

Constitution of CareSuper Pty Ltd
ACN 008 650 628

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Constitution of CareSuper Pty Ltd (ACN 008 650 628), a proprietary company limited by shares.

General

1 Definitions

The following definitions apply in this Constitution unless the context requires otherwise:

ASU Member Director means a Member Representative Director nominated by the Australian Services Union and appointed in accordance with rule 30.

AMWU Member Director means a Member Representative Director nominated by the Australian Manufacturing Workers' Union and appointed in accordance with rule 30.

Board means all or some of the Directors for the time being acting as a board.

Board Governance Policy means any policy or policies the Board has adopted in relation to the appointment, renewal and removal of Directors and Independent Directors for the purposes of this Constitution and of the Relevant Law.

BNSW Employer Director means an Employer Representative Director nominated by Business NSW and appointed in accordance with rule 30.

Chairperson means the Director elected to hold office as chairperson pursuant to rule 41.

Company means CareSuper Pty Ltd ABN 14 008 650 628 (formerly known as Motor Trades Association of Australia Superannuation Fund Pty Ltd).

Constitution means this constitution.

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

Deputy Chairperson means the Director elected to hold office as deputy chairperson pursuant to rule 41.

Director means a person appointed or elected to the office of director of the Company in accordance with this Constitution and, where appropriate, includes an alternate Director.

Employer Nominating Organisation means the entity or entities appointed from time to time under rule 34 as an Employer Nominating Organisation. Until varied by the Board in accordance with rule 34, the Employer Nominating Organisation for:

- (a) BNSW Employer Directors is Business New South Wales;
- (b) VCCI Employer Directors is the Victorian Chamber of Commerce and Industry;
- (c) TCCI Employer Directors is the Tasmanian Chamber of Commerce and Industry Limited ACN 009 475 987; and
- (d) MTAA Employer Directors is the Motor Trades Association of Australia Ltd ACN 008 643 561.

Equal Representation means the requirements of SIS and any RSE Licence conditions requiring an equal number of Employer Representative Directors and Member Representative Directors as Directors of the Company or as members of a committee constituted by the Board.

Employer Representative Director means a director nominated by an Employer Nominating Organisation under rule 28.

Fund means the superannuation fund known as 'CareSuper' ABN 74 559 365 913 (formerly known as 'Spirit Super').

Independent Director means a director appointed in accordance with rule 30(a)(iii).

Member Nominating Organisation means the entity or entities appointed from time to time under rule 34 as a Member Nominating Organisation. Until varied by the Board in accordance with rule 34, the Member Nominating Organisations for the:

- (a) ASU Member Director is Australian Services Union;
- (b) UNSW Member Director is Unions NSW;
- (c) UT Member Director is Unions Tasmania; and
- (d) AMWU Member Director is Australian Manufacturing Workers' Union.

Member Representative Director means a director nominated by a Member Nominating Organisation under rule 28.

MTAA Employer Director means a Member Representative Director nominated by the Motor Trades Association of Australia Ltd and appointed in accordance with rule 30.

Nominating Body means an Employer Nominating Organisation or a Member Nominating Organisation.

Relevant Law means SIS, the Corporations Act, the *Income Tax Assessment Act 1997*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the *Family Law Act 1975*, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*, the *Bankruptcy Act 1966*, the *Electronic Transactions Act 1999* and any other applicable legislation or other lawful requirement (as amended from time to time) with which the Company or the Fund must comply (whether to avoid breaching the relevant legislation or other lawful requirement or to qualify for tax or other concessions which the Trustee determines to be desirable or for any other purpose).

Register means the register of shareholders kept under the Corporations Act.

Regulator has the meaning given under section 10 of SIS.

RSE Licence has the meaning as set out in the Relevant Law.

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

Shares means shares in the share capital of the Company.

Shareholder means a person entered in the Register as a holder of a share in the Company.

Shareholder Present means, in connection with a general meeting, a shareholder present for the meeting, in person or by proxy, by attorney or, where the shareholder is a body corporate, by representative (and includes any of those persons attending a general meeting at the venue or venues for the meeting or using virtual meeting technology approved by the Board in accordance with this Constitution).

SIS means the *Superannuation Industry (Supervision) Act 1993* (Cth), the *Superannuation Industry (Supervision) Regulations 1994* (Cth) and any prudential standards or legislative instruments made under that Act.

Spirit Super SFT means the transfer of the members and assets of the fund formerly known as CareSuper (now Former CARE Super) (ABN 98 172 275 725) to CareSuper ABN 74 559 365 913 (formerly known as Spirit Super) which is set to occur on 1 November 2024.

TCCI Employer Director means an Employer Representative Director nominated by the Tasmanian Chamber of Commerce and Industry and appointed in accordance with rule 30.

UNSW Member Director means a Member Representative Director nominated by Unions NSW and appointed in accordance with rule 30.

UT Member Director means a Member Representative Director nominated by Unions Tasmania and appointed in accordance with rule 30.

VB Employer Director means the Employer Representative Director jointly nominated by the Victorian Chamber of Commerce and Industry and Business New South Wales and appointed in accordance with rule 30.

VCCI Employer Director means an Employer Representative Director nominated by the Victorian Chamber of Commerce and Industry and appointed in accordance with rule 30.

2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise:
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iii) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (iv) A reference to a rule is a reference to a rule of this Constitution.
 - (v) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
 - (vi) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.

3 Replaceable Rules

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

4 Transitional

- (a) This Constitution supersedes the constitution in force immediately before the adoption of this Constitution.
- (b) Everything done under any previous constitution of the Company continues to have the same operation and effect after the adoption of this Constitution as if properly done under this Constitution. In particular (without limitation) every Director, alternate Director and Secretary in office immediately before the adoption of this Constitution is taken to have been appointed and continues in office under this Constitution.

5 Objects

The sole purpose of the Company is to be the trustee of the Fund and do all things that the Board considers necessary or desirable for that purpose.

6 Proprietary Company Provisions

The Company is a proprietary company.

