

CONSTITUTION

MALDON & DISTRICT FINANCIAL SERVICES LIMITED

ACN 086 749 886

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1. GENERAL

1.1 Name of Company

The name of the Company is Maldon & District Financial Services Limited (MDFSL).

The Company is limited by guarantee.

1.2 Replaceable Rules

The Replaceable Rules in the Act do not apply to the Company.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution unless the context requires otherwise:

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

Board means the Directors for the time being of the Company or those of them who are present at a meeting at which there is a quorum.

Chair means the Chair of the meetings of the Board or other person occupying the position of Chair.

Chairman means the Chairman of the Board of Directors.

Committee means a Committee to which powers have been delegated by the Board.

Company means Maldon & District Financial Services Limited ACN 086 749 886.

Constitution means this Constitution as amended.

Director means a person appointed to the office of Director of the Company in accordance with Rule 9 of this Constitution.

Deputy Chairman means the Director elected to the office of Deputy Chairman

Member means any person who becomes a member of the Company in accordance with Rule 6 of this Constitution.

Office means the registered office of the Company.

Person and words importing persons include partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals.

Pledgor means any person who has loaned funds towards the establishment of the Maldon & District Community Bank.

Register means the register of members of the Company.

Registered Address means the Member's address specified on a transfer or any address at which the member notifies the Company they are willing to accept service.

Retiring Director means a Director who is required to retire under Rule 9b.

Rules means these Rules, as amended.

Secretary means a person appointed as, or to perform the duties of, a Secretary of the Company.

2.2 Interpretation

Unless the context otherwise requires:

- (a) a word or phrase which is given a meaning by the Act has the same meaning in this Constitution;
- (b) words in the singular include the plural and vice versa;
- (c) a reference to the Act or any statute or regulation is to be read as though the words 'as modified or substituted from time to time' were added; and
- (d) headings do not affect the construction of this Constitution.

3. OBJECTS OF THE COMPANY

The objects of the Company are:

- (a) to conduct commercial banking by managing a franchised office or offices of Bendigo and Adelaide Bank Limited;
- (b) to distribute such portion of any profit derived from managing any franchised office for such community service purposes as the Board may decide; and
- (c) the promoting, providing or carrying out of activities, facilities or projects including (but not limited to) community banking services for the benefit or welfare of the community or any members of the community who have a particular need by reason of youth, age, infirmity or disability, poverty or social or economic circumstances. This is the Company's main and dominant purpose and any other ongoing action or object otherwise stated or inferred is secondary and subservient to the extent of any inconsistency with the Company's main or dominant purpose as expressed in this Rule.

4. POWERS OF THE COMPANY

The Company has the power to:

- (a) deal with other bodies and as such to:
 - (i) subscribe to, become a member of and co-operate with or amalgamate with any other company, club, association or organisation ("bodies"), whether incorporated or not, whose objects are altogether or in part similar to those of the Company;
 - (ii) purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the bodies with which the Company is authorised to amalgamate;
 - (iii) transfer all or any part of the property, assets, liabilities and engagements of the Company to any one or more of the bodies with which the Company is authorised to amalgamate,but the Company may only do so with anybody which prohibits the distribution of its income and property among its members to an extent at least as great as that imposed on the Company under Rule 5;
- (b) to borrow, raise or secure the payment of money as the Company thinks fit;
- (c) to secure the money or repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or entered into by the Company, in

particular by the issue of debentures charged on all or any of the Company's property (both present and future) and to purchase, redeem or pay such securities.

