

3801 Sample Company Pty Ltd
ACN 001 002 003

Incorporation Date: 18th August 2009

Special Purpose Company
SMSF Trustee

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Prepared for:

Reckon Docs Pty Ltd

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Special Purpose Company
SMSF Trustee

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Prepared by:

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What this document is about?

This document explains the rights, obligations and responsibilities of those involved with this special purpose SMSF Trustee Company. It is expected that this company be used for the sole or primary purpose of acting as the trustee of a SMSF.

This document is in two parts.

- The first part is an information statement that talks about the role of the trustee of a SMSF and more importantly the role and responsibilities of a director of a trustee company. It also considers the powers of the trustee and what is required to be done at meetings. The information memorandum is educational and informational only.
- The second part is the legal constitution of the trustee company. These are the rules that the directors of the trustee company and the shareholders agree to. They must be followed at all times subject to the provisions of the *Superannuation (Industry) Supervision Act 1993*, *Income Tax Assessment Act 1997* and the *Corporations Act 2001*.

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Part One:

Information statement

1. Introduction to Trustee's role

Self managed super funds or SMSFs as they are commonly known are increasingly popular. However there are a number of statutes and laws that govern the trustees of a SMSF. So too are there various regulators such as the Australian Taxation Office ("ATO") and the Australian Securities and Investment Commission ("ASIC"). To be a director of a company is a big responsibility and one not to be taken lightly. A member of a SMSF with a corporate trustee is required to become a director of the trustee company under the *Superannuation (Industry) Supervision Act 1993* ("SIS Act").

From 1 July 2007 a person becoming a trustee or a director of a trustee company of a SMSF must sign a declaration that they understand their duties attached to this role.

Where the directors of the trustee company breach any of the rules of the fund or the *SIS Act*, *Income Tax Assessment Act 1997* ("Tax Act") or the *Corporations Act 2001* they may be liable to a fine and in some cases imprisonment. For these reasons it is vital that a director of a trustee company of a SMSF do the following things:

- (a) Read the constitution of the trustee company. If a director or potential director has any questions about their role as a director they should seek professional advice;
- (b) Read and understand the trust deed of the SMSF. If a trustee company causes a SMSF to become a non-complying superannuation fund (and as a consequence be subject to adverse tax consequences) the directors of the company might personally be liable for damages or even criminal prosecution; and
- (c) Read the ATO publication "Role and Responsibilities of Trustees".

2. Trustee's *Corporation Act 2001* responsibilities

The trustee of a SMSF is not required to be licensed however under the *Corporations Act 2001* a SMSF is a financial product and the trustee of the SMSF must issue prospective members with a Product Disclosure Statement (a PDS), which contains information required by the *Corporations Act 2001* to provide prospective members and members with sufficient information to make an informed decision about acquiring this financial product. Importantly the PDS is required to provide information about any significant benefits to which that person may become entitled as well as the circumstances, process and timeframe in which those benefits may be provided. *Failure to do so may render the trustee and its directors liable to civil and/or criminal penalties.*

In relation to a SMSF, the *Corporations Act 2001* includes the following as financial products:

- the making of a contribution into a fund;
- the payment of a SMSF pension;
- taking a disability benefit;
- putting in place an investment strategy;
- establishing a transition to retirement income plan;
- paying out benefits in the event of a member's death;
- making an investment that is a financial product;
- withdrawal of a lump sum from the fund; and
- creating an insurance plan for the members of the fund.

It is important to understand that it is the trustee's responsibility to provide members and prospective members with a PDS. This is the case even though the members of the fund may be directors of the trustee company. The trustee may use the Strategist PDS where the trustee is using the Strategist Trust Deed and Governing Rules.

3. The purpose of the Fund

The fund has been established as a SMSF with a Strategist SMSF Trust Deed and Governing Rules. The Strategist SMSF Governing Rules are unique and not universal to every SMSF.

The directors of the trustee company act in their capacity as trustee.