Shares

7 Issue of Shares

- (a) Subject to the Corporations Act, this Constitution and any special rights conferred on the holders of any Shares, the issue of Shares is under the control of the Board, which may issue and cancel Shares on the terms the Board considers appropriate.
- (b) The Board may, on behalf of the Company, issue Shares but only to persons who satisfy the shareholding qualifications.
- (c) Without affecting any special rights conferred on the holders of any Shares, any Shares may be issued with preferred, deferred or other special rights, obligations or restrictions, whether in regard to dividends, voting, return of share capital, payment of calls or otherwise, as the Board may determine and on any terms the Board considers appropriate.
- (d) Unless approved by the Board, no person shall be entitled to hold a Share in the Company unless the person:
 - (i) is a Director; and
 - (ii) consents to hold the Share on behalf of the members of the Fund; and
 - (iii) is approved by the Regulator as a Shareholder of the Company, if required under SIS.
- (e) Unless otherwise provided by the terms of issue, the issue of any new Shares ranking equally with existing Shares is not a variation of the rights conferred on the holders of the existing Shares.
- (f) The Company is entitled to treat a Shareholder who is the registered holder of a Share as the sole legal owner of that Share. Except as required by law or this Constitution, the Company is not required to recognise any other interest of any other person in any Share.
- (g) The capital of the Company is comprised solely of fully paid ordinary shares.
- (h) The liability of each Shareholder is limited to the amount unpaid (if any) on the Share held by that Shareholder.
- (i) Subject to the other provisions of this Constitution and the Corporations Act, the Shares in the Company are under the control of the Board.

8 Rights attaching to Shares

- (a) A Shareholder has the right to attend and vote at all meetings of the Company.
- (b) A Shareholder does not have the right to participate in any dividends declared on a Share.
- (c) A Shareholder does not have the right to participate in any surplus assets or profits of the Company on a winding up of the Company, but may be repaid the capital paid on a Share.

9 Certificates

A person whose name is entered as a Shareholder in the Register is entitled, upon written request and without charge, to one (1) certificate for the Share of the Company registered in the Shareholder's name. Otherwise, the Board may decide to issue certificates for Shares and to

cancel any certificates on issue and to replace lost, destroyed or defaced certificates on issue on the basis and in the form it determines from time to time.

10 Forfeiture and cancellation of Shares

If a person ceases to act as a Director:

- (a) in the case of death or, subject to the *Bankruptcy Act 1966* (Cth), the bankruptcy of the person:
 - (i) that person's share in the Company will be redeemed with effect immediately before the date of death or bankruptcy (as applicable) and then cancelled by the Company; and
 - (ii) that person will be removed from the Register with effect from that date;
- (b) in any other case:
 - (i) that person's shares in the Company will be redeemed and then cancelled by the Company; and
 - (ii) that person will be removed from the Register with effect from the date they cease to be a Director of the Company.

Payments by the Company

11 Payments by the Company

- (a) If the law of any place imposes or purports to impose any immediate or future or possible liability on the Company to make any payments or empowers any government or taxing authority or government official to require the Company to make any payment:
 - (i) in respect of any Shares held either jointly or solely by any holder;
 - (ii) in respect of any transfer of those Shares;
 - (iii) in respect of any interest, bonuses or other moneys due or payable or accruing or which may become due or payable to the holder by the Company on or in respect of any Shares; or
 - (iv) for or on account or in respect of any holder of Shares,then rules 11(b) and 11(c) apply, in addition to any right or remedy the Company may otherwise have.
- (b) The Company is fully indemnified by:
 - (i) the holder;
 - (ii) the holder's trustee, executor or administrator; or
 - (iii) any person who becomes registered as the holder of the Shares on the distribution of the deceased holder's estate.
- (c) The Company may recover any moneys paid as described in rule 11(a), which exceeded any bonus or other money then due or payable by the Company to the holder, together with interest at a rate the Board may determine from time to time from the date of payment to the date of repayment, as a debt due from:
 - (i) the holder;
 - (ii) the holder's trustee, executor or administrator; or

- (iii) any person who becomes registered as holder of the Shares on the distribution of the deceased holder's estate.
- (d) The Board may:
 - (i) exempt a Share from all or part of this rule 11; and
 - (ii) waive or compromise all or part of any payment due to the Company under this rule 11.

Transfer of Shares

12 Transfers

- (a) Subject to this rule 12 and approval by the Board, a Shareholder may transfer all or any of the Shares registered in their name to any person eligible to be a Shareholder under rule 7(d).
- (b) No transfer of any Shares may be registered unless a proper instrument of transfer, in writing in the usual or common form or in any form the Board may prescribe or in a particular case accept, signed by the transferor and the transferee and properly stamped (if necessary) is delivered to the Company (but the Board may dispense with the execution of the instrument by the transferee if the Board thinks fit).
- (c) The transferor is considered to remain the holder of the Shares transferred until the name of the transferee is entered on the Register.
- (d) The Board may in its discretion refuse to register any transfer of Shares and may decline to give its reasons and grounds for doing so.

13 Power to Alter Share Capital

The Company may reduce or alter its share capital in any manner provided for by the Corporations Act. The Board may do anything that is required to give effect to any resolution authorising reduction or alteration of the share capital of the Company and, without limitation, may make provision for the issue of fractional certificates or the sale of fractions of shares and the distribution of net proceeds as it thinks fit.

General Meetings

14 General Meetings

- (a) A Director may convene a general meeting of the Company whenever the Director thinks fit, to be convened at a time and:
 - (i) at one or more physical venues;
 - (ii) at one or more physical venues and using virtual meeting technology; or
 - (iii) using virtual meeting technology only,provided that, in each case, Shareholders as a whole are given a reasonable opportunity to participate in the meeting.
- (b) If virtual meeting technology is to be used for a general meeting of the Company, the Directors will determine the type of virtual meeting technology to be used, which may include any combination of telephone, video conferencing, messaging, smartphone application or any other audio or visual device which permits instantaneous communication.