- (d) to buy, sell and deal in all kinds of commodities and provisions required by Members of the Company or persons attending the Company's premises;
- (e) to purchase, take on lease, or in exchange, hire and otherwise acquire any land, buildings, easements or property (real and personal), and any rights, privileges and concessions which may be required for the purpose of, or used in connection with, the object of the Company. Where property is subject to any trusts the Company will deal with that property as allowed by law having regard to such trusts;
- (f) to enter into any arrangements with any government or authority that are beneficial to the Company's objects and to obtain from any such government or authority any rights, privileges and concessions which the Company thinks it useful to obtain;
- (g) to appoint, employ, remove or suspend such managers, employees and other persons as may be required for the purposes of the Company;
- (h) to establish and support or assist in the establishment and support of associations, institutions, funds and trusts calculated to benefit employees or past employees of the Company or the dependents or connections of any such persons; AND to make payments towards insurance and superannuation AND to subscribe or guarantee money for charitable or benevolent objects or for any public, general or useful object;
- (i) to construct, improve, maintain develop, work, manage, carry out, alter or control any houses, buildings, grounds, works or conveniences which seem calculated directly or indirectly to advance the Company's interests and to contribute, subsidise or otherwise assist and take part in same;
- (j) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Company to advance the objects of the Company;
- (k) to invest and deal with money of the Company not immediately required as may be permitted by law for the investment of trust funds;
- (l) to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferrable instruments;
- (m) to take any gift of property whether subject to any special trust or not for any object of the Company but subject always to any limitation in these Rules;
- (n) to co-ordinate, initiate and undertake efforts for the raising of funds for its objects including taking steps by personal or written appeals, public meetings or otherwise as appropriate for the purpose of obtaining contributions to the funds of the Company in the shape of donations, sponsorships, annual subscriptions, levies or otherwise;
- (o) to insure against all risks and liabilities as appropriate and to apply the proceeds of any claim under any insurance in such manner and for such propose or purposes as the Company thinks fit;
- (p) to print and publish any newspapers, periodicals, books or leaflets that the Company thinks useful for the promotion of its objects;

- (q) to make donations in furtherance of its objects and for patriotic, charitable or community purposes;
- (r) to provide a useful and cost-effective range of services, facilities and benefits for Members.
- (s) to pursue community service purposes only and to apply its income in promoting those purposes;
- (t) to require the Directors to approve all other payments the Company makes to Directors;
- (u) to do all such things as are incidental and beneficial to attaining the objects and the exercise of the powers of the Company.

5. PAYMENTS TO MEMBERS & WINDING UP

5.1 Payments to Members

- (a) The Company will not carry on business for the purpose of profit or gain to its individual Members and no portion of its income or profit may be paid, distributed to or transferred to the Members, the Board, or their relatives, except as provided by this Constitution.
- (b) Nothing in this Constitution prevents:
 - (i) the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any Member or Director of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
 - (ii) the payment of interest at a rate not exceeding interest at the rate for the time being charged by Bendigo and Adelaide Bank Ltd (or its successor) for overdrawn accounts as at the end of the preceding financial year on money borrowed from a Member; or
 - (iii) reasonable and proper rent for premises let by any Member to the Company.

5.2 No distribution of profits to Members on winding up

Where property remains after the Company's winding-up or dissolution and satisfaction of all its debts and liabilities, it may not be paid to or distributed among the Company's Members but must be given to or transferred to another body having objects similar to the Company's objects and whose Constitution prohibits the distribution of its income and property among its members to an extent as great as is imposed on the Company under these Rules. The body is to be determined by the Members of the Company at or before the time of the dissolution.

5.3 Limited liability on winding up

Each Member undertakes to contribute to the assets of the Company in the event of its being wound up while they are a Member, or within one year after they cease to be a Member, for the payment of the debts and liabilities of the Company contracted before they ceased to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding ten dollars (\$10).

6. MEMBERSHIP

6.1 Members

- (a) The persons the Board admits to Membership in accordance with these Rules will be Members of the Company.
- (b) All present Pledgors of the Company are automatically deemed to be pledging Members as though their initial pledge amount had been provided to the Company in accordance with Rule 6.2.

6.2 Application for Membership

- (a) An application for membership must be in writing, signed by the Member and will be in such form as the Board from time to time prescribes. The application for membership must include a nominated pledge amount of no less than of \$500 and no more than \$2,000.
- (b) Where an applicant is a Corporation:
 - (i) it must appoint a natural person as its representative in its application for membership;
 - (ii) where membership is granted, the appointed representative may exercise all rights to which the Member is entitled for as long as that person remains the appointed representative of the Member;
 - (iii) the rights which the appointed representative may exercise include the right to be elected to any position within the Company and its Board;
 - (iv) notice of any change of appointed representative must be given to the Company in writing by the corporate Member;
 - (v) a representative elected to any position within the Company will cease to hold office on ceasing to be the appointed representative of a Member unless the Board otherwise decides; and
 - (vi) a corporate Member is responsible for the actions of its appointed representative and is subject to any disciplinary action which may be taken against the Member in respect of the actions of its appointed representative.
- (c) At the next meeting of the Board after receiving any membership application, the Board will determine whether to accept or reject the application. The Board is not required to provide any reason for the rejection of an application.
- (d) Where an application has been accepted for membership, the Secretary will send the applicant written advice of acceptance and the applicant must pay the nominated pledge amount to the Company. Upon receipt of the pledge amount, the applicant will be a Member.
- (e) Where an applicant fails to pay the nominated pledge amount within two months of receiving notice of their acceptance for membership, their offer of membership automatically lapses.

