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indian(sub-cont)  
*crisis & support agency*

# CONSTITUTION

**2014**

(DRAFT)

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# GOVERNANCE & CAPACITY

## 1. Name

1.1 The name of the Company is the INDIAN (SUB-CONTINENT) CRISIS & SUPPORT AGENCY hereunder referred to as "The Company".

## 2. Entity

2.1 The Company is a public company limited by guarantee and a not-for-profit social enterprise. Ownership is through a fully paid up shareholding guarantee.

## 3. Mission

3.1 A Company owned by the community run by the community working co-operatively for the benefit of the target community's establishment and growth in Australia.

## 4. Vision

4.1 A non-religious, a-political unaffiliated entity to provide services to all, with respect and without discrimination regardless of gender, age, race, religion, personal orientation or social standing.

4.2 The Company to serve the specific needs of the community from the Indian Sub-Continent Region, with a caveat of never turning away anyone in genuine need regardless of their background.

4.3 A community organisation in which all exercise equal rights, choose their own destiny and have a safe environment for themselves and their family.

## 5. Values

5.1 The Agency [Company] is to be representative of, believe in and promote:

- Mutual respect, irrespective of differences
- Non-judgmental service delivery
- Collaboration and Alliances
- Embrace multiple cultures
- Integration into Australian Way-of-Life and Culture

## 6. Liability of Members

6.1 The liability of Shareholders and members is limited.

## 7. Constitution

7.1 This is the Company's Constitution and describes how the Company is to be managed.

7.2 The Company may modify or repeal the Constitution or any provision of it by Special Resolution from time to time and such modification, repeal or adoption takes effect on the date on which the resolution is passed or, if the resolution specifies a date which is later than the date on which the resolution is passed, on that date.

## 8. Conduct of Members

8.1 Members shall conduct themselves in accordance with

- a) this Constitution;
- b) any rules, regulations or by-laws prescribed by the Board and
- c) ICSA Code of Ethics and Conduct

As amended from time to time.

8.2 Members shall indicate their membership of the Company only in such form or manner and subject to any conditions, rules or regulations prescribed by the Board.

8.3 Each Member shall notify the Secretary of any change in the circumstances of the Member which may affect the Member's continued entitlement to membership or any class of membership.

## 9. Powers of the Board

9.1 Subject to the Act and to any provision of this Constitution, the business of the Company is to be under the direction of the Board.

9.2 The Board may exercise all of the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting:

- a) Control and manage the affairs of the Company, and
- b) Have the power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of The Company.

## 10. Guarantee of Members

10.1 Every Member undertakes to contribute a guarantee to the value of one thousand dollars (\$1000.00) to the Company for a shareholding that holds voting rights.

10.2 In the event the Company is wound up while the Member is a Member or within one year after the Member ceases to be a Member the Member is liable for payment of the debts and liabilities of the Company, the costs, charges and expenses of any winding up to the value of the guarantee.

## 11. Prohibited Acts

11.1 The Company does not have the power to:

- a) issue shares of any kind; or
- b) pay, transfer, apply, directly or indirectly, any portion of the income and property of the Company, by way of dividend, bonus or otherwise howsoever by way of profit, to or for the benefit of a Member.

11.2 The Company must not be operated for the purpose of the profit or gain of any Member.

11.3 Nothing in this Constitution authorises the Company to an act that is prohibited by law of a State or a Territory of Australia or gives the Company a right that the law of a State or Territory of Australia denies to the Company.

## 12. Income and Property

12.1 The income and property of the Company shall be applied solely towards the promotion of the purpose of the Company as described in clause 14 and shall not be applied in any manner which is prohibited by this Constitution.

12.2 The income and property of the Company, however derived, shall, subject to any obligations under charitable trust law or any other statutory requirements, be used and applied solely in the promotion of its objects and in the exercise of powers conferred upon it by the rules.

12.3 Subject to the Act, the Directors may be paid the remuneration that the Company determines by resolution approved at a General Meeting from time to time.

12.4 Nothing in this clause 12 or this Constitution prevents the Company from paying for:

- a) out of pocket expenses reasonably incurred by a Director in the performance of any duty as Director where the amount payable does not exceed an amount approved by the Board; and
- b) any service rendered by a Director to the Company in a professional or technical capacity where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
- c) goods supplied to the Company by a Member in the ordinary and usual course of business;
- d) interest (at a rate not exceeding the lowest rate paid for the time being by the Company's bankers) on term deposits on money borrowed from any Member; or
- e) reasonable and proper rent for premises licensed or leased by any Member.
- f) interest (provided it is based on the prevailing rate of interest charged by banks, building societies or credit unions for unsecured loans) to any such member in respect of moneys advanced by that member to the Company, or otherwise owing by the Company to the member; or

- g) any remuneration to any officers or servants of the Company or other person in return for any services genuinely rendered to the Company.

### 13. Non-Distribution of Profits

13.5 No portion of the income and property of the Company shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to or amongst the shareholders or members of the Company.