- (c) Any Director may cancel or postpone any meeting convened by that Director by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act. Any failure to give appropriate notice of cancellation or postponement, does not invalidate the cancellation or postponement or any resolution passed at the meeting.

15 Notice of General Meeting

- (a) Where Directors have called a general meeting, notice of the meeting may be given in the form and manner in which the Board determines, subject to the Corporations Act.
- (b) Subject to the Corporations Act, shorter notice of a general meeting may be given with the written consent of Shareholders who, between them, hold at least seventy five percent (75%) of the votes that may be cast at the meeting (and any such meeting will be treated as having been duly convened).
- (c) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at or any resolution passed at the meeting.

16 Business of General Meetings

- (a) The business of a general meeting of the Company is to be determined by the Directors and may include:
 - (i) to receive and consider the accounts and reports required by the Corporations Act to be laid before each general meeting;
 - (ii) when relevant to appoint an auditor and to fix the auditor's remuneration; and
 - (iii) to transact any other business that, under this Constitution or the Corporations Act, is required to be transacted at any general meeting.

The business of a general meeting may also include any other business that may be transacted at a general meeting.

- (b) No person may move at any general meeting either any resolution (except in the form set out in the notice of meeting) or any amendment of any resolution, except with the approval of the Directors, with the permission of the chair of the meeting or under the Corporations Act.

17 Quorum for General Meetings

- (a) No business may be transacted at any general meeting except, subject to rule 18, the election of a chair of the meeting unless a quorum of Shareholders is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, 75% of Shareholders Present constitutes a quorum.
- (c) If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the chair of the meeting or the Directors adjourns the meeting to a date, time and place determined by that chair or the Directors. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.
- (d) Nothing in this Constitution limits the Company's power to pass a resolution without a general meeting in accordance with the Corporations Act.

18 Conduct of General Meetings

- (a) Subject to rule 18(b), the Chairperson is entitled to preside as chair at every general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chairperson; or
 - (ii) the Chairperson is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the meeting, or despite being so present is unable or unwilling to act as chair of the meeting,the Deputy Chairperson is entitled to chair the meeting or, if the circumstances in rule 18(b)(i) or 18(b)(ii) apply to the Deputy Chairperson, the Directors present may choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Shareholders Present may elect one of their number to be chair of the meeting.
- (c) The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the chair of the meeting.
- (d) The chair of a general meeting of the Company may make rulings without putting the question (or any question) to a vote if that chair considers action is required to ensure the orderly conduct of the meeting.
- (e) The chair of a general meeting of the Company may require the adoption of any procedures that are in that chair's opinion necessary or desirable for the proper and orderly casting or recording of votes at the meeting, whether on a show of hands or on a poll.
- (f) If at any time the chair of a general meeting of the Company considers it necessary or desirable for the proper and orderly conduct of the meeting, that chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Shareholders Present.
- (g) Any determination by the chair of a general meeting in relation to matters of procedure (including any procedural motions moved at, or put to, the meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, the meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard a vote may only be made at the meeting and may be determined by the chair of the meeting whose decision is final.
- (h) If a person purports to cast a vote at a general meeting in contravention of the Corporations Act, the chair of the meeting may determine that the vote be disregarded and treated as not having been cast.
- (i) Nothing contained in this rule 18 limits the powers conferred on a chair of a general meeting by law.

19 Adjournment of General Meetings

- (a) During the course of a general meeting the chair of the meeting may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by that chair.

- (b) If the chair of a general meeting exercises a right of adjournment of the meeting under this rule 19, that chair has the sole discretion to decide whether to seek the approval of the Shareholders Present to the adjournment and, unless that chair exercises that discretion, no vote may be taken by the Shareholders Present in respect of the adjournment.
- (c) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.

20 Voting at General Meetings

- (a) Subject to the requirements of the Corporations Act, any question submitted to a general meeting is to be decided by a simple majority of votes validly cast on the question at the meeting.
- (b) Subject to the requirements of the Corporations Act, any question submitted to a general meeting is to be decided in the first instance by a show of hands of the Shareholders Present and entitled to vote, unless a poll is demanded.
- (c) Unless a poll is demanded, a declaration by the chair of a general meeting following a vote on a show of hands at the meeting that a resolution has been passed or lost is conclusive, without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (d) At any general meeting, a poll may be demanded by a shareholder in accordance with the Corporations Act (and not otherwise) or by the chair of the meeting. No poll may be demanded on the election of a chair of the meeting or, unless that chair otherwise determines, the adjournment of the meeting. A demand for a poll may be withdrawn.

21 Special Meetings

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of shareholders that may be held under the operation of this Constitution or the Corporations Act.

22 Procedure for Polls

- (a) When demanded at a general meeting, a poll may be taken in the manner and at the time that the chair of the meeting directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) that the chair of the meeting considers appropriate.
- (c) The result of a poll is the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll does not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded. Subject to rules 19 and 20(d), a poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

23 Representation and Voting of Shareholders

Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of Shareholders or a class of Shareholders each shareholder entitled to attend and vote may:
 - (i) attend and vote in person; or

- (ii) be represented and vote by proxy;
- (b) a Shareholder may only vote by one of the permitted methods in rule 23(a) in respect of a Share although, without limiting rule 25(b), a Shareholder may attend and participate in a meeting even though the Shareholder has previously appointed a proxy or attorney in respect of that meeting;
- (c) on a show of hands in respect of a resolution:
 - (i) subject to rules 23(c)(ii) and 23(c)(iii), each Shareholder Present has one vote;
 - (ii) where a Shareholder has appointed more than one person as representative, proxy or attorney for the Shareholder, none of the representatives, proxies or attorneys is entitled to vote; and
 - (iii) where a person is entitled to vote in more than one capacity, that person is entitled only to one vote; and
- (d) on a poll in respect of a resolution, subject to rule 23(b), only Shareholders Present may vote and every Shareholder Present having the right to vote on the resolution has one vote for each Share they hold.

