

"X"

# Constitution

*CEFPI Australasia Limited*

ACN 108 413 074

**MOORES LEGAL**  
9 Prospect Street  
BOX HILL VIC 3128

TEL: 9898 0000  
FAX: 9898 0333  
REF: LK 10/0032

**PRELIMINARY**

## 1. Exclusion of Replaceable Rules

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

## 2. Definitions and interpretation

In this Constitution:-

- 2.1 "Act" means the Corporations Act 2001 (Cth).
- 2.2 "Affiliated Area" has the meaning given in clauses 39-41.
- 2.3 "Australasian region" means, generally, Oceania (excluding Hawaii) and South East Asia. CEFPI International and CEFPI Australasia Limited may agree a list of countries included in the term "Australasia" from time to time.
- 2.4 "Board" means the board of directors for the time being of the Company.
- 2.5 "CEFPI" means CEFPI International except when it is used as part of the name "CEFPI Australasia Limited".
- 2.6 "CEFPI International" means the body known as Council of Educational Facility Planners, International'.
- 2.7 "Chair Elect" means the person who has been elected as the incoming Chair.
- 2.8 "Chapter" has the meaning given in clause 38.
- 2.9 "the Company" means CEFPI Australasia Limited.
- 2.10 "Council" means the Council as defined in clauses 33 - 37.
- 2.11 "Directors" means the directors for the time being of the Company.
- 2.12 "Officer" means a person elected to the one of the positions pursuant to clause 18.4 and, where the context permits, a person defined as an officer in the Act.
- 2.13 "Seal" means the common seal of the Company (if any).
- 2.14 "Secretary" means the secretary for the time being of the Company, and if there are joint secretaries, any one or more of such joint secretaries.
- 2.15 The Acts Interpretation Act 1901 (Cth) shall apply in the interpretation of this Constitution as if it were an act of the Commonwealth.
- 2.16 Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

- 2.17 Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.

### **PURPOSE OF COMPANY**

#### **3. Objects**

The objects for which the company is established are:-

- 3.1 to facilitate, stimulate and encourage community debate and interest in the design and use of the physical environment of educational facilities;
- 3.2 to promote advocate for and encourage excellence in the design and use of educational facilities and other built learning facilities;
- 3.3 to join in association with other groups, associations and individuals similarly interested in the promotion of excellence in the design construction and use of educational facilities;
- 3.4 to promote the goals, objectives and purposes and Strategic Plan of the International Board of Directors of CEFPI;
- 3.5 to promote active involvement and interaction in pursuing CEFPI goals and objectives by conducting regional activities to provide a system for communication, professional growth and effective decision making in support of the Board and Executive Director of CEFPI for the purpose of attaining specified goals and conducting activities with the goals, purposes and objectives of CEFPI and directed specifically toward the improvement of educational facilities and educational facility planning in the Australasian region;
- 3.6 to promote training and quality professional development opportunities for facility planning professionals and educational institutions;
- 3.7 to conduct conferences and seminars from time to time;
- 3.8 to identify, disseminate, research into the design construction and use of educational facilities;
- 3.9 to review and comment on local regulations and policies pertaining to educational facilities;
- 3.10 to advocate for a continual improvement to the built learning environment reflecting advances in learning methodology and pedagogy.

### **MEMBERSHIP**

#### **4. Eligibility, Application and Admission**

- 4.1 Any natural person or corporation (incorporated or otherwise) committed to the objects of the Company and whose residence or place of business is in the geographical area of the Australasia Region may be a member of the Company provided:

- (a) Application for membership is made on the prescribed Application Form and the determined fee has been paid;
- (b) The person or corporation agrees in writing to provide a guarantee not exceeding ten dollars (\$10.00) to defray such liabilities and expenses of the Company upon its winding up or dissolution.
- (c) The Application for Membership has been accepted by the Board and such acceptance may be determined by the Board using any criteria as the Board alone may determine; and
- (d) The name of the member has been entered in the Register of Members.

4.2 The Board may decline any application for membership and is not bound to give reasons why the application was not accepted.

