

Final EGM Version

Constitution

Lycee Condorcet the International French School of Sydney
Ltd ACN 003 977 160

MinterEllison

L A W Y E R S

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Constitution of Lycee Condorcet the International French School of Sydney Ltd ACN 003 977 160

1.	Defined terms	5
2.	Interpretation	5
3.	Replaceable rules	6
	Objects	6
4.	Objects	6
	Income and property of Company	6
5.	Income and property of Company	6
	Membership	7
6.	Classes of membership	7
7.	Admission	7
8.	Ceasing to be a Member	8
9.	Powers of attorney	8
	General meetings	8
10.	Calling general meeting	8
11.	Notice of general meeting	9
	Proceedings at general meetings	9
12.	Member	9
13.	Quorum	9
14.	Chairperson	10
15.	Adjournment	10
16.	Decision on questions	10
17.	Taking a poll	11
18.	Casting vote of chairperson	11
19.	Offensive material	11
	Votes of Members	11
20.	Entitlement to vote	11

21.	Objections	11
22.	Votes by proxy	12
23.	Document appointing proxy	12
24.	Lodgement of proxy	13
25.	Validity	13
Directors		13
26.	Appointment and removal of Directors	13
27.	Retirement	14
28.	Existing Directors	14
29.	Vacation of office	15
30.	Casual Directors	15
31.	Powers and duties of Directors	16
32.	Directors' meetings	16
33.	Decision on questions	16
34.	<i>Special Matters</i>	17
35.	Payments to Directors	17
36.	Directors' interests	18
37.	Remaining Directors	19
38.	Chairperson	19
39.	Delegation	19
40.	Written resolutions	19
41.	Validity of acts of Directors	20
42.	Minutes and Registers	20
43.	Appointment of attorneys and agents	20
Secretary		21
44.	Secretary	21
Inspection of records		21
45.	Inspection of records	21
Notices		21
46.	Service of notices	21
47.	Persons entitled to notice	22

Audit and accounts	22
48. Audit and accounts	22
Winding up	22
49. Winding up	22
Indemnity	23
50. Indemnity	23

1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

Auditor means the Company's auditor.

Board of Studies means the board of studies constituted by the *Education Act 1900 (NSW)*.

Casual Director means a person appointed as an alternate director under clause 30.

Committee means a group of members of the Company to whom delegation has been given by the Directors under clause 39.

Company means Lycee Condorcet the International French School of Sydney LTD ACN 003 977 160.

Constitution means the constitution of the Company as amended from time to time.

Corporations Act means the *Corporations Act 2001 (Cth)* as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

Director includes any person occupying the position of director of the Company and includes Member Directors and Board Directors as described in clause 26.

Directors means all or some of the Directors acting as a board.

Existing Directors means the directors of the Company as at the date of adoption of this Constitution.

Existing Members means the members of the Company as at the date of adoption of this Constitution.

Member means a member under clause 7 and includes Parent Members and Associate Members as described in clause 6.

Next AGM means the annual general meeting of the Company following adoption of this Constitution.

Register means the register of Members of the Company.

Seal means the Company's common seal (if any).

School means the school constituted by the Company.

Secretary means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;

- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and
- (f) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

Objects

4. Objects

- 4.1 The Company is established for the object of operating a co-educational school for children, irrespective of their social, religious or cultural background (**the School**), which:
 - (a) subject to any requirement of the Board of Studies:
 - (i) provides co-education according to both the French and Australian and NSW curriculums of a totally non-sectarian nature and without any religious bias whatsoever;
 - (ii) conducts education in both French and English;
 - (iii) conducts tuition using the French method of instruction (to allow students to continue their education in France or other places around the world); and
 - (b) takes an active part in the community life of Sydney by providing for the delivery and holding of lectures, public meetings, classes and conferences which advance the cause of education, any such activities or instruction to be of the highest professional and educational standard.
- 4.2 The Company may only exercise the powers granted in section 124(1) of the Corporations Act to:
 - (a) carry out the Objects set out in this clause; and
 - (b) do all things incidental or convenient in relation to the exercise of power under clause 4.2(a).

Income and property of Company

5. Income and property of Company

- 5.1 The income and property of the Company will only be applied towards the promotion of the Objects of the Company set out in clause 4.
- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

Membership

6. Classes of membership

- 6.1 A Member of the Company shall be either a Parent Member or an Associate Member.
- 6.2 Notwithstanding anything else in this Constitution, Associate Members of the Company are limited to 20 Members.
- 6.3 Associate Members their proxies and their attorneys are not entitled to vote on a special resolution to modify or repeal this Constitution.
- 6.4 All Existing Members shall be deemed to be Parent Members from the date of adoption of the Constitution.