6.3 Cessation of Membership

- (a) A Member may at any time give notice in writing to the Secretary resigning their membership. The Member continues to be liable for any monies due by them to the Company and for any sum not exceeding ten dollars (\$10) for which the Member is liable as a Member of the Company under Rule 5.3.

- (b) If any Member wilfully refuses or neglects to comply with these Rules or is found guilty of any conduct which in the Board's opinion is prejudicial to the interests of the Company, the Board will have power by resolution to censure, fine, suspend or expel the Member from the Company.
- (c) Where the Board seeks to exercise its rights under Rule 6.3(b), it must give notice to the Member of the Board meeting, what is alleged against them and the intended resolution to be passed at least two weeks before the Board meeting is held. At the meeting the Member will have the opportunity of giving any explanation they think fit (whether orally or in writing) prior to the passing of the resolution.
- (d) Membership will automatically cease upon the following:
 - (i) death of a Member;
 - (ii) where the Member is a natural person and becomes bankrupt, takes advantage of Part X of the *Bankruptcy Act* 1966 (Cth) or makes an assignment for the benefit of, or enters into an arrangement with, their creditors; or
 - (iii) where the Member is a company and an order is made or resolution passed to wind it up (except for reconstruction or amalgamation), it goes into liquidation, is placed under official management or has a receiver or an administrator appointed.
- (e) Where membership ceases under this Rule 6.3, the pledge amount paid by that Member will be redeemed by the Member without deduction. In addition, the Member will be paid interest in accordance with Rule 5(b)(ii) for the part of the financial year from 1 July until the date the membership ceases.

7. GENERAL MEETINGS

- (a) An Annual General Meeting ("AGM") of the Company will be held in accordance with the provisions of the Act.
- (b) Any Director may convene a general meeting whenever they think fit. General meetings may also be convened on request by Members under section 249 of the Act.
- (c) Subject to the provisions of the Act relating to special resolutions and agreements for a shorter notice period, at least 21 days' notice must be given to Members specifying the place, the day and the hour of meeting.
- (d) The use of technology for meetings (including the use of two or more venues to give the Members as a whole a reasonable opportunity to participate) is to be determined by the Board.
- (e) For the purpose of Rule 7(c), all business will be special that is transacted at a general meeting or at an AGM with the exception of the consideration of the accounts, balance sheets and reports of the Directors and auditors, the election of office bearers and other Directors in the place of those retiring and the appointment of Auditors, if necessary.

8. PROCEEDINGS AT GENERAL MEETINGS

8.1 Quorum

- (a) Three (3) Members present constitute a quorum for a meeting. No business may be transacted at any meeting, except the election of a Chairman and the adjournment of the meeting, unless a quorum is present at the commencement of the meeting.
- (b) If there is not a quorum at a general meeting within 15 minutes after the time specified in the notice of meeting, the meeting is dissolved unless the Board adjourns the meeting to a date, time and place determined by it. If no quorum is present at any adjourned meeting within 15 minutes after the time for the meeting the meeting is dissolved.

8.2 Chairman & Deputy Chairman

- (a) The Chairman of the Board is entitled to chair every general meeting.
- (b) If at any general meeting:
 - (i) a Chairman has not been elected by the Board; or
 - (ii) the Chairman is not present within 15 minutes after the time specified for the holding of the meeting; or
 - (iii) the Chairman is present but unwilling to act as chairman of the meeting, the Deputy Chairman of the Board is entitled to chair the meeting.
- (c) If at any general meeting:
 - (i) there is no Chairman or Deputy Chairman;
 - (ii) the Chairman and Deputy Chairman are not present within 15 minutes after the time specified for the holding of the meeting; or
 - (iii) the Chairman and the Deputy Chairman are present but each is unwilling to chair the meeting;

The Directors present may choose another Director as chair of the meeting and if no Director is present or if each of the Directors present is unwilling to act as Chairman of the meeting, a Member chosen by the Members present is entitled to chair the meeting.
- (d) The Chairman may with the consent of any meeting at which a quorum is present (and if so directed by the meeting) adjourn the meeting from time to time and from place to place. No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting will be given as for an original meeting.