4.3 The first members of the Company shall be the subscribers to this Constitution and they shall not be required to apply for membership.

4.4 (a) The Board may bestow life membership upon natural persons committed to the objects of the Company as defined in the Constitution

- (b) Such life members are not required to pay any membership fee and have all the rights and privileges of financial members.

5. Register of Members

5.1 (a) The Company Secretary will maintain a Register of Members of the company at the registered office.

- (b) When an applicant has been accepted for membership the Secretary will cause the member's name to be entered in the Register of Members and will send to the member written notice of the acceptance.

5.2 The address of a member in that Register will be the address of the member for the purpose of service of any notices to members.

5.3 The rights of any member will not be transferable.

6. Infringement Of Rules

6.1 The Board shall have the power to penalise any member who shall be found guilty of infringement of any rule or rules.

6.2 Any charge that might lead to suspension or expulsion of a member shall be lodged with the Secretary in writing, signed by any member and detailing the circumstance which gave rise to such charge.

6.3 The Secretary shall inform the member of the charge who may submit in writing, an explanation, or resign from the Company. Such explanation shall be tabled to the Board meeting at which the charge is heard.

- 6.4 Any member who may be considered to have infringed any rule or rules may be called upon to appear before the Board to answer such charges as may be laid against him, and if such charges be found proven, the Board may suspend, fine or expel such member.
- 6.5 Any member so suspended, fined or expelled shall be notified in writing by the Secretary within twenty-one (21) days of such penalty being imposed.
- 6.6 Any member who may be suspended, fined or expelled shall have the right to appeal against such penalty.

## 7. Discipline of Members

- 7.1 (a) The Board may by two-thirds majority vote, expel or by a majority vote suspend or otherwise discipline any member of the Company for conduct inconsistent with this Constitution or which in the opinion of the Board is unbecoming of a member or prejudicial to the interests of the Company provided that the member receives 28 days written notice of any proposal to discipline and reasonable opportunity is given for the member to be heard in relation to the proposal for discipline.
- (b) Any member expelled from the Company may at any time apply to the Board to be readmitted as a member.
- 7.2 No person may be a Director of the Company following expulsion or during suspension unless such a person is subsequently readmitted as a member.

## 8. Cessation of Membership

- 8.1 Membership of the Company will terminate upon:
  - (a) The Company Secretary receiving from a member a letter of resignation;
  - (b) A member being expelled or suspended in accordance with this Constitution; or
  - (c) Death of a member.
- 8.2 A member whose membership of the Company is terminated will be liable for all moneys due by that member to the Company in addition to any sum not exceeding ten dollars (\$10.00) for which the member is liable under clause 56 of this Constitution.
- 8.3 A member whose membership is terminated will not make any claim, monetary or otherwise, on the Company, its funds or property except as a creditor thereof.
- 8.4 Any person or corporation who for any reason ceases to be a member shall no longer represent themselves in any manner as being a member.

## 9. Liability of Members

The liability of the members is limited.

**MEETINGS OF MEMBERS**

## 10. Annual General Meeting

- 10.1 (a) Subject to the Act, a general meeting shall be held at least once in every calendar year and within the period of five (5) months after the end of the financial year at such time and place as may be determined by the Directors. The abovementioned general meeting shall be called the "annual general meeting" and all other meetings of the Company shall be called 'general meetings'.
- (b) The business of the Annual General Meeting may include any of the following, even if not referred to on the notice of meeting:
- (i) the consideration of the Annual Financial Report, Directors' Report and Auditor's Report;
  - (ii) the election of Directors;
  - (iii) the appointment of the auditor;
  - (iv) the fixing of the auditor's remuneration.

## 11. Convening General Meetings

- 11.1 (a) Any Director may whenever he thinks fit convene a meeting of the Company's Members
- (b) The Directors must convene a meeting of the Company's members on the request of members in accordance with section 249D of the Act. The members may convene a meeting of the Company's members in accordance with sections 249E and 249F of the Act.