## PURPOSE

### 14. Objectives

- i. To provide safe, confidential and reliable access to community services serving the communities of the Indian Sub-Continent.
- ii. To strengthen the role of local services in serving the target communities.
- iii. To ensure that as a community we are participating in the development of sound policies and opportunities.
- iv. To facilitate the integration of projects that support opportunities which meet community needs.
- v. To improve the quality and access to human services infrastructure for the target communities.
- vi. To improve the quality and efficiency of local services delivery to the target communities.
- vii. To ensure the Company develops as a highly credible and cost-effective organisation that is responsive to changing needs.

## MEMBERS

### 15. Members

15.1 There must be at least one member.

15.2 Subject to Clause 15 an individual, corporation or association may be a member.

15.3 The rights and privileges of every Member are personal to that Member and may not be transferred by any act of that Member or by operation of law.

### 16. Eligibility

16.1 A person is eligible to be a member shareholder of the Company if:

- a) the person is a natural person, and
- b) the person has been nominated and approved for membership of The Company by shareholding in accordance with Schedule 1 – Nomination for Membership.

16.2 A corporation or organisation is eligible to be a shareholder of the Company if they are:

- a) a properly registered corporation and is solvent.
- b) a properly registered association with current financial statements, good governance and valid membership register in accordance with the Associated Incorporations Act 2009.

16.3 A shareholding membership is entitled to one single vote.

### 17. Admission to Membership

17.1 The Board may admit any person or corporation as a Member on terms and conditions in this Constitution and as prescribed by the Board in rules and regulations from time to time.

17.2 Each Member shall execute an undertaking to be bound by this Constitution.

17.3 Each person or corporation that is admitted as a Member shall have his or her or its name and other particulars determined by the Board entered on the Register of Members.

17.4 Members shown in the Members' Register as at the date of adoption of this Constitution (the "Initial Members") shall remain Members of the Company; and

17.5 Nothing in this Constitution affects the validity of such a Member's membership or the duration and terms of such membership as shown in the Members' Register as at the date of adoption of this Constitution.

17.6 A person is eligible and accepted as a shareholder of the Company if:

- (i) approved by the Board
- (ii) is a fully paid up shareholder.

17.7 Membership nominations applications are through Schedule 1 to this constitution.

## 18. Classes of Members

18.1 The Directors may, from time to time, determine:

- a) the various classes of Membership of the Company;
- b) any restriction in the number of Members or the number of Members within each class;
- c) the qualifications for admission to each class; and
- d) the rights attached to being a Member in each class including for example voting rights.

18.2 Subject to the Act and the terms of a particular class of Membership, the Company may:

- a) vary or cancel rights attached to being a Member of that class; or
- b) convert a Member from one class to another, by:
  - (i) Special Resolution of the Company; and
  - (ii) Special Resolution passed at a meeting of the Members included in that class; or
  - (iii) by the written consent of Members who are entitled to at least 75% of the votes that may be cast in respect of membership of that class.

## 19. Subscription of Members

19.1 Members with shareholding (Shareholders) only shall have voting rights, unless:

- (i) The Board has established a class of members with voting rights attached to that class, the rights to vote will be limited to matters within that class as set by the rules.
- (ii) A working group or committee is established with specific voting rights, those groups will have the right to vote in accordance with rules attached to that group.

19.2 Members shall pay such Subscriptions as determined by the Board from time to time.

19.3 Subject to clause 19.4, the amount of any Subscription shall be fixed by the Board and shall be payable by Members at such times and in such manner as determined by the Board from time to time.

19.4 The Board may in its discretion:

- a) determine that no Subscription is payable by a Member or Members (in whole or in part) for any given year; and
- b) extend the time for payment of Subscriptions by any Member or class of Members.

19.5 No part of any payment for guarantee or subscription fee shall be refunded to a Member who ceases to be a Member.

## 20. Register of Members

20.1 The Secretary shall keep a Register of Members, which shall contain the name of each Member, the date on which the Member's name was entered on the Register of Members, the date of expiry in accordance with the provisions of the Constitution of such membership and such other particulars as the Board from time to time may determine.



20.2 Each Member shall notify the Secretary of the details of an address in Australia where the Company can send notices and keep the Secretary notified of any change in such address from time to time.

20.3 If a Member fails to provide an address in accordance with clause 20.2 and holds a Director position, clause 47.3 (e) applies as well as for ordinary members, after two reminders the membership will be deemed to have lapsed unless the Board determines otherwise.

20.4 The public officer of the Company must establish and maintain a register of members of The Company specifying the name and postal or residential address of each person who is a shareholder of The Company together with the date on which the person became a shareholder.

20.5 The register of shareholders must be kept in New South Wales:

- a) at the main premises of the Company, or
- b) if the Company has no premises, at the Company's official address.

20.6 The register of shareholders must be open for inspection, free of charge, by any shareholder of the Company at any reasonable hour.

20.7 A shareholder of the Company may obtain a copy of any part of the register on payment of a fee of not more than \$2 for each page copied.

20.8 If a shareholder requests that any information contained on the register about the shareholder (other than the shareholder's name) not be available for inspection that information must not be made available for inspection.

20.9 A shareholder must not use information about a person obtained from the register to contact or send material to the person, other than for:

- a) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to the Company or other material relating to the Company, or
- b) any other purpose necessary to comply with a requirement of the Act or the Regulation.