24 Form of Proxy

- (a) A Shareholder who is entitled to attend and vote at a meeting of the Company may appoint a person as a proxy to attend and vote for the Shareholder in accordance with the Corporations Act but not otherwise. A proxy appointed in accordance with the Corporations Act to attend and vote may exercise the rights of the Shareholder on the basis and subject to the restrictions provided in the Corporations Act but not otherwise.
- (b) An appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) that the Directors may prescribe or accept.
- (c) If a proxy appointment is not properly executed or validated, incomplete or unclear, the following provisions apply. Nothing obliges the Directors or the Company to do anything referred to in those provisions.
 - (i) If the name of the proxy is not included, the name of any Director or Secretary may be inserted by the Secretary on the authority of the Company (which may occur later than the time specified in the relevant notice of meeting for the receipt of proxy appointments).
 - (ii) If the appointment has not been duly signed or validated, the Company may:
 - (A) return the appointment to the appointing Shareholder; and
 - (B) request that the Shareholder sign or validate the appointment and return it to the Company within a period decided by the Company (which may be later than the time specified in the relevant notice of meeting for the receipt of proxy appointments).
 - (iii) If the appointment is otherwise incomplete or unclear, the Company may, by written or oral communication, clarify with a Shareholder any instruction on the appointment and complete or amend the contents of any appointment to reflect any clarification in instruction received from the Shareholder (which completion or amendment may occur later than the time specified in the relevant notice of meeting for the receipt of proxy appointments). For this purpose, the Shareholder appoints the Company as its attorney.

- (d) Where a notice of meeting provides for electronic lodgement of proxy appointments, an appointment lodged at the electronic address or by the electronic means specified in the notice is taken to have been received at the registered office of the Company and validated by the Shareholder if there is compliance with the requirements set out in the notice.

25 Validity of Proxies, Attorneys and Representatives

- (a) A vote exercised in accordance with the terms of a proxy appointment, a power of attorney or other relevant instrument of appointment is valid despite:
 - (i) the previous death or unsoundness of mind of the principal;
 - (ii) the revocation of the appointment, power or instrument (or of the authority under which it was made or given); or
 - (iii) the transfer of the share in respect of which the appointment, power or instrument is made or given,if no notice in writing of the death, unsoundness of mind, revocation or transfer (as the case may be) has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.
- (b) A proxy appointment or power of attorney (subject to its terms) is not revoked by the principal attending and taking part in the relevant meeting unless the principal actually votes at the meeting on a resolution for which the proxy appointment or power of attorney is proposed to be used.
- (c) Voting instructions given by a Shareholder to a Director or employee of the Company who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy. If a shareholder wishes to give a Company Proxy appointed by the Shareholder new instructions or variations to earlier instructions, the new or varied instructions are only valid if either they are received at the registered office of the Company before the meeting or adjourned meeting by a notice in writing signed by the Shareholder or they are otherwise validated by the Shareholder in a manner acceptable to the Company in its discretion prior to the commencement of the meeting.

Appointment, Removal and Remuneration of Directors

26 Requirements for Directors

- (a) All Directors are to be natural persons who, in each case:
 - (i) is not a disqualified person or disqualified from acting as a director under the Corporations Act or otherwise precluded from acting as a director of the Company under the Relevant Law;
 - (ii) is eligible under this Constitution to hold office as a Director, including meeting the shareholding qualification;
 - (iii) has consented to act as a Director; and
 - (iv) satisfies the requirements of the Board Governance Policy, including, without limitation, in respect of skills, experience and diversity.
- (b) The Board may determine the number of Directors from time to time in accordance with Relevant Law and the Board Governance Policy.

- (c) The Company may, by special resolution, increase or reduce the number of Directors as long as the composition of the Board at all times complies with the requirements of the Relevant Law.

27 Composition of the Board

- (a) Subject to rule 37, the Board must be comprised of the following Directors unless the Board or the Shareholders resolve otherwise in accordance with the requirements of this Constitution:
 - (i) six Member Representative Directors, comprising:
 - (A) one AMWU Member Director;
 - (B) one UNSW Member Director;
 - (C) two ASU Member Directors; and
 - (D) two UT Member Directors; and
 - (ii) six Employer Representative Directors, comprising:
 - (A) one BNSW Employer Director;
 - (B) one VCCI Employer Director;
 - (C) one VB Employer Director;
 - (D) two MTAA Employer Directors; and
 - (E) one TCCI Employer Director.
- (b) Subject to rule 37 and SIS and in addition to rule 27(a), the Board composition may include one or more Independent Directors appointed under rule 30(a)(iii).
- (c) The Equal Representation requirements will apply to the Company.

28 Nomination of Member Representative Directors and Employer Representative Directors

- (a) Each Member Nominating Organisation is entitled to nominate:
 - (i) such number of candidates specified in respect of that Member Nominating Organisation in rule 27(a)(i) for appointment as a Member Representative Director to the Board in accordance with rule 30; and
 - (ii) a replacement for any such Member Representative Director in the event of vacancy of that person's office for any reason.
- (b) Each Employer Nominating Organisation is entitled to nominate:
 - (i) such number of candidates specified in respect of that Employer Nominating Organisation in rule 27(a)(ii) for appointment as an Employer Representative Director to the Board in accordance with rule 30; and
 - (ii) a replacement for any such Employer Representative Director in the event of vacancy of that person's office for any reason.
- (c) The nomination of a candidate for appointment as a Member Representative Director or Employer Representative Director must:
 - (i) be made in writing to the Secretary as soon as reasonably practicable after the Company has notified the relevant Nominating Body of a vacancy (or potential or upcoming vacancy) in the office of any Director that the Nominating Body is entitled to nominate; and

- (ii) be accompanied by:
 - (A) a written consent by the candidate to serve as a Director;
 - (B) a written acknowledgment of their classification as a Member Representative Director or Employer Representative Director, as applicable; and
 - (C) all information and documentation (if any) prescribed under the Board Governance Policy, or otherwise requested by the Board in respect of the appointment of a Director.
- (d) If any Nominating Body who is entitled to nominate a candidate for appointment as a Director chooses not to do so or fails to do so within 90 days of being requested to do so, the Board may ask the then existing Directors representing some or all of the other Nominating Bodies to do so and, if requested, those Directors may nominate an appropriate candidate within a reasonable period.