8.3 Voting

- (a) At any general meeting a resolution put to the vote of the meeting will be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairman or by at least three Members present in person or by proxy. No poll may be demanded on the election of Chairman of a meeting.
- (b) Unless a poll is demanded, a declaration by the Chairman that a resolution has on a show of hands been passed or lost, having regard to the majority required, and an entry to that effect in the book containing the minutes of the proceeding will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- (c) If a poll is demanded, it will be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination made in good faith is final.
- (d) Where votes are equal whether on a show of hands or on a poll, the Chairman of the meeting is entitled to a second or casting vote.
- (e) If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with under the law relating to mental health, the committee or trustee or such other person as properly has the management of their estate may exercise any rights of the Member in relation to a general meeting.

8.4 Proxies

- (a) The instrument appointing a proxy must be in writing and signed by the Member or their authorised attorney. It must also contain the name and address of both the Member and the proxy, the Company's name, the meeting at which the appointment may be used and any specific direction to the proxy as to how the proxy must vote. Unless otherwise instructed the proxy may vote as they think fit. The instrument appointing a proxy confers authority to demand or join in demanding a poll and will be valid for any adjournment of the meeting unless the contrary is stated.
- (b) A later appointment revokes an earlier appointment if both appointments can only be validly exercised at the same meeting.
- (c) A proxy will only be valid for a meeting if at least 48 hours before the meeting the Company has received the proxy's appointment. The appointment of proxy may be given to the Company by delivering it to the Company's registered office, faxing or emailing it to either the facsimile number or email address at the Company's registered office or to the relevant facsimile number or email address specified for the purpose in the notice of meeting.
- (d) A proxy is revoked by the death or mental incapacity of a Member who appointed the proxy or the revocation of the proxy's appointment. Unless the Company has received written notice of the revocation of the proxy before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if the proxy is revoked prior to the proxy voting.

9. BOARD OF DIRECTORS

- (a) The Board will consist of not less than six and not more than twelve Directors all of whom will be Members and elected in accordance with these Rules. It is not necessary for a casual or other vacancy to be filled.
- (b) At each Annual General Meeting of the Company one-quarter of the Directors (or if their number is not a multiple of 4, then the number nearest one-quarter) will retire. The Directors who retire are those who have been in office longest since their most recent election. As between persons who became Directors on the same day, those to retire will (unless otherwise agreed between themselves) be determined by ballot. A retiring Director is eligible for re-election.
- (c) The election of Directors will take place as follows:
 - (i) Any Member may nominate any other Member to serve as a Director;
 - (ii) The nomination must be in writing and signed by both the nominated and

nominating Members and must be lodged with the Secretary. To be valid, the notice is required to be lodged at the Company's Registered Office at least 28 days before the AGM at which the election is to take place.

- (iii) A list of candidate names in alphabetical order with the nominating Members' names must be posted in a conspicuous place in the registered office of the Company for at least seven days immediately preceding the AGM.
 - (iv) Balloting lists must be prepared (if necessary) containing the names of the candidates in random order. Each Member present at the AGM will be entitled to vote for any number of candidates not exceeding the number of vacancies.
 - (v) If there are not enough candidates nominated, the Board may fill the remaining vacancies.
- (d) The election of the Executive will take place at the first Board meeting following the AGM.
 - (e) The Company may by resolution passed at a general meeting increase or reduce the number of office-bearers or Directors of the Board.
 - (f) The Board will have the power at any time to appoint any Member as a Director either to fill a casual vacancy or as an addition to the existing office-bearers or other Directors but so that the total number of office-bearers and other Directors will not at any time exceed the number fixed in accordance with these Rules. Any office-bearer or other Director so appointed will hold office only until the following AGM.
 - (g) The Company may, by ordinary resolution of which special notice pursuant to the Act has been given, remove any office-bearer or other Director before the end of their period of office and may by an ordinary resolution appoint another person in their stead; the person so appointed will hold office only until the following AGM.
 - (h) The position of a person as a Director will cease and become vacant if they die, resign by notice in writing, are disqualified from acting as a Director pursuant to any provision of the Act, become mentally ill or become bankrupt or make an assignment to or composition with their creditors.
 - (i) No proceedings of the Board will be invalid by reason of the fact that a Director takes part in a meeting or votes on a resolution of the Board while disqualified unless the other Directors at the meeting knew of or could reasonably have known of the disqualification.