## 21. Certificate of Membership

21.1 The Board shall issue a certificate of membership to Members in such form and upon payment of such fees as it may prescribe.

21.2 The certificate shall:

- a) annotate the membership number for shareholder members
- b) annotate the membership number and period of validity for non-shareholding subscription members

21.2 Certificates of membership remain the property of the Company and must be promptly returned to the Company if requested by the Board or if the holder of the certificate ceases to be a Member.

21.3 The Board may prescribe from time to time the manner in which certificates of membership of the Company can and cannot be used.

21.4 Without limiting clause 21.3, Members with a certificate of membership must not use the certificate to make false or misleading representations about the Company and their membership including representing that they are a Member when membership has ceased.

## 22. End & Suspension of Members

22.1 A Member ceases to be a Member if they:

- a) resign in writing;
- b) are subject to an Insolvency Event;
- c) die;
- d) become of unsound mind or become liable to be dealt with in any way under a law relating to mental health;
- e) are convicted of a criminal offence; or

- f) their membership is cancelled in accordance with this clause.

22.2 If a Member is in arrears by at least two (2) Months of the due date for payment of a Subscription or owes any other Outstanding Monies to the Company and fails to pay such arrears or Outstanding Monies within one (1) Month of a notice issued by the Secretary to do so, the Board may at any time in its discretion:

- a) suspend the Member from all privileges of membership including attendance or voting at any meeting of Members, the Board or any Committee (as relevant); or
- b) cancel the Member's membership.

22.3 The Board may resolve to censure, fine, suspend or expel a Member if the Member:

- a) has engaged in conduct which in the opinion of the Board:
  - (i) is unbecoming of a Member;
  - (ii) is prejudicial to or not in the best interests of the Company; or
  - (iii) brings discredit on the Company;
- b) in the opinion of the Board, has engaged in derogatory or discriminatory conduct or harassment;
- c) has failed to observe a proper standard of professional care, skill or competence;
- d) in the opinion of the Board has engaged in activities or been complicit in activities which give rise to a public perception which does not meet the ethics of the Company
- e) no longer meets the criteria for membership of the Company or class of membership of the Company;
- f) has failed to comply with a written direction issued by the Board in accordance with the Constitution or any rules and regulations of the Company regarding good conduct or administration of the Company;
- g) in any civil proceedings in a court or tribunal (however described) in Australia or elsewhere, has been found to have acted dishonestly; or
- h) fails in the opinion of the Board (for any reason) to comply with this Constitution, or any rules or regulations of the Company.

22.4 Any Member whose membership has been suspended or cancelled is not entitled to enjoy any of the privileges of membership including receiving notice of, attendance and voting at, any meeting of Members.

22.5 Any Member whose membership has been suspended or cancelled continues to remain liable for:

- a) all money owing by the Member to the Company as at the date of suspension or cancellation including any Subscription; and
- b) the Guarantee.

22.6 The Board may reinstate a Member whose membership has been suspended on the satisfaction of such terms and conditions as the Board thinks fit to apply from time to time, including the payment of all money owing by the Member to the Company as at the date their membership was suspended.

22.7 Before the Board makes a resolution referred to in clause 22.3, the Board must:

- a) meet to consider the allegation being made;
- b) provide the Member against whom the allegation has been made with at least seven (7) days written notice of this meeting of the Board and details of:
  - (i) the time and place of the Board meeting;
  - (ii) what is alleged against him or her or it; and
  - (iii) the intended resolution,

and confirmation that he or she or it has the right to give such oral or written explanation or defence as he or she may think fit at the Board meeting; and

- c) provide the Member with a reasonable opportunity to give such oral or written explanation or defence as the Member may reasonably think fit during the Board meeting and before the Board passes its resolution on the allegation.

22.8 Legal advisors are not permitted to attend the Board meeting referred to in clause 22.7.

22.9 Whenever any person ceases to be a Member, the Board shall direct that his or her name shall be removed from the Register of Members.

## GENERAL MEETINGS

### 23. Calling of meetings of Members

23.1 Subject to the Act and clause 22.3:

- a) the Chairman; or
- b) the Board;

may call a meeting of Members.

23.2 The Members may call and hold a general meeting pursuant to the provisions of the Act.

23.3 A court may order a meeting of Members to be called in accordance with the Act if it is impracticable to call the meeting in any other way.

### 24. Board Meetings

24.1 The Board must meet at least six (6) times in each period of twelve (12) months at such place and time as the Board may determine, or as required.

24.2 Additional meetings of the Board may be convened by the Chair or by any member of the Board.

24.3 Oral or written notice of a meeting of the Board must be given by the secretary to each member of the committee at least five (5) working days hours (or such other period as may be unanimously agreed on by the members of the committee) before the time appointed for the holding of the meeting.

24.4 Notice of a meeting must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the committee members present at the meeting unanimously agree to treat as urgent business.

24.5 At a meeting of the Board:

- a) the chair or, in the chair's absence, the vice-chair is to preside, or
- b) if the chair and the vice-chair are absent or unwilling to act, such one of the remaining members of the Board as may be chosen by the members present at the meeting is to preside.