## 12. Notice of General Meetings

- 12.1 A notice of a meeting of the Company's members shall specify:-
- (a) the place, the day and the time of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) the general nature of the business to be transacted at the meeting; and
  - (c) such other information as is required by section 249L of the Act.
- 12.2 The Company may hold a meeting of its members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.
- 12.3 Subject to the provisions of the Act relating to agreements for shorter notice, at least 21 days notice must be given of a meeting of the Company's members.
- 12.4 (a) Notice of every meeting of the Company's members shall be given in the manner authorised by clause 48 to:

- (i) every member and to every Director; and
  - (ii) the auditor for the time being of the Company.
- (b) No other person is entitled to receive notices of meetings of the Company's members.

13. Chairman of General Meetings

- 13.1 (a) The Directors may elect an individual to chair a meeting of the Company's members.
- (b) Where a meeting of the Company's members is held and:-
- (i) a Chairman has not been elected as provided by clause 13.1(a); or
  - (ii) the person so elected is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,
- the members present shall elect one of their number to be Chairman of the meeting (or part of it).

14. Quorum For General Meetings

- 14.1 (a) No business shall be transacted at any meeting of the Company's members unless a quorum of members is present at the time when the meeting proceeds to business.
- (b) A quorum is constituted by the equivalent of the number of members of Council.
- (c) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate that is a member, shall be deemed to be a member.
- (d) If the Company has only one member, that member may pass a resolution by the member recording it and signing the record.

15. Adjournment of General Meetings

- 15.1 If a quorum is not present within half an hour from the time appointed for the meeting:-
- (a) where the meeting was convened upon the request of members - the meeting shall be dissolved; or
  - (b) in any other case:-
    - (i) the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and

- (ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, then the meeting shall be dissolved.
- 15.2
  - (a) The Chairman shall adjourn a meeting of the Company's members from time to time and from place to place if the members present with a majority of votes that may be cast at that meeting agree or direct the Chairman to do so. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
  - (b) When a meeting of the Company's members is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
  - (c) Except as provided by clause 15.2(a), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 16. Voting at General Meetings
  - 16.1
    - (a) At any meeting of the Company's members a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before a vote is taken or before or immediately after the declaration of the result of the show of hands) demanded:-
      - (i) by the Chairman;
      - (ii) by at least three (3) members (present in person or by proxy or representative) entitled to vote on the resolution;
      - (iii) by a member or members (present in person or by proxy or representative) with at least 5% of the votes that may be cast on the resolution on a poll.
    - (b) Unless a poll is so demanded, a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
    - (c) The demand for a poll may be withdrawn.
  - 16.2
    - (a) If a poll is duly demanded, it shall be taken in such manner and (subject to clause 16.2(b)) either at once or after an interval or adjournment or otherwise as the Chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
    - (b) A poll demanded on the election of a Chairman or on a question of adjournment shall be taken immediately.
  - 16.3 In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting of the Company's members at which the show of hands takes place or at which the poll is demanded has a casting



vote in addition to any vote the Chairman may have in the capacity as a member.

- 16.4 Subject to any rights or restrictions for the time being attached to any member:-
- (a) at meetings of the Company's members or classes of members each member entitled to vote may vote in person or by proxy or attorney or representative; and
  - (b) on a show of hands every person present who is a member or a representative of a member has one vote, and on a poll every person present in person or by proxy or attorney or representative has one vote.
- 16.5 If the membership is held jointly and more than one such joint member votes, only the vote of the member whose name appears first in the register of members counts.
- 16.6 If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the member in relation to a meeting of the Company's members as if the committee, trustee or other person were the member.
- 16.7 A member is not entitled to vote at a meeting of the Company's members unless all sums presently payable by him in respect of the Company have been paid.
- 16.8
- (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
  - (b) Any such objection shall be referred to the Chairman of the meeting of the Company's members, whose decision is final.
  - (c) A vote not disallowed pursuant to such an objection is valid for all purposes.
17. Proxies
- 17.1 A member of the Company who is entitled to attend and cast a vote at a meeting of the Company's members may appoint a person (whether or not a member of the Company) as the member's proxy to attend and vote for the member at the meeting.
- 17.2
- (a) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or executed in accordance with the Act or under the hand of an officer or attorney duly authorised.
  - (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where

an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.