7. Admission

- 7.1 A person is eligible to be admitted to Membership if the person:
 - (a) has never been a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) nor ever been convicted of an indictable offence;
 - (b) is not an undischarged bankrupt;
 - (c) in the case of a Parent Member, they are the legal guardian of a student who is enrolled in the School; and
 - (d) in the case of an Associate Member, in the opinion of the Board, is likely to enhance and benefit the School by being an Associate Member.
- 7.2 Applications for Associate Membership of the Company must be in writing, signed by the applicant, in a form approved by the Directors in their absolute discretion and be nominated and seconded by an existing Member who personally knows the person applying for Membership.
- 7.3 The Directors will consider each application for Associate Membership at the next meeting of Directors after the application is received. In considering an application for Associate Membership, the Directors may:
 - (a) accept the application, if such acceptance will not lead to the Membership exceeding the limits imposed by clause 6.2;
 - (b) reject the application; or
 - (c) ask the applicant to give more evidence of eligibility or suitability for Membership.
- 7.4 If the Directors ask for more evidence under clause 7.3, their determination of the application for Membership is to be deferred until the evidence is given.
- 7.5 The Directors do not have to give any reason for rejecting an application for Associate Membership.
- 7.6 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

7.7 The Directors define the duration of the appointment of Associate Members, which cannot exceed 3 years, and may determine that an entrance fee is payable by each Associate Member.

8. Ceasing to be a Member

8.1 A Member's membership of the Company will immediately cease:

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
 - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company; and
 - (ii) who has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed; or
- (c) if the Member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
 - (iii) is a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW) or is convicted of an indictable offence;
 - (iv) files or is the subject of a petition for bankruptcy;
 - (v) in the case of a Parent Member (other than an Existing Member), they cease to be the legal guardian of a student enrolled in the School ; or
- (d) in the case of an Associate Member, at the end of their appointment period.

9. Powers of attorney

9.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership in the Company, that Member must deliver the instrument appointing the attorney to the Company for notation.

9.2 If the Company asks the Member to file with it a certified copy of the instrument for the Company to retain, the Member will promptly comply with that request.

9.3 The Company may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

General meetings

10. Calling general meeting

10.1 Any Director may, at any time, call a general meeting.

10.2 The Directors must call and arrange to hold a general meeting on the request of:

- (a) Members with at least 5% of the votes that may be cast at the general meeting; or
- (b) at least 100 Members who are entitled to vote at the general meeting.

10.3 A Member may not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

11. Notice of general meeting

11.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.

11.2 A notice calling a general meeting:

- (a) must specify the place, date and 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) must state the general nature of the business to be transacted at the meeting; and
- (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.

11.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:

- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
- (b) the election of directors; or
- (c) the appointment and fixing of the remuneration of the Auditor.

11.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 10.2).

11.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 47.1 entitled to receive notices from the Company.

11.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

Proceedings at general meetings

12. Member

In clauses 13, 14, 16 and 20, **Member** includes a Member present in person or by proxy or attorney.

13. Quorum

13.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

13.2 A quorum of Members is any 30 Members.

13.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
- (b) in any other case:

- (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
- (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

14. Chairperson

14.1 The chairperson, or in the chairperson's absence the deputy chairperson, of Directors' meetings will be the chairperson at every general meeting.

14.2 The Directors present may elect a chairperson of a general meeting if:

- (a) there is no chairperson or deputy chairperson; or
- (b) neither the chairperson nor deputy chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
- (c) the chairperson and deputy chairperson are unwilling to act as chairperson of the general meeting.

14.3 If the Directors make no election under clause 14.2 when they are entitled to do so, then:

- (a) the Members may elect one of the Directors present as chairperson; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.

14.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

15. Adjournment

15.1 The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
- (b) must adjourn the general meeting if the meeting directs him or her to do so.

15.2 An adjourned general meeting may take place at a different venue to the initial general meeting.

15.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.

15.4 Notice of an adjourned general meeting must only be given in accordance with clause 11.1 if a general meeting has been adjourned for more than 21 days.