### 25. Quorum

25.1 Any three (3) members of the Board constitute a quorum for the transaction of the business of a meeting of the Board, during the establishment phase of the first three years. From the fourth year, any five (5) members of the Board constitute a quorum for the transaction of the business of a meeting of the Board.

25.2 At Meetings of Members a quorum shall consist of 9 members in the establishment phase of the first three year, from the fourth year a minimum of 25 members, unless otherwise prescribed by the Board.

25.3 The quorum is to be present at the meeting at all times.

25.4 Should within half an hour of the time set down for a meeting to commence, a quorum be not present, then:

- a) the meeting shall be adjourned to the same time and place seven days later or
- b) to a place and to a time within one month of the date of such meeting, to be determined thereat.

25.5 If at such adjourned meeting a quorum not be present, then those members attending shall be deemed to be a quorum, provided, the number of such members is not less than three.

## 26. Annual General Meetings

26.1 The Company must hold an annual general meeting at least once in each calendar year and within five (5) Months after the end of its Financial Year or within such other period prescribed by the Act (at a place and time determined by the Board) to:

- a) receive the financial reports, statements and accounts of the Company and reports of the Board and the Auditor for the preceding Financial Year;
- b) elect Directors as required;
- c) appoint or confirm the appointment of the Auditor;
- d) fix the Auditor's remuneration;
- e) consider any matter which may be submitted by a Member to the meeting in accordance with the Act or this Constitution; and
- f) transact any other business which the Board considers appropriate.

26.2 The Chair shall preside as Chairman at every general meeting of the Company, but if he is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act then the members present shall elect one of their number to be chairman of the meeting, a simple majority sufficing.

26.3 All business transacted pursuant to clause 26.1 shall require an Ordinary Resolution to be carried. All other business shall require a Special Resolution to be carried.

26.4 The Chairman may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Except as previously provided it shall not be necessary to give any notice of the adjourned or of the business to be transacted at an adjourned meeting.

26.5 In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which a poll is demanded shall be entitled to a second or casting vote.

## 27. Special General Meetings

27.1 Any two members of the Board may at any time convene a Special General Meeting of the Company.

27.2 Special General Meetings shall also be convened by the Secretary upon the written request of not less than 5 per centum in number of the members of the Company and shall be held within a period of one month from the date of receipt of the request.

## 28. Amount of notice of meetings

28.1 Subject to the Act, at least 21 days notice must be given of a meeting of Members.

## 29. Notice of meetings

29.1 Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director. No other person shall be entitled to receive notices of meetings of Members.

29.2 The Company shall give notice of meeting of Members in accordance with clause 53 – use of technology.

29.3 Except for resolutions of Members in relation to removal of a Director of the Company under the Act, the Company may call:

- a) an annual general meeting on shorter notice if all members entitled to attend and vote at the annual general meeting agree beforehand; and

- b) any other meeting of Members on shorter notice if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

29.4 Information included in a notice of meeting of Members shall be as prescribed by the Act.

29.5 The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any Member shall not invalidate the proceedings at any meeting.

### 30. Auditor entitled to notice and other communication

The Company must give the Auditor:

- a) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- b) any other communication relating to the general meeting that a Member is entitled to receive.

### 31. Members' resolutions

The Members may propose a resolution to be moved at a general meeting only in accordance with the relevant provisions of the Act. Notice of such proposal must be given to the Secretary in accordance with the Act.

### 32. Time and place for meetings of Members

32.1 A meeting of Members must be held at a reasonable time and place.

### 33. Members' Meetings - Technology

33.1 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.

### 34. Voting and decisions

34.1 On any question arising at a meeting of the Company a member has one vote only.

33.2 In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.

34.3 A member is not entitled to vote at any general meeting of the Company unless all money due and payable by the member to the Company has been paid.

34.4 A member is not entitled to vote at any general meeting of the Company if the member is under eighteen (18) years of age.

34.1 A challenge to a right to vote at a meeting of Members:

- a) may only be made at the meeting; and
- b) must be determined by the chair whose decision is final.

### 35. Proxy votes not permitted

35.1 Proxy voting must not be undertaken at or in respect of a general meeting.

### 36. Postal ballots

36.1 The Company may hold a postal ballot to determine any issue or proposal (other than an appeal under clause 22).

36.2 A postal ballot is to be conducted in accordance with clause 29.4.

### 37. Making of decisions

37.1 A question arising at a general meeting of The Company is to be determined by either:

- a) a show of hands, or
- b) on the motion of the chairperson or
- c) if five (5) or more members present at the meeting decide that the question should be determined by a poll – a poll.
- d) if five (5) or more members present at the meeting decide that the question should be determined by a written ballot—a written ballot.

37.2 If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has on a show of hands:

- (i) been carried or
- (ii) carried unanimously or
- (iii) carried by a particular majority or lost,

37.3 An entry to that effect in the minute book of the Company is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

37.4 If the question is to be determined by a poll or written ballot, the poll or ballot is to be conducted in accordance with the directions of the chairperson.