The sole and primary purpose of a SMSF is to provide retirement, death, or incapacity benefits to the members and their dependants. Benefits might be provided by way of lump sum or an income stream (that is a pension) or a combination of both. Further, members who have reached their preservation age – being 55 years of age and over or born before 1960 - are entitled to a transition to retirement income stream (even though the member may still be working).

The trustee must ensure that it maintains the fund for the sole purpose of providing benefits to members. Failure to do so may render the fund a non-complying SMSF. The Commissioner of Taxation may replace trustees that have breached the *SIS Act* or their governing rules with his preferred trustee.

4. Trustee's general responsibilities

A Trustee must act honestly, prudently and in the best interests of the beneficiaries of a trust (i.e. the members of the SMSF).

Directors and potential directors reviewing this constitution should be aware that both civil and criminal penalties can be imposed under the superannuation laws for any breach of these and other trustee responsibilities including breaking the Fund's governing rules. Prior to accepting an appointment as a director, it is important that a person consider the risks associated with such an appointment. The excuse that the director was not aware of the superannuation laws or the governing rules is not valid at law.

If a person is unwilling to take on the responsibilities as director of a trustee company yet retain the benefits generally available in a SMSF then it may be advisable to appoint an approved trustee. In this instance the fund becomes what is known as a "small APRA fund" or "SAF".

A trustee of a SMSF must:

- act honestly;
- act in the best interests of members and other beneficiaries;
- keep the money and assets of the fund separate from the trustee's personal assets and money or those of another person including other trusts, companies and businesses that the member or trustee may have an interest in;
- formulate and implement an investment strategy for the fund. This strategy must follow the fund's investment objective and should be detailed and in writing;
- abide by the governing rules of the fund at all times;
- ensure that the trustee does not breach any of the superannuation laws;
- ensure proper accounting including the maintenance of member accounts;
- appoint an auditor and other specialists; and
- meet all regulatory obligations.

5. Trustee meetings and decision making

The directors of the trustee company need to meet regularly to decide issues and approve transactions that arise within the fund. Some of these issues include the:

- appointment of professional advisers including auditor and SMSF specialist adviser;
- appointment of the fund administrator;
- establishment of a bank account;
- setting the investment objective and investment strategy for the fund;
- admission of members to the fund and issue of a PDS;
- acquisition and disposal of investments pursuant to the investment strategy;
- approval of the payment of benefits to a member;
- payment of a death benefit to a dependant or legal personal representative of a deceased member;
- payment of a disability benefit to a member or their legal personal representative;
- acceptance of a binding death benefit nomination from a member;
- review of audit reports; and
- creation of any reserves.

In making any decision, the directors of the trustee company may vote according to the balance of the member accounts of those members that they represent. The trustee may, at any stage lay down a specific voting procedure to apply in the event of a corporate transaction or some thing happening to a member. Directors need to be aware of the number of votes that they may bring to a meeting and ensure that any requirements to vote must be exercised according to their responsibilities as director of the trustee company.

6. Trustee's powers

The company's powers in respect of the SMSF are those of the SMSF. These powers are not found in the company's constitution; rather they will be found in the SMSF Trust Deed.

7. Authorised investments

The company can only invest the funds of the SMSF to the extent that the investment is authorised by the Trust Deed of the SMSF.

8. Trustee must not borrow

Normally a SMSF cannot borrow (except for some limited short term purposes) nor can a trustee charge the assets of the fund.

An important exemption is contained within section 67A of the *S/S Act* (known as "limited recourse borrowing arrangements"). Broadly, section 67A allows a borrowing if the borrowing is used to acquire an asset (or replacement of that asset), if:

- (a) the asset acquired is held on trust for the fund;
- (b) the fund has the right to subsequently acquire the legal ownership of the asset; and
- (c) the rights of the lender against the trustee of the fund are limited to the asset (or replacement to that asset) acquired through the borrowing.

If a fund borrows to acquire an asset the trustee cannot – until that borrowing is repaid – hold title to that asset.