16. Decision on questions

16.1 Subject to the Corporations Act and clause 6.3 in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

16.2 A resolution put to the vote of a meeting is to be decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.

16.3 Unless a poll is demanded:

- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and

(b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

16.4 The demand for a poll may be withdrawn.

16.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

17. Taking a poll

17.1 If a poll is demanded under clause 16.2, a poll will be taken when and in the manner that the chairperson directs.

17.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

17.3 The chairperson may determine any dispute about the admission or rejection of a vote.

17.4 The chairperson's determination, if made in good faith, will be final and conclusive.

17.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

17.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

18. Casting vote of chairperson

The chairperson does not have a casting vote in addition to the chairperson's votes as a Member, proxy or attorney.

19. Offensive material

A person may be refused admission to, or required to leave and not return to, a meeting if the person:

(a) refuses to permit examination of any article in the person's possession; or

(b) is in possession of any:

(i) electronic or recording device;

(ii) placard or banner; or

(iii) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

Votes of Members

20. Entitlement to vote

20.1 Subject to this Constitution, on a show of hands and on a poll every Member has one vote.

21. Objections

21.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.

- 21.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 21.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

22. Votes by proxy

- 22.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 22.2 A proxy must be a Member.
- 22.3 A proxy may demand or join in demanding a poll.
- 22.4 A proxy or attorney may vote on a poll.
- 22.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.
- 22.6 Any person acting as a proxy or attorney for a member shall not act as proxy or attorney for more than 3 members

23. Document appointing proxy

- 23.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 23.2 For the purposes of clause 23.1, an appointment received at an electronic address will be taken to be signed by the Member if:
- (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
 - (b) the appointment has been verified in another manner approved by the Directors.
- 23.3 A proxy's appointment is valid at an adjourned general meeting.
- 23.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 23.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
- (a) to vote on:
 - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
 - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting, even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and
 - (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 23.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

24. Lodgement of proxy

- 24.1 The written appointment of a proxy or attorney must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
 - (b) the taking of a poll on which the appointee proposes to vote.
- 24.2 The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

25. Validity

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

Directors

26. Appointment and removal of Directors

- 26.1 The Company shall have minimum of 9 and maximum of 12 Directors.
- 26.2 Subject to clause 26.5(e) and from the conclusion of the Next AGM, the Directors shall comprise:
- (a) at least 7 but no more than 10 directors elected by the Members of the Company (**Member Directors**); and
 - (b) a maximum of 2 directors appointed by the Board (**Board Directors**).
- 26.3 All Directors must be members of the Company.
- 26.4 The following individuals must be invited to meetings of the Board to attend as observers, unless the Board determines in its absolute discretion that it is not appropriate for a person to attend in light of the proposed discussion at any meeting or part of a meeting of the Board:
- (a) one representative of the primary school teachers;
 - (b) one representative of the secondary school teachers ;
 - (c) the school principal;
 - (d) the French Consul in Australia; and

(e) the French Cooperation & Cultural Counsellor in Australia.

26.5 The election of Member Directors shall take place in the following manner:

- (a) Any two Members of the Company shall be at liberty to nominate any other member to serve as a Member Director (**Nominee**).
- (b) The nomination, which shall be in writing and signed by the Nominee and his proposer and seconder shall be lodged with the Secretary at least fourteen days before the annual general meeting at which the election is to take place.
- (c) A list of the Nominees' names in alphabetical order, with the proposers' and seconders' names shall be posted in a conspicuous place in the registered office of the Company and on the official website of the company for at least ten days immediately preceding the annual general meeting.
- (d) Balloting lists shall be prepared containing the names of the Nominees and a short statement from the candidate outlining their skills and expertise for holding directorship. The list shall be only in alphabetical order.
- (e) In the case there shall not be sufficient number of Nominees nominated the vacancies will be filled up as described in clause 30.
- (f) The number of Member Directors required to meet the requirements of clauses 26.1 and 26.2 shall be elected by the Members at each annual general meeting from the Nominees.

26.6 Subject to applicable law, if the Board considers in its discretion, acting reasonably, that the conduct or position of any Director is such that continuance in office is likely to be prejudicial to the interests of the Company, the Board, at a meeting of the Directors specifically called for that purpose, may suspend that Director.

The relevant Director will not be eligible to vote on such resolution.

26.7 As soon as possible after the suspension (subject to the notice provisions in the Corporations Act and this Constitution), the Directors must call a general meeting, at which the Members may either confirm the suspension and remove the Director from office or annul the suspension and reinstate the Director.