### 38. Special resolutions

38.1 A special resolution may only be passed by the Company in accordance with **section 39 of the Act**.

### 39. Adjourned meetings

39.1 Any person appointed to chair a meeting of Members may adjourn the meeting if the Members present with a majority of votes at the meeting agree or direct that the chair may do so.

39.2 No business may be transacted at an adjourned meeting other than the business left unfinished from the earlier meeting from which the adjournment took place.

39.3 If a meeting is adjourned for more than 21 days, new notice of the adjourned meeting must be given.

## BOARD of DIRECTORS

### 40. Founding Member

40.1 The Company is established by one single Founding Member.

40.2 The Founding Member in bringing the Company run as an Company into operation is allowed special provisions:

- (1) The founding member shall hold position of Chairperson for the first three years of operations, following the formal launch.
- (2) This is the only member that can hold dual office on the board and in the Company's office after the first three years.
- (3) The founding member cannot be removed from the Register of Shareholders and membership.
- (4) The founding member, can only be removed from office in the event of serious and proven misconduct in accordance with the provisions of clause **??**.
- (5) In such an event as removal, shall still hold the title of **'Founding Member'** and the shareholding.

40.3 Serious misconduct is defined to be a criminal conviction, fraud, embezzlement, using the Company for purely personal gain, or any actions which can be demonstrated as detrimental to the Company's objectives.

40.4 The Founding Member retains a position on the Board until such time as resigns or retires.

40.5 The Founding Member can hold any operational position until such time as resigns or retires.

### 41. Initial Directors

41.1 The Registration of the Company includes two Initial Directors, those two directors shall have special provisions as follows:

- (1) The Initial Directors can hold positions on the Board (except Chairperson) without election, unless they resign or are removed by the provisions of this constitution at clause **??**.

- (2) Post any exit from the Board, the two Initial Directors are eligible for positions on the Board through the normal election process.
- (3) The Initial Directors can hold dual office on the board and in the Company's office for the first three years.
- (4) The Initial Directors can only be removed from office in the event of serious and proven misconduct in accordance with the provisions of clause ??.
- (5) In such an event as removal, shall still hold the title of 'Initial Director' and the shareholding.

41.2 Serious misconduct is defined to be a criminal conviction, fraud, embezzlement, using the Company for purely personal gain, or any actions which can be demonstrated as detrimental to the Company's objectives.

41.3 The Initial Directors retain a position on the Board subject to clause 40.1 (3) until such time as they resign or retire.

41.4 The Initial Directors can hold any operational position subject to clause 40.1 (3) until such time as they resign or retire.

## 42. Directors

42.2 Subject to clause 40.5, the Board shall consist of not less than three (3) Directors.

42.3 The Directors in office as at the date of adoption of this Constitution or if this Constitution is adopted at an annual general meeting at which Directors are elected, those Directors shall hold office until the conclusion of the next Annual General Meeting when they shall retire but shall be eligible for re-election or reappointment as appropriate (Initial Directors).

42.4 At least two Directors must ordinarily reside in Australia.

42.5 The Company may from time to time in general meeting increase or reduce the number of Directors.

## 43. Auditor not Eligible

43.1 The Auditor is not eligible to be elected or appointed as a Director. Subject to the Act, the Regulation and this constitution and to any resolution passed by the Board in general meeting, the committee.

## 44. Composition and membership of Board

44.1 The Board is to consist of:

- a) the office-bearers of the Company, and
- b) at least four (4) ordinary Board members, each of whom is to be elected at the annual general meeting under clause B.2.

44.2 The total number of Board members is to be nine (9), which can be amended from time to time as determined by the Board resolved through a resolution of a General Meeting.

44.3 The executive office-bearers of the Company are as follows:

- (1) the Chair,
- (2) the Vice-Chair,
- (3) the Treasurer,
- (4) the Secretary.
- (5) the Public Officer

44.4 A Board member may hold up to two (2) offices (other than both the Chairperson and vice-chairperson offices).

44.5 Each member of the Board is, subject to this constitution, to hold office until the conclusion of the annual general meeting following the date of the member's election, but is eligible for re-election.

44.6 The Board of Directors past the establishment phase of three years, shall at all times hold a minimum of three executive directors: Chair, Secretary, Treasurer, with two ordinary members.

44.7 The Board members will be allocated a level of remuneration commensurate with the reimbursement of time and expenses associated with the position, determined annually in the Company's Financial Plan.

44.8 Members of the Board can be dually appointed to select salaried office positions of the Company in the first three operational years, commencing from the launch date, as an interim measure for the establishment phase of the Company. From the fourth year Board members may either take office of the Company or Board, but not both, subject to clause 40 and 41.

#### 45. Election, Appointment & Term

45.1 Subject to the provisions of this Constitution, any Voting Member (shareholder) who has no Outstanding Monies to the Company and is in good standing shall be eligible to be a candidate or to nominate a person to be a candidate for election to the office of elected Director.

45.2 Board positions have position descriptions with set criteria in regards to skills, experience and qualifications required to undertake the duties of the position.

45.3 The Company may call for nominations as Director in such manner as the Board determines from time to time. This clause 44.3 does not apply to persons appointed to the Board pursuant to clause 44.8.