(c) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

17.3 An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:-

*(Name of Company)*

I/We ....., being a member/members of the abovenamed Company, hereby appoint of or, in his absence, .....of .....as my/our proxy to vote for me/us on my/our behalf at the meeting of the Company's members of the Company to be held on the .....day of ....., 20... and at any adjournment of that meeting.

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

SIGNED this .....day of ....., 20...

\* Strike out whichever is not desired. # To be inserted if desired.

17.4 An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than forty eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty four (24) hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

17.5 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, if no intimation in writing of the death, unsoundness of mind or revocation was made before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

**DIRECTORS**

18. Appointment and Removal of Directors

18.1 The number of the Directors shall be not less than three (3).

18.2 The first Directors shall be appointed in writing by the person(s) specified in the application for the Company's registration under the Act as a person who consents to become a Director of the Company.

- 18.3 For the purposes of elections conducted after the adoption of this Constitution, any person who has served for at least two years on Council is eligible for election to the Board.
- 18.4 At each Annual General Meeting, the Company may appoint a person to be a Director. Each such appointment is to one of the following positions:
- (a) Chair;
  - (b) Chair Elect;
  - (c) Immediate Past Chair;
  - (d) International Representative;
  - (e) Treasurer; and
  - (f) Secretary.
- 18.5 The term of appointment for each Director is two years, except in the case of the International Representative whose term is three years.
- 18.6 Not less than seventy five per centum (75%) of those members as carry a right to vote may at any time and from time to time by document in writing:-
- (a) remove any Director provided that the total number of directors shall not at any time fall below the minimum fixed by this Constitution;
  - (b) appoint a new Director to fill any casual vacancy;
  - (c) appoint additional Directors.
- 18.7 In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or of convening a meeting of the Company's members for that purpose.
- 18.8 (a) The Directors shall have power to:-
- (i) appoint a new Director to fill any casual vacancy; and
  - (ii) appoint additional Directors.
- (b) Any Director so appointed shall hold office only until the next following annual general meeting of the Company and shall then be eligible for election.
- 18.9 In addition to the circumstances in which the office of a Director becomes vacant by virtue of Act the office of a Director becomes vacant if the Director:

**Comment [Moores1]:**

We have deleted the clause that says a Director may be elected to more than one Office.

- (a) dies or 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;
- (b) resigns from office by notice in writing to the Company;
- (c) is absent without the consent of the Directors from all meetings of the Directors held during a period of six (6) months;
- (d) without the consent of the Company in general meeting holds any other office of profit under the Company;
- (e) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest as required by clause 32;
- (f) is expelled or suspended as a member in accordance with clause 7.1.

19. Defects in Appointment of Directors

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

20. Remuneration of Directors

20.1 The Directors shall not be paid by way of remuneration for their services provided that:-

- (a) reimbursement of out-of-pocket expenses incurred in carrying out the duties of a director shall be paid where the payment does not exceed the amount previously approved by the Board; or
- (b) payment for any service rendered to the Company in a professional or technical capacity shall be made where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms; or
- (c) payment is as an employee of the Company where the terms of employment have been approved by resolution of the Board

21. Powers and Duties of Directors

21.1 (a) Subject to the Act and to any other provision of this Constitution, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Company in meeting of the Company's members.

- (b) Without limiting the generality of clause 22.1(a), the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- 21.2 (a) The Directors may, by power of attorney, appoint any person or persons (either by name or by reference to position or office held) to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.
- 21.3 All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be in such manner as the Directors determine.

#### **MEETINGS OF DIRECTORS**

22. The Board may meet together for the despatch of business and adjourn and otherwise regulate its meetings as it thinks fit and determine the quorum necessary for the transaction of business.
23. Convening Meetings of Directors
- 23.1 The Board may at any time, and a Secretary shall on the requisition of a Director, convene a meeting of the Directors.
24. Quorum for Directors' Meetings
- 24.1 At a meeting of the Directors, the number of Directors whose presence is necessary to constitute a quorum is three, provided that each such person is a Director or an alternate Director and is entitled under the Act to vote on a motion that may be moved at that meeting.
25. Chairman
- 25.1 (a) The Directors shall elect one of their number as Chairman and another of their number as Deputy Chairman of its meetings and determine the period for which such Chairman or Deputy Chairman is to hold office.
- (b) Where a meeting of the Directors is held and:-
- (i) a Chairman or Deputy Chairman has not been elected as provided by clause 25.1(a)(a); or

- (ii) the person so elected is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,

the Directors present shall elect one of their number to be Chairman of such meeting or part of it.