9. Trustee must prepare accounts

The trustee is required under the rules and the law to prepare a set of accounts for the fund each year and to have these accounts audited. The accounts must show the profit and loss on the fund's investments, tax, the value of the fund's assets and liabilities and any other things as required by the law. These accounts must be audited on an annual basis.

The trustee is also required to issue to each member a report of their superannuation benefits at the end of a financial year including the return on their benefits and any costs associated with maintaining the fund that have been allocated against their benefits.

10. Appointment of specialists

The company may appoint an advisor to assist it to ensure that the Fund remains a SMSF and to assist it in the administration and management of the Fund.

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- End of Part One -

Part Two: Rules of the Company

Rule 1. Replacement of Replaceable Rules

Explanation

The *Corporations Act* contains rules that are deemed to be adopted by a company if a company does not have its own constitution. However those rules are “replaceable rules” – they do not have to be adopted by the members of the company. Since this Company has been formed for the sole purpose of acting as a trustee of a Self Managed Superannuation Fund not all of those “replaceable rules” are presently relevant.

Further the law has specific requirements as to what should be contained within the constitution of a company that is the trustee of a superannuation fund. Accordingly this Constitution states that the “replaceable rules” do not apply and adopts rules that are more appropriate to a company that is the trustee of a Self Managed Superannuation Fund.

In particular this Constitution has been drafted so that any company adopting it is suited to be a trustee of a superannuation fund and adopts the fund rules (Trust Deed) the copyright of which is vested in Reckon Docs Pty Ltd.

Rule

The replaceable rules set out in the *Corporations Act* do not apply to this Company.

Rule 2. Definitions and Interpretations

Rule

2.1 Definitions

In the interpretation of this Constitution unless the subject matter or context otherwise requires:

“**Board**” means the board of Directors.

“**Company**” means the company the shareholders of which have adopted this Constitution.

“**Complying Superannuation Fund**” means a complying superannuation fund within the meaning of section 45 of the *SIS Act*.

“**Constitution**” means this constitution.

“**Corporations Act**” means the *Corporations Act 2001 (Cth)* as amended or modified from time to time or any replacement to that act.

“**Director**” means a person appointed as a director of the Company.

“**Employee**” means a person who is an employee for the purposes of sections 15A and 17A of the *SIS Act*.

“**Financial Year**” means a year ended on 30 June or on such other date as determined by the Directors.

“**Fund**” means the Self Managed Superannuation Fund of which the Company is currently the trustee.

“Legal Personal Representative” means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person who is under a legal liability or a person who holds an enduring power of attorney granted by a person.

“Member” means a member of the Fund.

“Member’s Account” means an account kept by the Company as trustee of the Fund that records a Member’s interests in the Fund.

“Notice” means a notice given to a Member or Shareholder.

“Regulated Superannuation Fund” means a regulated superannuation fund as defined by sections 10(1) and 19 of the *SIS Act*.

“Regulator” means the Commissioner of Taxation or such other person or body as defined by section 10(1) of the *SIS Act*.

“Registered Address” means that address as notified by a Director or Shareholder to the Secretary as that address being either a physical or electronic address to which Notices can be sent to the Director or Shareholder.

“Relative” means a person who is a relative for the purposes of section 17A of the *SIS Act*.

“Represents” means if a Director is also a Member that that Director represents himself or if the Director is a Legal Personal Representative of a Member that the Director represents that Member.

“Rule” means a rule of this Constitution.

“Secretary” means the secretary of the Company.

“Self Managed Superannuation Fund” is a superannuation fund that is a self managed superannuation fund as defined by the *SIS Act*.

“SIS Act” means the *Superannuation Industry (Supervision) Act 1993*.

“Shares” means shares in the Company.

“Shareholder” means a person owning Shares.