45.4 Election of Board members is through an application for nomination to the Board at least one Month before the Annual General Meeting. The sitting board will shortlist candidates that are suitable to be nominated for election.

45.5 Member that meets the criteria must be put up for election, those who do not meet the criteria may be rejected for election. The member to be advised of the reasons for rejection.

45.6 Subject to clause 50.2, a Director is elected for a term of one (1) year at the end of which he or she shall retire and shall be eligible for re-election.

45.7 In election of the Board members, consideration is to be given to election of members to fulfill the following representations:

- a) India
- b) Pakistan
- c) Sri Lanka
- d) Bangladesh
- e) Nepal
- f) Bhutan
- g) Australia

Where suitable candidates for representation are not available, the nominations are open to all.

45.8 Directors may appoint to the Board Voting Members or any person approved by the majority of the Board from time to time.

45.9 Subject to the minimum number of Directors not being less than three (3), the Company may from time to time in general meeting resolve not to replace retiring Directors or Directors who have vacated office.

45.10 Nomination for Application to the Board is by Schedule 2 to this constitution.

45.11 A written board appointment notification shall be issued for the term of office.

#### 46. Removal & Vacation of Office

46.1 A Director may at any time resign from the Board by giving written notice of resignation to the Secretary at the Registered Office.

46.2 Subject to the Act, the Members in general meeting may resolve to remove any Director before the expiration of his or her period of office and may by an ordinary resolution appoint another person in his or her stead. A person appointed to replace a Director removed under this clause shall hold office until the annual general meeting next following his or her appointment.



46.3 The office of Director shall be vacated if he or she:

- a) dies
- b) resigns or is removed from office pursuant to clauses 46.2;
- c) ceases to be a member of the Company
- d) is expelled as a member subject to clause 21.3
- e) upon resolution being passed by a two-thirds majority of members present at a properly constituted general meeting called for the purpose, is removed from office.
- f) is subject to an Insolvency Event;
- g) holds any office of personal profit in the company or directs business for the purpose of personal profit, outside the remit of the Company,
- h) 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;
- i) ceases to be a director by virtue of the Act or becomes prohibited from being a director by reason of any order made under the Act;
- j) is absent from three (3) consecutive meetings of the Board without permission of the Board; or
- k) is convicted of felony or is declared by any Court of competent jurisdiction to have committed any fraud.

#### 47. Casual Vacancies & Additional Directors

47.1 Subject to clause 46.2, the Board may appoint a Member to fill a vacancy occurring on the Board as a result of clause 46.3 and such replacement Director shall hold office for the balance of the term of the replaced Director.

47.2 If the number of Directors becomes less than three (3) as a result of vacancies on the Board, the Board must not act, except for the purposes of filling vacancies or convening a general meeting, while there are less than three (3) Directors.

47.3 The Board may from time to time resolve to appoint Members as additional Directors (as long as the maximum number of Directors is not exceeded). Additional Directors shall hold office until the end of the next annual general meeting following his or her appointment.

#### 48. Alternate Directors

48.1 Subject to the approval of the Board, a Director may appoint a person to be his or her Alternate Director to exercise some or all of that Director's powers for any period.

48.2 If the appointing Director requests, the Board must give the Alternate Director notice of Board meetings.

48.3 When an Alternate Director exercises the Director's powers, the exercise of the powers is just as effective as if the appointing Director exercised the powers.

48.4 The appointing Director may terminate the Alternate Director's appointment at any time.

48.5 The Board may terminate the Alternate Director's appointment at any time without having to give reasons, in which case the affected Director may, subject to clause 47.1, appoint a new Alternate Director.

48.6 An appointment or termination of an Alternate Director must be in writing. A copy of the appointment or termination must be given to the Secretary.

#### 49. Material personal interest

49.1 Unless an exception in the Act applies, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the Board notice of the interest.

49.2 The notice required by clause 48.1 must:

- a) include details of:
  - (i) the nature and extent of the interest; and

(ii) the relation of the interest to the affairs of the Company; and

- b) be given at a Board meeting as soon as practicable after the Director becomes aware of his or her interest in the matter, the details of which must be recorded in the minutes of the meeting.

49.3 A Director who has a material personal interest in a matter that is being considered at a Board meeting shall not be present while the matter is being considered at the meeting or vote on the matter unless:

- a) the interest does not need to be disclosed under the Act; or
- b) the other Directors on the Board who do not have a material personal interest in the matter pass a resolution that:
- (i) identifies the Director, the nature of his or her interest in the matter and its relation to the affairs of the Company; and
- (ii) states that the Board is satisfied that the interest should not disqualify the Director from voting or being present.

49.4 A Director who votes when not otherwise authorised to do so under this clause shall have his or her vote discounted.

## 50. Standing notice about an interest

A Director with an interest in a matter may give the Board standing notice of the nature and extent of this interest in accordance with the Act.

## 51. Negotiable instruments

51.1 The Board shall determine the mechanism for signing, drawing, accepting, endorsing or otherwise executing a negotiable instrument.

51.2 Receipts for money payable to or receivable by the Company may be signed by a Director or the Secretary or by any other person authorised by the Board to receive money either generally or any particular sum of money on behalf of the Company and such receipt shall be deemed to be valid.