10. POWERS AND DUTIES OF THE BOARD

- (a) The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred on them by these Rules) may exercise all powers and do all things as are within the power of the Company and are not by these Rules or the Act required to be exercised or done in general meeting.
- (b) The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Company.
- (c) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for such money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed by any two Directors or in such other manner as the Board from time to time determines.

- (d) The Board will make minutes of all appointments of officers and employees, the names of the Directors present at all meetings of the Company and of the Board and of all proceedings at all meetings of the Company and of the Board. Such minutes will be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the following meeting.

11. PROCEEDINGS OF THE BOARD

- (a) The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Any Director, or the secretary to the Board on request of any Director, may convene a Board meeting.
- (b) Subject to these Rules, questions arising at any Board meeting will be decided by a majority of votes. A determination by a majority of the Directors present will be deemed a determination of the Directors. Where there is an equality of votes, the Chair of the meeting will have a second or casting vote.
- (c) The quorum necessary for the transaction of business is a majority of the total number of Directors.
- (d) If the number of Directors is reduced below the minimum number fixed pursuant to these Rules, the continuing Directors may act only for the purpose of increasing the number of Directors to that number or to call a general meeting of the Company.
- (e) The Chair will rotate for each Board meeting, with the order to be determined as the Board thinks fits.
- (f) The Board may delegate any of its powers or functions (not being directors' duties under the Act) to one or more committees consisting of such Members of the Company as the Board thinks fit. Such Committees will act in an advisory capacity only. They will conform to any regulations that may be given by the Board and will have power to co-opt any other Member or Members of the Company.
- (g) Every Committee may meet and adjourn as it thinks proper. Questions arising at any meeting will be determined by a majority of votes of the Members present and in the case of an equality of votes the Chair will have a second or casting vote.
- (h) All acts done by any meeting of the Board or a Committee or by any Director will, notwithstanding that it is afterwards discovered that there was some defect in the appointment of the Committee or Director, or that the Directors or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director or Committee member.
- (i) A resolution in writing signed by all Directors in Australia for the time being entitled to receive notice of a meeting of the Board will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, each one signed by one or more Directors.
- (j) A Secretary will in accordance with the Act be appointed by the Board for such term and upon such conditions as it thinks fit and any Secretary so appointed may be removed by it. Nothing in these Rules prevents the Board from appointing a Member or a Director as Secretary.
- (k) A document will be validly executed and will be binding on the Company if it is signed by any two authorised Directors.
- (l) The Branch Manager of the Maldon & District **Community Bank**[®] is permitted to counter-sign invoices with any authorised Director.

12. FINANCIAL RECORDS & AUDITING

- (a) Proper books and financial records must be kept and maintained showing the correct financial affairs of the Company. The Company must ensure the relevant accounting and auditing requirements of the Act are complied with.
- (b) The Board must distribute to all Members at the end of each financial year, copies of every profit and loss account and balance sheet (including attachments) accompanied by a copy of the Auditors' report.
- (c) The Board must cause to be made out and laid before each AGM a balance sheet and profit and loss account made up to the end of the Company's financial year but in no case will that date be more than five months before the date of the meeting.
- (d) All monies of the Company must be banked in the name of the Company in a bank account as the Board may from time to time direct.
- (e) The Board may determine at its sole discretion whether and to what extent, and at what time and place and under what conditions the financial records and other documents to the Company will be open to the inspection of Members other than the Board. No Member other than a Director has the right to inspect any document of the Company except as provided by the Act or as authorised by the Board.
- (f) A properly qualified Auditor or Auditors will be appointed and their duties regulated in accordance with the Act.

13. NOTICES

- (a) A notice may be given by the Company to any Member either personally, by sending it by post to the Member's registered office, postal address, facsimile number or email address supplied by the Member to the Company. Notices sent by post are deemed to be served (except in the case of a notice of meeting) at the time at which the letter would be delivered in the ordinary course of post. Notices sent by facsimile or email are deemed to be served when the transmission or electronic message is sent.
- (b) Any notice by a court of law or otherwise required or allowed to be given by the Company to Members by advertisement will be sufficiently advertised if advertised once in the newspaper circulating in the local area where the Company conducts its business.
- (c) Notice of every General Meeting will be given in any manner authorised only to every Member (except those Members for whom the Company has no registered address or an address for giving notices) and the Auditor or Auditors for the time being of the Company.
- (d) The accidental omission to give notice of a General Meeting to or the non- receipt of the notice by any person entitled to receive notice of a General Meeting under these Rules does not invalidate the proceedings or any resolution passed at the meeting.