2.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Except where the context otherwise requires words and phrases given a meaning by the *Corporations Act* or the *SIS Act* have the same meaning in this Constitution.
- (c) Explanations accompanying a Rule are for information and interpretation purposes only and may be taken into account in interpreting a Rule:
 - (1) in considering the purpose or object underlying a Rule; or
 - (2) to confirm that the meaning of a Rule is its ordinary meaning conveyed by its text taking into account the purpose or object underlying the Rule; or
 - (3) in determining a Rule’s meaning if the Rule is ambiguous or obscure; or
 - (4) in determining a Rule’s meaning if the ordinary meaning conveyed by its text, taking into account its context in the Rules and the purpose or object underlying the Rule leads to a result that is manifestly absurd or unreasonable.
- (d) A reference to any person or body shall include a reference to a company, references to its respective authorised officers, agents, delegates, successors, assigns, executors and administrators.

Rule 3. Company a Trustee of a Self Managed Superannuation Fund

Rule

- 3.1 The sole purpose of the Company is that of being the trustee of a Self Managed Superannuation Fund and if any clause of this Constitution is in conflict with a provision of the *SIS Act* or a regulation made pursuant to that *Act* that provision or that regulation prevails.
- 3.2 If the Company is the trustee of the Fund the Company must not be the trustee of any other superannuation fund or trust or engage in any business.

Rule 4. Company a Proprietary Limited Company

Rule

The Company is a proprietary company limited by shares and must not be changed to any other type of company unless required by the *Corporations Act* or the *SIS Act*.

Rule 5. Directors

Explanation

A superannuation fund must have a trustee. The Company has been formed to be the trustee of a superannuation fund that is a Self Managed Superannuation Fund.

Section 17A of the *SIS Act 1993* states that if a company is the trustee of a Self Managed Superannuation Fund each member (or Legal Personal Representative of the Member) must be a director of that company. However a person cannot be director of a Self Managed Superannuation Fund if that person is a "disqualified person". A person will be a "disqualified person" if (broadly speaking) that person has contravened a provision of the *SIS Act* or has been convicted of dishonest conduct.

Rule

5.1 Entitlement to be a Director

(a)

- (1) Subject to Rule 5.1(b), Rule 5.1(c) and Rule 5.1(e) a person may only be a Director if that person is a Member of the Fund, unless there is only one Member of the Fund in which case that member and if the Member so elects a relative of that Member as defined by section 17A (9) of the *SIS Act* may be Directors of the Fund.
- (2) Notwithstanding paragraph (a) above a person may be appointed as a Director in place of a Member if the Member has died and that person is the Legal Personal Representative of that Member.
- (3) Notwithstanding paragraph (a) above a person may be appointed as a Director in place of a Member if the Member is under legal disability and if that person is the Legal personal Representative of that Member or if that person is the Legal personal Representative of the Member and that person has an enduing power of attorney in respect of that Member or if that person is a parent or guardian of the Member who is under a legal disability because of age and does not have a Legal Personal Representative.

- (b) A person may not be appointed as a Director if that person is under a legal disability or if the appointment of that person as a Director would cause the Fund not to be a Self Managed Superannuation Fund.

- (c) If a Member is under a legal disability then the Legal Personal Representative of the Member or parent or guardian of a Member who is under a legal disability because of age and does not have a Legal Personal Representative may be appointed a Director in lieu of that Member who is under the legal liability.
- (d) A person including a person who is the Legal Personal Representative of a Member or parent or guardian of a Member who is under a legal disability because of age and does not have a Legal Personal Representative, cannot be a Director if that person has been disqualified by the Regulator (pursuant to sections 126A or 126H of the *S/S Act*).
- (e) Notwithstanding Rule 5.1(a) above a Director need not be Member of the Fund provided the Company does not have more than two Directors one person whom is a Member of a Fund or the Legal Personal Representative of a Member of that Fund and that other person whom is a Relative of that Member or is a person who is not an employer of that Member.

5.2 Resignation of a Director

A Director who is the Personal Legal Representative of a Member or parent or guardian of a Member who is under a legal disability because of age and does not have a Legal Personal Representative may resign as a Director and subject to the provisions of the Constitution the Member or some other Personal Legal Representative of the Member or parent or guardian of a Member who is under a legal disability because of age and does not have a Legal Personal Representative shall be appointed in place of that person.