## 26. Voting At Directors' Meetings

26.1 (a) Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Directors.

(b) In a case of an equality of votes:

- (i) the Chairman of the meeting shall not have a casting vote in addition to any vote the Chairman may have in the capacity as a Director; and

(ii) the motion will be minuted as having been defeated

## 27. Alternate Directors

27.1 (a) A Director may with the approval of the other Directors, appoint a person (whether a member of the Company or not) to be an alternate Director in his or her place during such period as he or she thinks fit.

(b) An alternate Director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his or her stead.

(c) An alternate Director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate Director shall be deemed to be the exercise of the power by the appointor.

(d) An alternate Director is not required to have any membership qualifications.

(e) The appointment of an alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate Director has not expired, and terminates in any event if the appointor ceases to hold office as a Director.

(f) An appointment, or the termination of an appointment, of an alternate Director shall be effected by a notice in writing signed by the Director who makes or made the appointment and served on the Company.

## 28. Delegation of Powers

28.1 (a) The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.

- (b) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.
- (c) The members of such a committee may elect one of their number as Chairman of their meetings.
- (d) Where such a meeting is held and:-
  - (i) a Chairman has not been elected as provided by clause 28.1(c); or
  - (ii) the person so elected is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,

the members present shall elect one of their number to be Chairman of the meeting or part of it.
- (e) A committee may meet and adjourn as it thinks proper.
- (f) Questions arising at a meeting of a committee shall be determined by a majority of the members present and voting.
- (g) In the case of an equality of votes, the Chairman shall not have a casting vote in addition to any vote the Chairman may have in the capacity as a committee member.

## 29. Electronic Meetings of Directors

- 29.1 (a) Without limiting the generality of clause 22, a meeting of Directors may be called or held using any technology consented to by all the Directors. A consent of a Director for the purposes of this Clause may be a standing one. A Director may only withdraw his consent within a reasonable time before the meeting of Directors.
- (b) For the purposes of this Constitution, the contemporaneous linking together by an instantaneous communication device of a number of Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, shall be deemed to constitute a meeting of the Directors and all the provisions of this Constitution as to meetings of the Directors shall apply to any such meeting held by an instantaneous communication device so long as the following conditions are met:-
- (i) All the Directors for the time being entitled to receive notice of the meeting of Directors (including any alternate for any Director) shall be entitled to notice of a meeting held by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting. Notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by this Constitution; and

- (ii) Each of the Directors taking part in the meeting by an instantaneous communication device must be able to hear each other of the Directors taking part at the commencement of the meeting.
- (c) A Director may not leave a meeting held by an instantaneous communication device by disconnecting his instantaneous communication device unless he has previously expressly notified the Chairman of the meeting of his intention to leave the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of his leaving the meeting.
- (d) A minute of the proceedings at meetings held by an instantaneous communication device shall be sufficient evidence of such proceeding and of the observance of all necessary formalities if certified as a correct minute by the Chairman of the meeting.
- (e) For the purpose of this clause "instantaneous communication device" shall include telephone, television or any other audio and/or visual device which permits instantaneous communication.

### 30. Circulating Resolutions

- 30.1 (a) If all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
- (b) For the purposes of clause 30.1(a), two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate document.

### 31. Directors' Conflicts of Interest

- 31.1 (a) Subject to the Act no Director shall be disqualified by his office from contracting or entering into any arrangement with the Company either as vendor, purchaser, or otherwise, nor shall any such contract or arrangement or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided, nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or agreement, by reason of such Director holding that office or of the fiduciary relation thereby established, but every Director shall observe the provisions of Section 191 of the Act relating to the disclosure of the interest of Directors in contracts or proposed contracts with the Company or of any office or property held by



Directors which might create duties or interests in conflict with their duties or interests as Directors as if the Company were a proprietary company.