27. Retirement

27.1 Other than the Existing Directors (to which clause 28 applies), all Directors, must retire from office at the conclusion of the second annual general meeting after the Director was last elected or appointed.

27.2 Subject to clause 27.3, a retiring Director is eligible for re-election or re-appointment.

27.3 Subject to clause 27.4, any person (including the appointees) who has been a Director for six consecutive years is not eligible to be a Director for a period of 2 years after those six years' service.

27.4 The Directors may, by a two-thirds majority, resolve that a person is eligible to be a Director if that person would otherwise not be eligible solely by operation of clause 27.3.

28. Existing Directors

28.1 All the Existing Directors will cease to be directors at the conclusion of the Next AGM.

- 28.2 At the Next AGM, at least 7 but no more than 10 Member Directors shall be elected in accordance with clause 26.5 and in accordance with the following:
- (a) if an even number of Member Directors are appointed, half of the Member Directors will be appointed for a term of 1 year and that half will be appointed for a term of 2 years;
 - (b) if an odd number of Member Directors are appointed, half plus 1 of the Member Directors will be appointed for a term of 2 years and the remainder will be appointed for a term of 1 year.
- 28.3 At the Next AGM, the Chairman shall determine the names of those Member Directors appointed for terms of 1 year and those Member Directors appointed for terms of 2 years by lot.
- 28.4 The Board shall appoint 2 Board Directors, one for a term of 1 year and one for a term of 2 years, from the time at which the Member Directors are appointed at the Next AGM.

29. Vacation of office

A person immediately ceases to be a Director if he or she:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company;
- (d) is removed by a resolution of the Company;
- (e) is absent from Directors' meetings for 6 consecutive months without leave of absence from the Directors;
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
- (g) is or becomes a registrable person for the purposes of the *Child Protection (Offenders Registration) Act 2000* (NSW); or
- (h) ceases to be a Member of the Company.

30. Casual Directors

- 30.1 The Board shall have power at any time, and from time to time, to appoint any member to the Board for a period of up to 2 years, either to fill a casual vacancy or as an addition to the existing Directors of the Board but so that the total number of Directors of the Board shall not at any time exceed the number fixed in accordance with clause 27.1¹ and with a view to maintaining the rotation of the board by staggering the director appointment terms.
- 30.2 A Director appointed under clause 30.1 is, subject to clause 27.3, eligible for re-election or re-appointment as a Director.

¹ The correct cross-reference is to clause 26.1.

31. Powers and duties of Directors

- 31.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 31.2 Without limiting the generality of clause 31.1, the Directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) charge any property or business of the Company;
 - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
 - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

32. Directors' meetings

- 32.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 32.2 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director.
- 32.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.
- 32.4 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 32.5 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 32.6 Subject to clause 36, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 32.7 Clauses 32.4 to 32.5 apply to meetings of Committees as if all committee members were Directors.
- 32.8 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 32.9 A quorum for meetings of Directors is five Directors.
- 32.10 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 32.11 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

33. Decision on questions

- 33.1 Subject to clause 34, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 36, each Director has one vote.

- 33.2 The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote.
- 33.3 Subject to the Directors' duties and applicable law, no decision can be made on matter raised in Directors meeting, if not included in the agenda and notes about distributed 48 hours before hand. This rules does not apply in dealing with emergency situation.

34. Special Matters

- 34.1 The Directors shall ensure that the Company does not undertake any of the matters set out below without a majority vote of at least 75% of the votes cast by Directors present and entitled to vote on the matter:
- (a) the sale or purchase of assets having a value greater than \$200,000;
 - (b) the borrowing of, or entering into any borrowing arrangement in respect of, an amount in excess of \$100,000;
 - (c) the adoption or material variation of any business plan;
 - (d) the adoption or material variation of any operating budget;
 - (e) the adoption or material variation of any clause of the governance charter ;
 - (f) the making of any loan, credit facility, guarantee, or any other type of financial accommodation to any person otherwise than in the ordinary course of business and in accordance with the terms of this Constitution;
 - (g) departure from the accounting standards or principles prescribed by law for the preparation of its accounts or financial statements;
 - (h) the incorporation of a subsidiary or entry into any partnership, joint venture or agency agreement;
 - (i) any material commercial transaction between the Company and a related party of the Company (as defined in section 228 of the Corporations Act); and
 - (j) subject to paragraph (b), the incurring of liabilities having a value greater than \$100,000.