5.3 Removal of a Director

- (a) If any purported appointment of a person as a Director is in contradiction of Rules 5.1(a) and 5.1(b), above, the appointment is not valid and is of no effect.
- (b) If a person has been properly appointed as a Director but the continued appointment of that person as a Director will cause the Fund not to be a Self Managed Superannuation Fund that person ceases to be a Director as at the date of that act or that event which would cause the Fund not to be a Self Managed Superannuation Fund if that person did not cease to be a Director.

Rule 6. Powers of Directors

Rule

- 6.1** The Company is to be managed by or be under the direction of the Directors.
- 6.2** The Directors may exercise all powers of the Company except all powers that by law or by this Constitution must be exercised at a general meeting.
- 6.3** If the Company has two or more Directors any two of the Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 6.4** If the Company has only one Director that Director may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 6.5** Whilst the Company is the trustee of the Fund the Directors may exercise all the powers of the trustee of the Fund.
- 6.6** Whilst the Company is the trustee of the Fund the Directors must ensure that the Fund is a Complying Superannuation Fund.

Rule 7. Meetings of Directors

Rule

- 7.1** If there is more than one Director the Secretary may serve a Notice on the Directors requiring the Directors to meet and to conduct business on behalf of the Company.

Explanation

If there is more than one Director, the Directors should meet to decide matters such as the:

- appointment of various professional advisers to the Fund including an auditor;
- establishment of the Fund's cash account;
- setting of an investment objective and investment strategy for the Fund;
- admission of Members to the Fund;
- acquisition and disposal of investments pursuant to an investment strategy;
- approval of the payment of benefits to a Member;
- payments of death benefits;
- acceptance of a binding death benefit nomination;
- review of audit reports;
- creation of any reserves.

The Directors should also attend to the day-to-day administration of the Fund (attending to such things as the making and maintenance of investments) although the Directors may appoint a manager or accountant to assist them.

- 7.2** The Secretary must give reasonable notice of any such meeting to each of the Directors (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by the Director). Such written notice must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
 - (b) state the general nature of the business of the meeting.
- 7.3** Notwithstanding Rule 7.2 above, the Directors can unanimously agree a meeting be held on some earlier date than that date referred to at clause 7.2(a) above.
- 7.4** At any meeting of the Directors a quorum is equal to that number of Directors or proxies who represent Members the balance of whose Member's Accounts aggregated together are at least 50% of the balance of all Member's Accounts.
- 7.5** The directors will determine by majority approval at the first meeting of directors one of the following as the method by which the directors will be entitled to cast votes at all meetings of directors:
- (a) each director being entitled to cast the number of votes equal to the nearest whole number of dollars of the balance of the member's account that the director represents, but no less than one vote each; or
 - (b) each director being entitled to cast one vote each.
- 7.6** If the directors fail to make a determination in accordance with Clause 7.5, Clause 7.5(b) will apply.
- 7.7** If Clause 7.5(b) applies and there is a deadlock in making any director decision, the deadlock shall be resolved by weighting each director's votes equal to the nearest whole number of dollars of the balance of the member's account that the director represents, but no less than one vote each.

- 7.8 A resolution shall not be passed at any meeting of the Directors unless it is passed by the casting of a majority of the votes entitled to be cast by all Directors who are present and voting at that meeting.
- 7.9 A Director may appoint a person to act as that Director's proxy at any meeting of the Director.
- 7.10 If a circulating minute, containing a statement that the Directors are in favour of a resolution in the terms set out in that document has been signed by all Directors a resolution in those terms will be taken to have been passed at a meeting of the Directors held on the day and at the time at which the document was last signed by a Director. Two or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be taken to constitute one document for the purposes of this Rule.

Rule 8. Directors' records

Explanation

A written record must be kept of all decisions made by the Directors. Those records must be held for at least ten years under Section 103 of the *SIS Act 1993*.

Rule

- 8.1 If there is only one Director that Director must make a written record of all decisions made by the Director. If there is more than one Director the Directors must keep minutes of every meeting held by the Directors.
- 8.2 Records and minutes required by this Rule must be kept for at least ten years from the date the decision was made or the date of the meeting.