14. INDEMNITY AND INSURANCE

14.1 Indemnity in favour of Directors and Officers

Subject to the Act and Rule 14.2, the Company will indemnify each Director, Secretary and executive officer to the maximum extent permitted by law against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary order or a compensation order under the Act; or
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

14.2 Indemnity for legal costs

The Company will indemnify each Director, Secretary and executive officer to the maximum extent permitted by law against any Liability for legal costs incurred by them by virtue of their holding office as, and acting in the capacity of, Director, Secretary or executive officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the Director, Secretary or executive officer is found to have a Liability for which they could not be indemnified under Rule 14.1;
- (b) in defending or resisting criminal proceedings in which the Director, Secretary or executive officer is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this Rule 14.2(c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the Director, Secretary or executive officer under the Act in which the court denies the relief.

14.3 Indemnity for employees

- (a) Subject to the Act and Rule 14.3(b), the Company may indemnify an employee who is not a Director, Secretary or executive officer of the Company to the same extent as provided for a Director, Secretary or executive officer as described at Rule 14.1 above.
- (b) The Company may indemnify an employee other than a Director, Secretary or executive officer against any Liability for legal costs to the same extent as provided for a Director Secretary or executive officer as described at Rule 14.2.

14.4 Proceedings

For the purposes of Rules 14.2 and 14.3(b), 'proceedings' includes the outcomes of the proceedings and any appeal in relation to the proceedings.

14.5 Insurance for the benefit of Directors, Secretaries and executive officers

Subject to the Act, the Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company acting in that capacity against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

14.6 Insurance for other officers

Subject to the Act, the Company may pay a premium for a contract insuring a person who is or has been an employee and also an officer of the Company, acting in that capacity, but who is not a Director, Secretary or executive officer of the Company against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

14.7 When insurance may not be provided by the Company

The Company will not pay, or agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer or an employee who is also an officer of the Company, against a Liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of section 182 or section 183 of the Act.

14.8 Definitions for the purposes of Rule 14

In this Rule 14, except to the extent the context otherwise requires:

‘Liability’ includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense;

‘Executive officer’ means a person who is concerned, or takes part in, the management of the Company (regardless of the person’s designation and whether or not the person is a Director of the Company).

15. MEDIATION

- (a) If a dispute arises between Directors, Members, the Company or any combination of these concerning the affairs of the Company, the parties must attempt to resolve the dispute by mediation as follows:
 - (i) Either party may serve a mediation notice on the other. The notice must state that a dispute has arisen and identify what is in dispute.
 - (ii) The parties must jointly appoint a Mediator. If the parties fail to agree on the appointment within 7 days of service of the notice, a Mediator will be appointed by the President of the Law Institute of Victoria. The costs of the Mediator are to be shared equally by the parties.

- (iii) The parties must observe the instructions of the Mediator about the conduct of the mediation and execute any written agreements that the Mediator may reasonably ask them to execute and make a genuine and determined effort to resolve the dispute.
- (iv) If the dispute is not resolved within 14 days of the Mediator's appointment or at any other time that the parties are agreed to in writing, the mediation ceases.
- (v) The Directors and the Members must as far as is reasonably practicable (and without breaching the Act) maintain the status quo concerning the affairs of the Company while the mediation process is taking place.
- (vi) No request for arbitration may be made nor any application made to a court of law except where the status quo concerning the affairs of the Company is not maintained until such time as the parties have attended a mediation meeting.
- (vii) If the dispute is resolved, each party must sign the terms of the agreement and the settlement terms are binding on the parties.
- (viii) The mediation process is confidential and written statements prepared for the Mediator or for a party and any discussions between the parties and the Mediator before or during the mediations process cannot be used in any legal proceedings.

16. INCONSISTENCY WITH CORPORATIONS ACT

- (a) If any of these Rules are inconsistent with or breach any provisions of the Act, these Rules will be read down to the extent necessary to comply with the Act.
 - (b) Where the provisions of the Act permit an act to be done, decision to be made or a meeting to be held in a way which is more convenient for the Company or the Directors, or is more favourable to the Members or the Directors than as permitted by these Rules, the Directors may elect to act in accordance with the Act rather than these Rules.
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