35. Payments to Directors

No payment will be made to any Director of the Company other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Directors of the Company;
- (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as 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;
- (c) 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;
- (d) of any honorarium as contemplated by section 21A(3) of the *Education Act 1990* (NSW) and

- (e) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.

36. Directors' interests

- 36.1 A Director must, without exception, give notice to the other Directors, as soon as known, about all and any personal interest in a matter that relates to the affairs of the Company.
- 36.2 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 36.3 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 36.4 A Director is not disqualified merely because of being a Director from contracting with the Company in any respect.
- 36.5 Subject to clause 34, a Director or a body or entity in which a Director has a direct or indirect interest may:
 - (a) enter into any agreement or arrangement with the Company;
 - (b) hold any office or place of profit other than as auditor in the Company; and
 - (c) act in a professional capacity other than as auditor for the Company,and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 36.6 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
 - (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter,unless permitted by the Corporations Act to do so, in which case the Director may:
 - (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 36.7 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

37. Remaining Directors

- 37.1 The Directors may act even if any of the directors' positions are vacant.
- 37.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director; or
 - (b) call a general meeting.

38. Chairperson

- 38.1 The Directors may by simple majority appoint, remove and replace a Director as chairperson of Directors' meetings and may determine the period for which the chairperson shall hold office (save that any chairperson shall cease to be chairperson if they cease to be a Director).
- 38.2 If no chairperson is appointed or if the chairperson is not present at any Directors' meeting within ten minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of the meeting.
- 38.3 The Directors may elect a Director as deputy chairperson to act as chairperson in the chairperson's absence.
- 38.4 The chairperson must fluently speak and write in both French and English. The chairperson must be a Member Director.

39. Delegation

- 39.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to a committee or committees (each a **Committee**).
- 39.2 The Directors may at any time revoke any delegation of power to a Committee.
- 39.3 At least one member of each Committee must be a Director.
- 39.4 A Committee must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 39.5 A Committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 39.6 Meetings of any Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each member was a Director.

40. Written resolutions

- 40.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 40.2 For the purposes of clause 40.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 40.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.

- 40.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.
- 40.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

41. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment or election of a person as a Director or member of a Committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

42. Minutes and Registers

42.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with clause 40;
- (d) all appointments of officers;
- (e) all orders made by the Directors and Directors' committees; and
- (f) all disclosures of interests made under clause 36.

42.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.

42.3 The Company must keep all registers required by this Constitution and the Corporations Act, including a register of Members (**Register**).

43. Appointment of attorneys and agents

43.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint a person in accordance with clause 43.2 to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions,

determined by the Directors.

- 43.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:
- (a) any company;
 - (b) the members, directors, nominees or managers of any company or firm; or
 - (c) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 43.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.
- 43.4 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

Secretary

44. Secretary

- 44.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 44.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 44.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

Inspection of records

45. Inspection of records

- 45.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 45.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

Notices

46. Service of notices

- 46.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
 - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 46.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and

- (b) on the day after the day on which it was posted.
- 46.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
 - (b) on the day after its despatch.
- 46.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 46.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 46.
- 46.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 46.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 46.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

47. Persons entitled to notice

- 47.1 Notice of every general meeting must be given to:
- (a) every Member;
 - (b) every Director; and
 - (c) any Auditor.
- 47.2 No other person is entitled to receive notice of a general meeting.

Audit and accounts

48. Audit and accounts

- 48.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 48.2 The Directors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

Winding up

49. Winding up

- 49.1 If the Company is wound up:
- (a) each Member; and
 - (b) each person who has ceased to be a Member in the preceding year,
- undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to clause 49.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
 - (d) adjustment of the rights of the contributories amongst themselves,
- the amount of \$2.00.

49.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to a corporation to which income tax deductible gifts can be made and which, by its constitution, is:

- (a) required to pursue similar charitable purposes to those pursued by the Company;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or paying fees to its directors (other than in circumstances contemplated by clause 35),

such corporation to be determined by the Members at or before the winding up and, in default, by application to the Supreme Court of New South Wales for determination.

Indemnity

50. Indemnity

50.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); and
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

50.2 The amount of any indemnity payable under clauses 50.1(a) or 50.1(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

50.3 For the purposes of this clause, **officer** means:

- (a) a Director; or
- (b) a Secretary.