- (b) Subject to the Act, a Director shall not as a Director be present at a meeting of Directors or vote in respect of any contract or arrangement in which such Director is interested in the manner described in the preceding clause being considered at that meeting.
- (c) A Director who is interested in any contract or arrangement as aforesaid may notwithstanding such interest attest the affixing of the Seal of the Company to any document evidencing or otherwise connected with such contract or arrangement.

#### **ADMINISTRATION OFFICER**

- 32. The Directors may from time to time appoint a person to the office of Administration Officer for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.

**Comment [Moore2]:** It might be better to delete this whole clause. You would still have the power to appoint an administrative officer and any other staff or volunteers to specific functions.

#### **COUNCIL**

- 33. A Council comprised of the Board and representatives of Chapters and Affiliated Areas will engage in education and communication activities to promote the objects of the Company.
- 34. Chapters may nominate two representatives to be on Council provided such representatives are members of CEFPI Australasia Limited.
- 35. Affiliated Areas may nominate one representative to be on Council provided that representative is a member of CEFPI Australasia Limited.
- 36. The Board may appoint a person to the Council whether or not that person is a member of CEFPI Australasia Limited.
- 37. The Board must consider resolutions made by the Council.

#### **CHAPTERS**

- 38. A group of natural persons and/or corporations may form a Chapter of CEFPI Australasia Limited by entering into an affiliation agreement with CEFPI Australasia Limited.

#### **AFFILIATED AREAS**

- 39. The Board may determine the requirements for admission as an Affiliated Area.
- 40. The Board may determine the terms of reference, procedures, rights, privileges, responsibilities and any other issues relating to the operation of Affiliated Areas.
- 41. The Board has absolute discretion over whether it admits or expels groups as Affiliated Areas.

**ADMINISTRATION**

## 42. Secretary

A Secretary holds office on such terms and conditions, as to remuneration (if any) and otherwise, as the Directors determine.

## 43. Minutes

43.1 The Directors will cause minutes of:-

- (a) all proceedings and resolutions of meetings of the Company's members;
- (b) all proceedings and resolutions of meetings of the Directors, including meetings of a committee of Directors;
- (c) resolutions passed by members without a meeting; and
- (d) resolutions passed by Directors without a meeting,

to be duly entered into the books kept for that purpose in accordance with the Act.

43.2 A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

43.3 Books containing the minutes of the Company's members and resolutions passed by members without a meeting will be open for inspection by any member free of charge.

## 44. Inspection of Records

Subject to the Act, the Directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of members other than Directors, and a member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in meeting of the Company's members.

## 45. Execution of Documents

- 45.1
- (a) The Company may have a Seal, known as the common seal, on which its name, its Australian Company Number and the words "Common Seal" are engraved.
  - (b) If the Company has a seal the Directors shall provide for the safe custody of the Seal.
  - (c) The Seal shall be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.

- (d) The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:-
- (i) two Directors; or
  - (ii) one Director and one Secretary; or
  - (iii) one Director and another person appointed by the Directors for that purpose.
- The signature of such persons may be affixed to the document by manual, autographic or mechanical means.
- (e) The Company may execute a document without using a seal if the document is signed by:
- (iv) two Directors; or
  - (v) one Director and one Secretary; or
  - (vi) one Director and another person appointed by the Directors for that purpose.
- (f) A facsimile signature may not be affixed to a document unless the auditors, internal auditors or bankers of the Company have reported to the Board in writing that the document may be sealed in that manner.

#### 46. Policies

The Board has power to make policies concerning membership application and qualification for membership of the Company and any other matter which the Board believes suitable for including in policies.

#### 47. Alteration of Constitution

The Company may only alter this Constitution by special resolution passed at a general meeting of the members.