29 Nomination of Independent Directors

- (a) Any person may be nominated by the other Directors to be an Independent Director subject to rule 29(b).
- (b) In addition to the eligibility criteria for appointment as Director under this Constitution, the Corporations Act and the Board Governance Policy, the nomination of an Independent Director must comply with the Company's RSE Licence conditions (if any).

30 Appointment of Directors

- (a) Subject to rule 30(b), the Board may appoint:
 - (i) a person nominated by the Member Nominating Organisations in accordance with rule 28(a) or rule 31(d) as Member Representative Director;
 - (ii) a person nominated by the Employer Nominating Organisations in accordance with rule 28(b) or rule 31(d) as Employer Representative Director; and
 - (iii) a person nominated in accordance with rule 29 (or an existing Independent Director eligible to serve a Further Term) as an Independent Director.
- (b) The Board must not appoint a person as a Director unless:
 - (i) the Board is satisfied (or the Board has a reasonable expectation it will be satisfied in due course) that the Board Governance Policy has been complied with in respect of the appointment; and
 - (ii) the Board is satisfied that the appointment will not contravene the Relevant Law (in particular, any RSE Licence conditions); and
 - (iii) any formalities under the Corporations Act and the Board Governance Policy have either been satisfied (or the Board has a reasonable expectation that they will be satisfied in due course) in respect of the appointee.

31 Term of appointment

- (a) Subject to the terms of appointment of any Director (as may be determined by the Board in accordance with the Board Governance Policy), a Director may be appointed for an initial term specified by the Board not exceeding three years (**Initial Term**).
- (b) Subject to the Board Governance Policy and to rule 31(c), at the expiry of a Director's Initial Term, that Director is eligible to be reappointed by the Board for further terms

specified by the Board that do not exceed three additional years in each case (each a **Further Term**).

- (c) A person may not serve as a Director for more than an aggregate period (whether consecutive or otherwise) of more than nine years, provided that, in exceptional circumstances approved by the Board in accordance with the Board Governance Policy, the Board may determine that a Director may have a maximum aggregate tenure of ten years.
- (d) Prior to the end of a Member Representative Director or Employer Representative Director's Initial Term or any Further Term and subject to rule 31(c):
 - (i) the Company must give written notice of the date on which the Director's term will expire at least six months before the expiry date to the relevant Director and the Nominating Body who was entitled to nominate that Director; and
 - (ii) the relevant Nominating Body must consider whether the renomination of that Director for a Further Term is appropriate having regard to the requirements for office under this Constitution and the Board Governance Policy, and notify the Director and the Company within 45 days (or such shorter or longer period as determined by the Board) as to whether the Nominating Body wishes to nominate that Director for reappointment for a Further Term or, instead, wishes to nominate another person for appointment under rule 28.

32 Removal of Directors

- (a) A Nominating Body may, at any time, request the removal from the office of the Director nominated by it by written notice to the Company.
- (b) Upon receipt of such notice, the Board may, but is not required to:
 - (i) consider the removal of the relevant Director nominated by the Nominating Body; and
 - (ii) if the Board is satisfied that such withdrawal of support is not for reasons which would be in breach of the Relevant Law and the Board Governance Policy,the Board may remove the Director from office with effect from such date as the Board determines. The removal of a Member Representative Director or Employer Representative Director will create a vacancy in that office from the date the removal takes effect.
- (c) The Board may remove an Independent Director on such terms as the Board may determine.

33 Review of Employer Nominating Organisation and Member Nominating Organisation

- (a) At any time the Board thinks fit (but at least once every ten years and otherwise promptly following the retirement or removal of an Employer Nominating Organisation or a Member Nominating Organisation in accordance with rule 34), the Board must consider the membership characteristics of the Fund and determine the entity or entities that, having regard to those membership characteristics and the purposes of the Fund as a whole:
 - (i) represent the interests of employers of members of the Fund and are otherwise appropriate to be appointed as an Employer Nominating Organisation; and
 - (ii) represent the interests of members of the Fund and are otherwise appropriate to be appointed as a Member Nominating Organisation.

- (b) In making the determination under rule 33(a), the Board may take into account the views of the Employer Nominating Organisations and Member Nominating Organisations then in office.

34 Appointment and removal of Member Nominating Organisations or Employer Nominating Organisations

- (a) Each Nominating Body continues to hold its position until:
 - (i) the Nominating Body retires from that position by giving the Company 90 days prior written notice of retirement (or such shorter period of notice allowed by the Board); or
 - (ii) the Nominating Body fails to nominate a replacement Member Representative Director or Employer Representative Director (as the case requires) within 45 days (or such shorter or longer period as determined by the Board) of the relevant Member Representative Director or Employer Representative Director vacating office, in which case the relevant Nominating Body may be removed as an Member Nominating Organisation or Employer Nominating Organisation (as the case requires) at the discretion of the Board; or
 - (iii) the Nominating Body is otherwise replaced by an appointment made under rule 34(b).
- (b) As soon as practicable after any of the following events:
 - (i) the retirement or removal of a Nominating Body; or
 - (ii) whenever a review under rule 33 requires,the Board must, subject to SIS, appoint such entity or entities determined by the Board in accordance with rule 33 to be a Nominating Body. The Board must specify the basis on which each such entity is entitled to nominate Member Representative Directors or Employer Representative Directors (as the case requires) (including without limitation, the number of Member Representative Directors or Employer Representative Directors able to be nominated by that entity and the class of members, or employers of members, of the Fund to which they relate).

35 Remuneration of Directors

The Directors shall be paid such remuneration for their services as Directors, and in such manner, as the Board shall determine.