## 52. Powers & Role

52.1 Subject to the Act, the Board shall control and supervise the business and affairs and have custody and control of the funds and property of the Company.

52.2 Without limiting clause 51.1, the role of the Board is to:

- a) direct and guide the Company's strategic direction;
- b) ensure that the Company's activities remain consistent with its principal purpose; and
- c) monitor and maintain the financial integrity and viability of the Company.

52.3 The activities of the Board are subject to any regulation from time to time made, amended and removed by the Company in general meeting provided that no regulations so made shall invalidate any prior act of the Board which would have been valid if such regulation had not been made.

## 53. Use of Technology

As determined by the majority of Directors, a Board meeting and any notices may be called or held using any technology which allows all of the Directors to participate in meetings at the same time.

## 54. Chairing Board meetings

54.1 At the first meeting of the Board following each annual general meeting, the Board shall elect:

- a) a Director to be the Chair;
- b) one or more Director(s) to be the Deputy Chair(s).

54.2 Despite clause 44.6, the Chair and Deputy Chair shall hold office for a two (2) year term.

54.3 The Chair or in his or her absence the Deputy Chair shall be entitled to preside as chair at every meeting. If there is no Chair or Deputy Chair present at the time appointed for holding the meeting or if

both decline to chair the meeting, the Directors present shall elect one of their number to be chair of that meeting.

54.4 The Chair shall have a casting vote.

## 55. Quorum at Board meetings

A meeting of the Board at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Board under the Constitution.

## 56. Passing of Board resolutions

A Board resolution must be passed as an Ordinary Resolution.

## 57. Resolutions by Proxy

The Board may vote on resolutions by proxy to be passed as an Ordinary Resolution on administrative matters only.

## 58. Circulating resolutions of Board

58.1 The Board may pass a resolution without a Board meeting being held if all of 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.

58.2 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.

58.3 The resolution is passed when the last Director signs.

58.4 The requirement for a signature or for signing a document is taken to have been met in relation to an electronic communication if:

- a) a method is used to identify the person and to indicate the person's approval of the information communicated; and
- a) having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated.

## 59. Delegation

59.1 The Board may delegate any of its powers to any Committee, Director(s), employee of the Company or any other person.

59.2 The delegate must exercise the delegated powers in accordance with any directions of the Board.

59.3 The effect of the delegate exercising a delegated power is the same as if the Board exercised it.

59.4 The Board may withdraw any delegated power at any time.

## 60. Committees

60.1 The Board may instrument in writing from time to time establish Committees to advise it on matters affecting the operations of the Company. Terms of reference of all Committees shall be determined by the Board.

60.2 A function the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.

60.3 A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function, or as to time or circumstances, as may be specified in the instrument of delegation.

60.4 Despite any delegation under this clause, the Board may continue to exercise any function delegated.

60.5 Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force and effect as it would have if it had been done or suffered by the Board.

60.6 The Board may, by instrument in writing, revoke wholly or in part any delegation under this clause.

60.7 A sub-committee may meet and adjourn as it thinks proper.

### 61. Validity of Actions

All acts done by any meeting of the Board or a Committee or by any Director or Alternate Director shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified.

### 62. Company's attorney

62.1 The Board may appoint a company, firm, person or body of persons to be the Company's attorney under a power of attorney for:

- a) any period; and
- b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board under this Constitution.

## MANAGEMENT

### 63. Appointment of Secretary

63.1 The Company must have a Secretary or Secretaries. At least one of them must ordinarily reside in Australia.

63.2 The Secretary shall be appointed by the Board on such terms and conditions (including as to remuneration) as the Board thinks fit and may be the Chief Executive Officer. The Secretary may be removed and replaced by the Board.

63.3 A person ceases to be a Secretary of the Company if the person becomes disqualified from managing corporations under the Act, unless ASIC or the Court allows them to take part in the management of the Company.

63.4 The secretary of the Company must, as soon as practicable after being appointed as secretary, lodge notice with the Company of his or her address.

63.5 It is the duty of the secretary to keep minutes of:

- a) all appointments of office-bearers and members of the Board, and
- b) the names of members of the Board present at a Board meeting or a general meeting, and
- c) all proceedings at Board meetings and general meetings, and
- d) maintain the register of members and issue of certificates.

63.6 Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

### 64. Treasurer

64.1 It is the duty of the treasurer of the Company to ensure:

- a) that all money due to the Company is collected and received and that all payments authorised by the Company are made, and
- b) that correct books and accounts are kept showing the financial affairs of the Company, including full details of all receipts and expenditure connected with the activities of The Company.
- c) maintain the accuracy of membership payments and subscriptions to ensure accuracy of the members register.

## 65. Chief Executive Officer

65.1 The Board may from time to time appoint a Chief Executive Officer for such periods and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case and may revoke any such appointment subject to the provisions of the law.

65.2 The Chief Executive Officer shall, subject to the terms of any agreement entered into in any particular case, receive such remuneration as the Board may determine.

65.3 The Board may delegate to the Chief Executive Officer such of its powers and authorities as it deems fit from time to time including the delegation to employ and direct staff.