#### 48. Notices

- 48.1 (a) A notice may be given by the Company to any member either:-
- (i) by serving it on him personally;
  - (ii) by sending it to him at his postal address or email address as shown in the register of members or the address supplied by him to the Company for the giving of notices to him;
  - (iii) by sending it by facsimile transmission to a facsimile number supplied by the member to the Company for the giving of notices to the member.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effective by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in

the case of a notice of a member, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

- (c) Where a notice is sent by facsimile, service of the notice shall be deemed to be effected on receipt by the Company of a transmission report confirming successful transmission.
- (d) Where a notice is sent by email, service of the notice shall be deemed to be effected twenty-four (24) hours after the transmission of the email unless the person transmitting the email is notified at any time that the email was undelivered or undeliverable.
- (e) A notice may be given by the Company to joint members by giving the notice to the joint member first named in the register of members.

## **INDEMNITY OF OFFICERS**

### 49. Officers: Indemnities And Insurance

#### 49.1 To the extent permitted by the Act:-

- (a) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability for costs and expenses incurred by that person in defending any proceedings in which judgement is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the Court grants relief to the person under the Act; and
- (b) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability incurred by the person, as an Officer of the Company or of a wholly-owned subsidiary of the Company, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.

#### 49.2 The Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:-

- (a) incurred by the person in his capacity as an Officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or a subsidiary of the Company or otherwise arising out of the Officer's holding such office PROVIDED THAT the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of Sections 182 or 183 of the Act; or
- (b) for costs and expenses incurred by that person in defending proceedings, whatever their outcome.

49.3 In this clause 49:-

- (a) the term "proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his capacity as such an Officer or in the course of acting in connection with the affairs of the Company or a wholly-owned subsidiary or subsidiary of the Company or otherwise arising out of the Officer's holding such office (including proceedings alleging that he was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a wholly-owned subsidiary or subsidiary of the Company); and
- (b) the term "Officer" as the meaning given to that term in Section 9 of the Act.

## **FINANCIAL MATTERS**

50. Application of Income and Property

- 50.1 (a) The income and property of the Company however derived will be applied solely towards the promotion of the objects of the Company as set out in this Constitution, and no portion of the income or the property of the Company will be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to members of the Company.
- (b) Nothing in this Constitution shall prevent the payment in good faith:
- (i) of out of pocket expenses incurred by a director in the performance of any duty as Director of the Company where the amount payable is approved by the Directors of the Company.
  - (ii) for any service rendered to the Company by a director in a professional or technical capacity, other than in the capacity as a director, where the provision of the service has the prior approval of the directors of the Company and where the amount payable is approved by the directors of the Company and is not more than an amount which commercially would be reasonable payment for the service; or
  - (iii) of any salary or wage due to the director as an employee of the Company where the terms of employment have been approved by the directors of the Company.
  - (iv) payment of insurance premiums to the extent permitted by law; and
  - (v) indemnification to the extent permitted by law and this Constitution.
- (c) The Board shall consider and if thought fit approve an annual operating budget and may approve expenditure for items not included in the Budget.

## 51. Accounts

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

## 52. Audit

- 52.1 (a) A registered company auditor must be appointed.
- (b) The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

## 53. Dividends and Reserves

No payment of dividends or other distributions to members shall be made.

**WINDING UP**

## 54. Procedure

The Company may be dissolved by a special resolution of members at a meeting of the Company members.

## 55. Contribution of Members on Winding Up

Every member of the Company undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a member, or within one year of ceasing to be a member such amount as may be required not exceeding ten dollars (\$10.00), for the payment of the debts and liabilities of the Company contracted whilst the member or past member as the case may be was a member of the Company, and the costs charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

## 56. Distribution of Property on Winding Up

Where on the winding up of the Company or dissolution of the Company, there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus will not be paid or distributed to the members of the Company but will be given or transferred to such other institution or company having similar objects to those described in clause 3, is an institution or body and which prohibits the distribution of income, profit or assets to its members and which has gained approval from the Deputy Commissioner of Taxation to be recognised as a body whose income is exempt from taxation. Such institution or company will be determined by the members of the Company on or before the time of such winding up or dissolution, failing such determination the institution or company shall be determined by application to the Supreme Court in the State of incorporation.