Rule 9. Remuneration of Directors

Rule

- 9.1 A Director will not be paid any remuneration as a consequence of being a Director.
- 9.2 The Company may pay travelling and other expenses properly incurred by a Director:
- (a) in attending Director's Meetings or any committees of the Directors; and
 - (b) in attending general meetings of the Company.

Rule 10. Secretaries

Rule

The Board will appoint one or more persons as Secretary or Secretaries of the Company. A Secretary holds office on the terms and conditions as determined by the Board.

Rule 11. Sole Shareholder companies

Explanation

The Company might only have one Shareholder and one Director. This Rule is designed to:

- reiterate those provisions of the *Corporations Act* which allow the Director of a proprietary company who is its only director and shareholder to exercise all the powers of the company;
- ensure that where there is only one shareholder and director of a Company that the provisions of the Constitution are to be read as if there was only one Shareholder and Director of the Company.

Rule

If there is only one Shareholder who is the only Director of the Company this Constitution is to be read and interpreted as if any reference in this Constitution to more than one Shareholder and Director was a reference to that one Shareholder and Director.

Rule 12. Joint owners

Explanation

Where a Share is held jointly and one of the co owners dies that co owner's interest in the Share is automatically transferred to the other or other joint owners.

Rule

Shares may be held jointly with another person.

Rule 13. Transfers of shares

Rule

13.1 A Shareholder may only transfer Shares held by him to another person as allowed by this Constitution.

13.2 A person transferring Shares remains the holder of the Shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the Company's register of Shareholders as holder of the Shares.

13.3 The Directors must refuse to register a transfer of Shares unless:

- (a) a properly completed form of transfer and any certificate of registration of those Shares have been left at the Company's registered office; and
- (b) the Directors have been given such information as they reasonably require to establish the right of the person to whom the Shares have been transferred to hold those Shares.

Rule 14. Transmission of shares on death

Rule

14.1 If a Shareholder dies the Company will recognise only the Legal Personal Representative of the deceased Shareholder as being entitled to the deceased Shareholder's interest in a Share unless that interest is held jointly with another person. If the Legal Personal Representative gives the Directors the information they reasonably require to establish the Legal Personal Representative's entitlement to be registered as the holder of the Share the Legal Personal Representative may:

- (a) by giving a written and signed notice to the Company, elect that until administration of the estate of that deceased Shareholder, that the Legal Personal Representative be registered as the holder of the Share; or
- (b) by giving a completed transfer form to the Company transfer the Share to another person being a Member.

14.2 On receiving a notice under Rule 14.1 the Company must register the personal representative or that other Member as the holder of the Share.

Rule 15. Transmission of shares on bankruptcy

Explanation

A Shareholder may become bankrupt. This Rule is to protect the other Shareholders against a trustee in bankruptcy acquiring a Share and as consequence meddling in the affairs of the Company.

Rule

- 15.1** If a Shareholder becomes bankrupt the Company will recognise only the Legal Personal Representative of the Shareholder, not being a trustee in bankruptcy of the Shareholder, as being entitled to the bankrupt Shareholder's interest in a Share. If a Legal Personal Representative, not being a trustee in bankruptcy of the Shareholder, gives the Directors the information they reasonably require to establish the Legal Personal Representative's entitlement to be registered as the holder of a Share the Legal Personal Representative may, by giving a written and signed notice to the Company, elect to be registered as the holder of the Share.
- 15.2** On receiving that election the Company must register the Legal Personal Representative as the holder of the Share.

Rule 16. Transmission of shares on mental incapacity

Rule

- 16.1** If a Shareholder becomes mentally incapacitated the Company will recognise only the Legal Personal Representative of the Shareholder, not being a trustee in bankruptcy of the Shareholder, as being entitled to the Shareholder's interest in a Share. If a Legal Personal Representative, not being a trustee in bankruptcy of the Shareholder, gives the Directors the information they reasonably require to establish the Legal Personal Representative's entitlement to be registered as the holder of a Share the Legal Personal Representative may, by giving a written and signed notice to the Company, elect to be registered as the holder of the Share.
- 16.2** On receiving that election the Company must register the Legal Personal Representative as the holder of the Share.

