraph (d) applies only if it is disclosed before the transaction is entered into.

49.6 A Director who by reason of article 49.3 and 49.4 is not entitled to be personally present during consideration of a matter at a meeting but who is a proxy for another Director who is entitled to be present and vote may be present and vote as a proxy on that matter if and only if the appointor has given written instructions on how to vote and the vote is in accordance with those instructions, but may not speak.

49.7 The company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers, votes on, or participates in the execution of, that agreement.

## 50. Committees

50.1 The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit. Neither alternate directors nor persons appointed as the proxy of another may be utilised as a sub-committee.<sup>9</sup>

50.2 A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.

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50.3 The members of such a committee:

- (a) Including alternate directors who are also committee members may appoint another member of the committee as his or her proxy, or a member of the Board of directors as his or her proxy;
- (b) May appoint one of their number as chairperson of their meetings; and
- (c) May appoint other persons to the committee in an "ex-officio" capacity but that person will not have a vote at a meeting of the committee.<sup>10</sup>

50.4 Where such a meeting is held and:

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<sup>9</sup> Text added to clause 50.1 by clause 3.2 of Resolution dated 21 October 1999.

<sup>10</sup> Clause 50.3 replaced by clause 3.3 of Resolution dated 21 October 1999.

- (a) a chairman has not been elected as provided by article 50.3; or
- (b) the chairman is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present may elect one of their number to be chairman of the meeting.

1.1 A committee may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

50.5 Questions arising at a meeting of a committee shall be determined by a resolution of the committee members present and voting and no such resolution shall be effective unless carried by two thirds of the total number of committee members. An alternate director is not entitled to vote at a meeting of a committee, unless he or she is also a member of that committee in his or her own right.<sup>11</sup>

50.6 The chairman shall not have a casting vote.

50.7 Provided that all of the members of a committee agree, the members may participate in a meeting of the committee by means of a telephone conference, closed circuit television or other communications equipment allowing all persons participating in the meeting to hear each other at the same time. Any member of a committee participating in such a meeting shall for the purposes of these articles be deemed to be personally present at the meeting. Article 42.3 shall apply as far as practicable to such a meeting.

50.8 If two-thirds or more of the total number of the members of a committee have signed a document containing a statement that they are in favour of a resolution of the committee in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the members of the committee held on the day on which and at the time at which the document was last signed by a member of the committee.

50.9 For the purposes of article 50.9, two or more separate documents containing statements in identical terms each of which is signed by one or more of the members of the committee shall together be deemed to constitute one document containing a statement in those terms signed by those members of the committee on the respective days on which they signed the separate documents.

1.1 A reference in article 50.9 to all of the members of the committee does not include a reference to a member of the committee who, at a meeting of the committee, would not be entitled to vote on the resolution.

50.10 References to a document in this article 50 shall include references to a facsimile copy of the document.

## 51. **Secretary**

A secretary of the company shall hold office on such terms and conditions, as to remuneration and otherwise, as the directors determine.

## 52. **Seal**

52.1 The directors shall provide for the safe custody of the seal.

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<sup>11</sup> Text added to clause 50.6 by clause 3.1 of Resolution dated 21 October 1999.

52.2 The seal shall be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the seal, and every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

### 53. **Inspection of Records**

The directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the company or any of them will be open for inspection PROVIDED THAT such records and documents of the company shall be open for inspection as required by law or the Relevant Requirements.

### 54. **Notices**

54.1 A notice may be given by the company to any member either by serving it on the member personally or by sending it by post to the member at the member's address as shown in the register of members or the address supplied by the member to the company for the purpose of the giving of notices.

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

54.3 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 by serving it on the person personally or by sending it by post addressed to that person by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) in Australia supplied for the purpose by the person or, if such 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.

54.4 Notwithstanding the foregoing, if a person to whom a notice is to be given by the company has supplied to the company a facsimile number for the service of notices, then any notice may be served by the company on that person by facsimile.

54.5 A notice sent by facsimile (provided a status report is received by the sender which shows the notice has been transmitted) shall be deemed served immediately upon completion of sending if such completion is within business hours in the place where the addressee's facsimile machine is located, but if not, then at 9.00 am next occurring during business hours at such place.

54.6 For the purposes of this article, "business hours" means from 9.00 am to 5.00 pm on a day on which the major trading banks are open for business at the place or in the postal district where the addressee's facsimile machine is located.

54.7 A notice to be given by the company to any Fund Member must be given in accordance with the requirements if any as contained in the Trust Deed and, where the context allows, also in accordance with this article.

54.8 Notice of every general meeting shall be given in the manner authorised by this article to:

- (a) every member;

- (b) the Employer (if any); and
- (c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

## 55. **Winding Up**

If the company is wound up, the liquidator must vest the whole or any part of any property vested in the company in a new trustee upon such trusts identical to those existing prior to the liquidation of the company.

## 56. **Indemnity and Insurance**

- 56.1 Every director or officer of the company and past director or officer of the company shall be indemnified out of the property of the company whether held as trustee or otherwise against all liability incurred by him or her as a director or officer of the company to another person (other than the company or related body corporate), unless the liability arises out of conduct involving a lack of good faith or would breach the Relevant Requirements.
- 56.2 Every director or officer of the company and past director or officer of the company shall be indemnified against a liability for costs and expenses incurred by him or her:
  - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of him or her, or in which he or she is acquitted; or
  - (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to him or her under the Corporations Law.
- 56.3 The company may pay, at the relevant intervals, a premium in respect of a contract insuring all or any one or more of the directors or officers of the company or past directors or officers of the company against liability incurred by him or her as a director or officer of the company, but excluding liability for a wilful breach of a duty to the company, a contravention of the Corporations Law or any matter not permissible under the Relevant Requirements.
- 56.4 Subject to the Relevant Requirements, the company may pay, at the relevant intervals, a premium in respect of a contract insuring all or any one or more of the directors or officers of the company or past directors or officers of the company against a liability for costs and expenses incurred by him or her in defending proceedings, whether civil or criminal and whatever their outcome, arising out of his or her role as a director or officer of the company.
- 56.5 Nothing contained in these Articles shall be construed to lessen or abrogate any indemnity or protection given or authorised to directors or officers of the company by the Corporations Law or under the Relevant Requirements.

## 57. **Minutes and Records**

- 57.1 The directors shall ensure that proper minutes are kept of all meetings of members and the Board.
- 57.2 In addition to all records required to be maintained by the company pursuant to the Corporations Law the directors shall ensure that the company retains copies of all minutes affecting the Fund and other records required to be kept and notices given by the company

under or pursuant to the Relevant Requirements for such periods as may be required under the Relevant Requirements.

- 1 Clause 27.4 replaced by clause 1.1 of Resolution dated 21 October 1999.
- 1 Clause 28 replaced by clause 1.2 of Resolution dated 21 October 1999.
- 1 Clause 29 renumbered as clause 29.1 by clause 1.3 of Resolution dated 21 October 1999.
- 1 Clause 29.2 inserted by clause 1.3 of Resolution dated 21 October 1999.
- 1 Text added to clause 35.4 by clause 2 of Resolution dated 21 October 1999.
- 1 Text added to clause 50.1 by clause 3.2 of Resolution dated 21 October 1999.
- 1 Clause 50.3 replaced by clause 3.3 of Resolution dated 21 October 1999.
- 1 Text added to clause 50.6 by clause 3.1 of Resolution dated 21 October 1999.