36 Vacation of Office of Director

In addition to the circumstances in which the office of a Director becomes vacant:

- (i) the Corporations Act; and
- (ii) under rule 32,

the office of a Director becomes vacant if:

- (iii) the Director dies;
- (iv) the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (v) the Director is absent without the consent of the Board from meetings of the Board held during a continuous period of six months;
- (vi) the Director resigns by notice in writing to the Company;

- (vii) the Director no longer satisfies the requirements under the Board Governance Policy;
- (viii) with respect to an Employer Representative Director, the relevant Employer Nominating Organisation is no longer an Employer Nominating Organisation in accordance with rule 34;
- (ix) with respect to a Member Representative Director, the relevant Member Nominating Organisation is no longer a Member Nominating Organisation in accordance with rule 34;
- (x) having been appointed for a fixed term, that term expires and the Director is not reappointed; and
- (xi) being an Independent Director, is determined by the Board to cease to meet the criteria to be considered independent under the Relevant Law (in particular, any RSE Licence conditions) or under the Board Governance Policy.

37 Filling vacancies

- (a) All vacancies must be filled to adhere to any RSE Licence conditions applicable to the Trustee.
- (b) If there is a vacancy in the office of a Director, the remaining Directors may act to appoint a Director to fill that vacancy, provided that the Directors may only act for the purpose of:
 - (i) increasing the number of Directors to a number sufficient to constitute a quorum;
 - (ii) if there is no Employer Nominating Organisation, to appoint an interim Employer Nominating Organisation;
 - (iii) if there is no Member Nominating Organisation, to appoint an interim Member Nominating Organisation; or
 - (iv) in any other circumstances which the Directors determine is an emergency or otherwise necessary to act in order to ensure compliance with Relevant Law.
- (c) The Board may also fill any casual vacancy and must do so within ninety (90) days or within such time and in such manner as is required to ensure compliance with SIS. The term of a Director filling the casual vacancy shall be determined by the Board and notified in writing to that Director.

38 Alternate Directors

Subject to this Constitution, each Director may appoint any person (who, if there are other Directors, is approved by a majority of the other Directors) to act as an alternate Director in the Director's place, either for a stated period or until the happening of a specified event, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment must be in writing and signed by the Director and a copy of the appointment must be given to the registered office of the Company or to a meeting of the Board. The appointment takes effect on (if there are other Directors) approval by a majority of the other Directors or, where the approval has been granted, at any later time specified in the appointment. The following provisions apply to any alternate Director:

- (a) the appointment of such alternate Director is subject to the same eligibility criteria as set out in rule 26(a);
- (b) the appointment of the alternate Director is terminated or suspended on receipt at the registered office of the Company of notice in writing signed by the Director by whom the alternate Director was appointed;

- (c) the alternate Director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate Director was appointed is not present;
- (d) the alternate Director is entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, to the extent the Director by whom the alternate Director was appointed has not exercised or performed them or they have not been limited by the instrument appointing the alternate Director;
- (e) the alternate Director is not, unless the Board otherwise determines, entitled to receive any remuneration as a Director from the Company (not including remuneration authorised by the Board or reimbursement for expenses);
- (f) unless previously terminated, the office of the alternate Director is terminated on the death of, or termination of office by, the Director by whom the alternate Director was appointed;
- (g) the alternate Director is not to be taken into account in determining the number of Directors; and
- (h) the alternate Director is, while acting as a Director, responsible to the Company for the alternate Director's own acts and defaults and is not the agent of the Director by whom the alternate Director was appointed.

Proceedings of the Board

39 Proceedings of the Board

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it determines.
- (b) Until otherwise determined by the Board, 75% of Directors being present forms a quorum.
- (c) A Board meeting may be called by any Director giving reasonable notice to every other Director.
- (d) Notice of a meeting of the Board may be given by mail (electronic or otherwise), personal delivery, facsimile transmission or other electronic means to the usual place of business or residence of the Director or at any other address given to a Secretary by the Director or by any technology agreed by all the Directors.

40 Meetings of the Board by Technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Board meeting:
 - (i) video;
 - (ii) telephone;
 - (iii) any other technology that permits each Director to communicate with every other Director; or
 - (iv) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:
 - (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Board, taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of the Board conducted in that manner are as valid and effective as if conducted at a meeting at which all of the participating Directors were physically present in the one location.

41 Chair and Deputy Chair of the Board

- (a) The Member Representative Directors and Employer Representative Directors are each (as a group) entitled to nominate any Director to be voted on by all Directors, as Chairperson or Deputy Chairperson (as the case may be), on an alternating basis.
- (b) Without limiting rule 41(a), following expiry of the initial term of the Chairperson in office following the adoption of this Constitution on and from completion of the Spirit Super SFT, the Employer Representative Directors will have the right to nominate the next Chairperson.

The Board must appoint a Director nominated in accordance with rule 41(a) to be the Chairperson or Deputy Chairperson (as the case may be), with such decision to be made by a majority of 75% of all votes that could be cast by Directors.
- (c) The appointment of a Chairperson or Deputy Chairperson shall be for a period of three years or for such shorter period as the Board shall determine.
- (d) Where the Chairperson elected is a Director nominated by the Member Representative Directors, then the Deputy Chairperson shall be a Director nominated by the Employer Representative Directors and where the Chairperson elected is a Director nominated by the Employer Representative Directors, then the Deputy Chairperson elected shall be a Director nominated by the Member Representative Directors.
- (e) For the avoidance of doubt, an Independent Director is also eligible to hold the position as Chairperson or Deputy Chairperson of the Company where they are nominated by the relevant Representative Directors under rule 41(a).
- (f) Where a meeting of the Board is held and:
 - (i) a Chairperson has not been elected as provided by rule 41(a); or
 - (ii) the Chairperson is not able to be present at the meeting or is not present within 15 minutes after the time appointed for the meeting, or despite being so present is unable or unwilling to chair the meeting,
 the Deputy Chairperson is entitled to chair the meeting or, if the circumstances in rule 41(f)(i) or 41(f)(ii) apply to the Deputy Chairperson, the Directors present may elect one of their number to chair the meeting.
- (g) The Board may remove a Chairperson or Deputy Chairperson and appoint another Chairperson or Deputy Chairperson by a majority of 75% of all votes that could be cast by Directors where each Director has one (1) vote.