Rule 17. Meetings of Shareholders

Rule

17.1 Calling of meetings

A Director may call a meeting of Shareholders for the purpose of considering that business which that Director requires to be considered by the Shareholder.

17.2 Notice

Notice of any meeting of the Shareholders shall be given as detailed at Rule 26.

17.3 Adjourned meetings

The Secretary must give reasonable notice of any such meeting to each of the Shareholders (which may be by mail, facsimile or email to that address, facsimile number or electronic address last nominated by the Shareholders). Such written notice must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the business of the meeting.

Notwithstanding Rule 17.3 above, the Shareholders can unanimously agree a meeting be held on some earlier date than that date referred to at clause 17.3(a) above.

17.4 Quorum

At any meeting of Shareholders a quorum is equal to the number of Shareholders or proxies of Shareholders who represent Members the balance of whose Member's Accounts aggregate at least 50% of the balance of all Member's Accounts.

17.5 Chairperson

At a meeting the Shareholders will elect a chairperson of the meeting who will have a casting vote on a show of hands but no additional vote on a poll.

17.6 Voting

At a meeting of the Company, unless the Shareholders present unanimously agree otherwise, a Shareholder shall only be entitled to cast that number of votes as is equal to the nearest whole number of dollars of the balance of the Member's Account of that Member whom that Shareholder represents. If no Shareholder represents a Member, each Shareholder shall be entitled to cast one vote for each Share that the Shareholder owns.

17.7 Resolutions

A resolution shall not be passed at any meeting of the Shareholders unless it is passed by the casting of a majority of the votes entitled to be cast by Shareholders who are present at the meeting.

17.8 Circulating minutes

If a circulating minute containing a statement that the Shareholders are in favour of a resolution in the terms set out in that document and that document has been signed by all Shareholders a resolution in those terms will be taken to have been passed at a meeting of the Shareholders held on the day and at the time at which the document was last signed by a Shareholder. Two or more separate documents containing statements in identical terms, each of which is signed by one or more Shareholder, will together be taken to constitute one document for the purposes of this Rule.

17.9 Attendance by auditors

Any one Shareholder can invite any person who is or has audited the Company or the Fund to attend any meeting of the Shareholders and that auditor shall have the right to address that meeting.

Rule 18. Proxies

Rule

18.1 Right to appoint a proxy

A Shareholder who is entitled to attend and cast a vote at a meeting of the Shareholders of the Company may appoint a person as that Shareholder's proxy to attend and vote for the Shareholder at that meeting.

18.2 A proxy may be an individual or body corporate

The person appointed as the Shareholder's proxy may be an individual or a body corporate.

18.3 Number of votes

The appointment must specify the proportion or number of votes that the proxy may exercise.

18.4 More than one proxy

If the Shareholder is entitled to cast 2 or more votes at the meeting he may appoint 2 proxies. If the Shareholder appoints 2 proxies and the appointment does not specify the proportion or number of the votes each proxy may cast each proxy may exercise half of the votes which might be exercised by that Shareholder at that meeting.

18.5 Validity of proxy

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing Shareholder dies; or
- (b) the Shareholder is mentally incapacitated; or
- (c) the Shareholder revokes the proxy's appointment; or
- (d) the Shareholder revokes the authority under which the proxy was appointed by a third party; or
- (e) the Shareholder transfers the Share in respect of which the proxy was given.

18.6 Form of proxy

An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the regulations to the *Corporations Act* by the Shareholder making the appointment and contains the following information:

- (a) the Shareholder's name and address;
- (b) the Company's name;
- (c) the proxy's name;
- (d) the meetings at which the appointment may be used.

Rule 19. Inspection of records

Rule

The Directors of the Company or the Company by a resolution passed at a general meeting may authorise a Shareholder to inspect the records of the Company.