42 Directors' Voting Rights and Exercise of Powers

- (a) Without limiting rule 45, a meeting of the Board of which notice has been given to all Directors and at which a quorum is present, is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the

- Board. Nothing in this rule 42(a) limits the exercise of any authority, power or discretion of the Board which has been delegated by the Board in accordance with law or this Constitution.
- (b) Subject to this Constitution, questions arising at a meeting of the Board are decided (where there is more than one Director) by 75% of votes of Directors present and voting.
 - (c) In the case of an equality of votes at a meeting of the Board, the Chairperson does not have a casting vote in addition to that Chairperson's deliberative vote.
 - (d) Subject to rule 43 and the Corporations Act, a Director:
 - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Board and be counted as part of the quorum;
 - (ii) may enter into contracts with, or otherwise have dealings with, the Company;
 - (iii) may hold any other office or place of profit in the Company, except as auditor; and
 - (iv) may hold any other office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which the Company has an interest of any kind.
 - (e) A Director is not disqualified from the Director's office by contracting with the Company or any related body corporate of the Company in any capacity by reason of holding the office of Director.
 - (f) A Director is not liable to account to the Company for any profit realised by any contract, dealings, office or place of profit contemplated by rule 42(d), by reason only of holding the office of Director or of the fiduciary relationship established by the office of Director.
 - (g) Subject to the Corporations Act, a Director or any person who is an associate of a Director may participate in any issue by the Company of financial products.
 - (h) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

43 Material Personal Interests of Directors

- (a) In relation to a contract or arrangement in which a Director has a material personal interest:
 - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) a contract or arrangement made by the Company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the Director will not be liable to account to the Company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- (b) If a Director has a material personal interest in a matter that relates to the affairs of the Company and that interest has been disclosed in accordance with the Corporations Act (or is of a type that does not require disclosure):
 - (i) the Director may vote on matters that relate to the interest;
 - (ii) any transactions that relate to the interest may proceed;

- (iii) the Director can retain benefits from the transaction even though the Director has the interest; and
 - (iv) the Company cannot avoid the transaction merely because of the existence of the interest.
- (c) If the material personal interest of a Director requires disclosure in accordance with the Corporations Act, rule 43(b)(iii) and rule 43(b)(iv) only apply if the disclosure is made before the transaction is entered into.
- (d) Nothing in this rule 43 affects the duty of a Director:
 - (i) who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as a Director, to declare at a meeting of the Board, the fact and the nature, character and extent of the conflict; or
 - (ii) to comply with the Corporations Act.

44 Committees of the Board

- (a) The Board may delegate any of its powers to committees consisting of any one or more Directors or any other person or persons as the Board thinks fit. In the exercise of delegated powers, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.
- (b) The meetings and proceedings of any committee are to be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as they are applicable and are not in conflict with or superseded by any regulations made by the Board under rule 44(a).
- (c) Nothing in this rule 44 limits the power of the Board to delegate.

45 Written Resolutions of Directors

- (a) The Board may pass a resolution without a Board meeting being held if all Directors or 75% of the Directors (where notice of the resolution has been given to all Directors), who are entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Board) assent to a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A Director may signify assent to a document under this rule 45 by signing the document or by notifying a Secretary of the assent of the Director by any technology including email. The resolution is passed when the last Director, or the last of the Directors constituting a majority (as applicable), has assented to the document.
- (c) Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- (d) Where a Director signifies assent to a document under rule 45(b) other than by signing the document, the Director must by way of confirmation sign the document before or at the next meeting of the Board attended by that Director. The resolution the subject of a document is not invalid if a Director does not comply with this requirement.
- (e) For the purpose of this rule 45, the references to Directors include any alternate Director appointed by a Director who is not available to assent to the document or is otherwise

unable to assent to the document within a reasonable time, but do not include any other alternate Directors.

46 Minutes

- (a) The Secretary must cause minutes to be entered in the minute book provided by the Company within one month after the relevant meeting, which shall include:
 - (i) the resolutions and proceedings of all meetings of the Shareholders;
 - (ii) the resolutions and proceedings of all Board meetings and committee meetings;
 - (iii) resolutions passed by Shareholders without a meeting; and
 - (iv) resolutions passed by the Board without a meeting.
- (b) Minutes of a meeting signed by the chairperson of that meeting or of the next succeeding meeting will be prima facie evidence of the matters stated in those minutes.
- (c) The books containing the minutes of general meetings and committee meetings must be kept at the Office or principal place of business of the Company.

47 Defects in Appointments of Directors

- (a) All actions at any meeting of the Board or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.
- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors (if any) may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

48 Statutory registers

The Company must keep the following registers as required by the Board or by the Corporations Act:

- (a) register of Shareholder;
- (b) register of charges;
- (c) register of Directors' interests; and
- (d) register of Directors, Secretaries and other officers.

Secretaries and Other Officers

49 Secretaries

- (a) A Secretary of the Company holds office on the terms and conditions as to remuneration and otherwise as the Board decides.
- (b) The Board may at any time terminate the appointment of a Secretary.

50 Other Officers

- (a) The Board may from time to time:
 - (i) create any other position or positions in the Company with the powers and responsibilities as the Board may from time to time confer; and
 - (ii) appoint any person, whether or not a Director, to any position or positions created under rule 50(a)(i).
- (b) The Board may at any time terminate the appointment of a person holding a position created under rule 50(a)(i) and may abolish the position.

Seals**51 Seals and their Use**

- (a) The Company may have a common seal and a duplicate common seal. If the Company has any such seal:
 - (i) it may only be used with the authority of the Board; and
 - (ii) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Board to countersign that document or a class of documents in which that document is included.

Service of Documents**52 Service of Documents**

In this rule 52, a reference to a document includes a notice. Subject to the Corporations Act:

- (a) A document may be given by the Company to any Shareholder by, in the Company's discretion:
 - (i) serving it on the Shareholder personally;
 - (ii) sending it by post to the Shareholder or leaving it at the Shareholder's address as shown in the Register or the address nominated by the Shareholder to the Company for the giving of documents;
 - (iii) sending it electronically (including by providing a URL link to any document or attachment) to the electronic address nominated by the Shareholder to the Company for the giving of documents or by other electronic means nominated by the Shareholder;
 - (iv) by sending a document by any of the means referred to in rules 52(a)(i) to (iii) that notifies the holder of the electronic address where the primary notice can be accessed; or
 - (v) serving it in any manner contemplated in this rule 52(a) on a Shareholder's attorney as specified by the Shareholder in a notice given under rule 52(c).
- (b) This rule 52 applies to any notice given under this Constitution, the Corporations Act and any other notice that the Company is required to, or may elect to, give to any Shareholder, including:
 - (i) any document that comprises or includes an offer of Shares to any Shareholder; and

- (ii) any document that includes an offer for, or in respect of or in relation to, any Shares held by any Shareholder.
- (c) By written notice to a Secretary left at or sent to the registered office of the Company, a Shareholder may request that all documents to be given by the Company or the Board be served on the Shareholder's attorney at an address, or by the electronic means, nominated in the notice and the Company may do so in its discretion.
- (d) A document may be sent to a Shareholder whose address for documents is outside Australia by airmail, air courier or otherwise be sent or made available electronically (including as contemplated by rule 52(a)(iv)).
- (e) Any document sent by post is conclusively considered to have been served at the expiration of seven business days after the envelope containing the document is posted and, in proving service, it is sufficient to prove that the envelope containing the document was properly addressed and posted. Any document served on a Shareholder personally or left at the Shareholder's registered address is conclusively considered to have been served when delivered. Any document sent to a Shareholder by electronic means is conclusively considered to have been served when the electronic transmission is sent. Any document made available to a Shareholder by electronic means as contemplated by rule 52(a)(iv) is conclusively considered to have been served when notification that the document is available for access by that means is sent.
- (f) Every person who, by operation of law, transfer or any other means, becomes entitled to be registered as the holder of any Shares is bound by every document that, prior to the person's name and address being entered in the Register in respect of the Shares, was properly given to the person from whom the person derived title to those Shares.
- (g) A document served in accordance with this Constitution is (despite the fact that the Shareholder is then dead and whether or not the Company has notice of the Shareholder's death) conclusively considered to have been properly served in respect of any registered Shares, whether held solely or jointly with other persons by the Shareholder, until some other person is registered in the Shareholder's place as the holder or joint holder. The service is sufficient service of the document on the Shareholder's personal representative and any persons jointly interested with the Shareholder in the Shares.

Winding up

53 Treatment of income and property including on merger or winding up

- (a) All income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in rule 5. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to Shareholders.
- (b) For the avoidance of doubt, rule 53 does not prevent payment in good faith of:
 - (i) remuneration to any Director, officer or employee of the Company or to any Shareholder of the Company in return for services rendered to the Company or for goods supplied in the ordinary and usual course of business;
 - (ii) payment to a Shareholder by way of reimbursement for costs and expenses incurred in the maintenance and administration of the Company or the Fund;
 - (iii) payment of any amount of the Company's personal capital to the Fund if the Board, at its discretion, determine in accordance with rules 42 and 45;

- (iv) payment of any civil, administrative or criminal penalty incurred in relation to a contravention of a law of the Commonwealth by the Company or one or more of its Directors or officers to the full extent permitted by the Corporations Act;
 - (v) payment of any amount payable by the Company or one or more of its Directors or officers under an infringement notice (however described) given under a law of the Commonwealth to the full extent permitted by the Corporations Act;
 - (vi) payment of any insurance premium in connection with any insurance policy in relation to the Company or its Directors or officers to the full extent permitted by the Corporations Act; and
 - (vii) indemnification of any officer, auditor or agent of the Company to the full extent permitted by the Corporations Act or otherwise by law.
- (c) If, on the merger, winding up or dissolution of the Company, after the satisfaction of all its debts and liabilities, any property of the Company remains (surplus), the surplus must not be paid or distributed among the Shareholders.
- (d) The surplus under rule 53(c) (if any) must be paid or applied to:
- (i) the Fund or its successor fund (as defined by SIS); or
 - (ii) a company that replaces the Company as trustee of the Fund; or
 - (iii) a trustee of the Fund's successor fund (as defined by SIS),
- as the Shareholders or the liquidator determine.

Indemnity and insurance

54 Indemnity for officers

To the maximum extent that SIS and or the Corporations Act allows, each Director and other officer of the Company must be indemnified by the Company against any liability incurred by that person in that capacity (whether the liability relates to the Company or the Fund) and the cost of defending such claims against that person.

55 Insurance premiums

The Board may, at any time, cause the Company to pay premiums in respect of a contract insuring a person (whether with others or not) who is an officer of the Company against a liability incurred by the person as such an officer (whether the liability relates to the Company or the Fund) and the cost of defending such claims against that person except for a liability which SIS or the Corporations Act prohibits the Company to insure. Any such premium in relation to a Director is in addition to, and not regarded as part of, the remuneration of Directors.

56 Contract

The Company may contract with any officer of the Company in relation to the matters referred to in rule 54 and 55 not only during that person's period of office but also after that person has ceased to be an officer.

57 Amendments

- (a) The Shareholders may, by special resolution, alter this constitution but not so as to breach the Relevant Law.

- (b) A special resolution made pursuant to rule 57(a) that alters the dividend rights attaching to any class of shares and/or rule 53(c) in any way will be effective only if the Board has unanimously approved the particular alteration.