Rule 20. Company accounts

Rule

- 20.1** The Company must keep such accounting records as correctly record and explain the transactions of the Company.
- 20.2** Such accounting records are to be kept in such form and supported by such documentation as to enable those accounting records to be properly audited if required.
- 20.3** The Company must retain the accounts and statements for a period of 10 years after the end of the Financial Year to which they relate.

Rule 21. Common seal

Rule

The Company may have a seal. If the Company has a seal it may only be used as authorised by the Directors.

Explanation

The Company does not have to have a seal. This is because section 127 of the *Corporations Act* states that a company may execute a document without using a common seal if the document is signed by:

- two directors of the company;
- a director and a company secretary of the company; or
- for a proprietary company that has a sole director who is also the sole company secretary – that director.

However some persons transacting business with a company prefer that a company in executing a document affix a seal to that document. As a consequence this Rule authorises but does not require the Company to acquire a seal.

Rule 22. Dividends

Explanation

Annual fees payable to the Australian Securities and Investment Commission “ASIC” by a company that is a “special purpose company” are significantly less than those fees payable by most companies to the Commission.

A company whose sole purpose is to act as the trustee of a Regulated Superannuation Fund will be a special purpose company if its constitution prohibits distribution of the company’s income or property to its shareholders (Regulation 3 of the *Corporations (Review Fees) Regulation 2003*). This rule is designed to allow the Company to only have to pay the lower fees to “ASIC”.

Assets of the Fund are not income or property of the Company.

Further it is appropriate that a company whose sole purpose is to be a trustee of a Self Managed Superannuation Fund should not be able to pay dividends or make a distribution of its income or capital to its members.

Rule

The Company cannot pay dividends or make a distribution of its income or property to its Shareholders.

Rule 23. Loans to Members, Shareholders and Directors

Explanation

Section 65 of the *SIS Act* states that a trustee of a Regulated Superannuation Fund must not lend money of the fund to a member of the fund or to a relative of a member of the fund. The purpose of this Rule is to prohibit the Company from making loans to Members.

Rule

The Company must not:

- (a) lend money of the Company to:
 - (1) a Member, Shareholder or Director;

- (2) a Relative of a Member, Shareholder or Director; or
- (b) give any other financial assistance to:
 - (1) a Member, Shareholder or Director;
 - (2) a Relative of a Member, Shareholder or Director.

Rule 24. Alteration of Capital

Rule

If at a meeting of the Shareholders the Shareholders agree, the Shares on issue can be converted into larger or smaller number of Shares on issue.

Rule 25. Winding up

Rule

- 25.1** The Company shall not be wound up whilst it is still the Trustee of the Fund.
- 25.2** On the winding up of the Company all the income and property of the Company shall be distributed to such charities as the Shareholders agree at a meeting of the Company.

Rule 26. Notices

Rule

The Company may give a notice to a Shareholder:

- (a) by leaving it at the Shareholder's registered address;
- (b) or by sending it by prepaid post or facsimile transmission to the Shareholder's Registered Address; or
- (c) by sending it by any other electronic means to the Shareholder's Registered Address.

Rule 27. Indemnification of Directors

Rule

- 27.1** Subject to law the Company indemnifies each person who is or has been a Director out of the assets of the Company or Fund against any liability incurred by the person as a consequence of that person being or having been a Director except any liability incurred by that person's gross negligence, wilful wrongdoing, or fraud.
- 27.2** The Company may insure any person against any liability incurred by that person as a consequence of that person being or having been a Director.

- End of Part Two -

Shareholder declaration

I/We being the person specified in the application, dated 18th August 2009, for the registration of 3801 Sample Company Pty Ltd pursuant to Section 117 of the *Corporations Act 2001*, as having given my consent to become a Shareholder, hereby agree to the Rules of this Constitution as set out above.

Dated:/...../.....

John Smith

of Eye Building, Building B 35 Saunders Street
Pymont NSW 2009

in the presence of:

Please print name of Witness

Signature of Witness

Sample Copy

Sample Copy

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