65.4 The Chief Executive Officer shall not be entitled to cast a vote at any meeting of the Board.

# RULES & REGULATIONS

## 66. Rules, Regulations or By-Laws

66.1 The Board may from time to time prescribe rules, regulations or by-laws of the Company on such matters considered necessary or expedient to carry out the purposes of the Company or for the regulation, management and control of the Company's affairs including in respect of its Members, Directors and Committees.

66.2 In the event of any inconsistency between this Constitution and any rule or regulation, this Constitution prevails.

66.3 The Board must publish rules and regulations adopted or amended pursuant to this clause as soon as practicable.

# RECORDS

## 67. Custody of books

67.1 Except as otherwise provided by this constitution, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to the Company.

67.2 The Board shall determine the most effective means of record keeping to maintain data security, integrity and archiving through the use of technology, keeping hardcopy records to a minimum.

## 68. Inspection of books

68.1 The following documents must be open to inspection, free of charge, by a member of the Company at any reasonable hour:

- a) records, books and other financial documents of the Company,
- b) this constitution,
- c) minutes of all committee meetings and general meetings of the Company.

68.2 A member of the Company may obtain a copy of any of the documents referred to in clause (1) on payment of a fee of not more than \$2 for each page copied.

## 69. Minutes

69.1 The Company must keep minute books in which it records within one Month:

- a) proceedings and resolutions of Members' meetings;
- b) proceedings and resolutions of Board meetings, including meetings of Committees;
- c) resolutions passed by the Members without a meeting; and
- d) resolutions passed by the Board without a meeting.

69.2 The Company must ensure that minutes of a meeting are signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.

69.3 The Company must ensure that resolutions passed without a meeting are signed by a Director within a reasonable time after the resolution is passed.

## 70. Members' access to minutes

Members are entitled to gain access to the minute book of meetings of Members in accordance with the Act.

## 71. Prohibited Access to Information

71.1 Members, other Agencies or the Public are not entitled to gain access to any client records unless ordered by the courts.

71.2 Members, other Agencies or the Public are not entitled to gain access on any commercial-in-confidence material or negotiated agreements with other parties which may have a bearing or present risk to the financial viability of the Company.

# FINANCIAL RECORDS

## 72. Financial Year

The financial year shall conclude on 30 June of each year.

## 73. Obligation to Keep Financial Records

73.1 The Company must keep written financial records that:

- a) correctly record and explain the transactions and financial position and performance of the Company;
- b) enable true and fair financial statements to be prepared and audited; and
- c) permit preparation of any other documents required by the Act or this Constitution.

## 74. Location of Financial Records

74.1 The financial records of the Company shall be kept:

- a) in such manner as to enable them to be conveniently and properly audited;
- b) for seven (7) years after the completion of the transactions or operations to which they relate; and
- c) at the Registered Office or at such other place as the Board thinks fit.

## 75. Access

75.1 The financial records of the Company shall at all reasonable times be open to inspection by a Director.

75.2 The Board shall from time to time determine at what times and places and under what conditions and regulations the financial records of the Company may be open to inspection by Members.

## 76. Financial Reporting Obligations

75.1 A financial report in respect of the Company and a Board report must be prepared for each Financial Year.

75.2 The financial report for a Financial Year shall consist of:

- a) the Company's financial statements for the year;
- b) the notes to the financial statements; and
- c) the Board's declaration about the statements and notes.

75.3 The financial statements for the year are the financial statements that are required by and made up in accordance with the Accounting Standards, including those showing the Company's:

- a) profit and loss for the previous Financial Year of the Company;

- b) balance sheet at the date to which the profit and loss account is made up; and
- c) cash flows for the year.

75.4 The notes to the financial statements are:

- a) disclosures required by the Act and its regulations;
- b) notes required by the Accounting Standards; and
- c) any other information necessary to give a true and fair view of the financial position and performance of the Company.

75.5 The Board's declaration is a declaration by the Board that, in its opinion:

- a) there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
- b) the financial statement and notes are in accordance with the Act.

75.6 A Board report shall consist of the matters prescribed in the Act.

75.7 The financial report in respect of the Company and the Board report for the Financial Year must be sent to all persons entitled to receive notice of general meetings of the Company not less than seven days before the meeting at which they are to be considered.

## AUDIT

### 77. Appointment

77.1 A properly qualified auditor or auditors shall be appointed and his, or her or their remuneration shall be fixed and duties regulated in accordance with the Act or other legislation.

77.2 Subject to the Act, the Auditor may be:

- a) an individual;
- b) a firm; or
- c) a company.

77.3 A person shall not be appointed or act as the Auditor if the person is:

- a) an Officer of the Company;
- b) a partner, an employer or employee of an Officer of the Company; or
- c) a partner or employee of an employee of an Officer of the Company.

77.4 The Company may have more than one Auditor.

77.5 The Company must appoint an Auditor at an annual general meeting and appoint an Auditor to fill any vacancy in the office of auditor at each subsequent annual general meeting.

77.6 Except where the Auditor is removed from office at the annual general meeting, the Company may appoint an Auditor at an annual general meeting only if a Member gives the Company written notice of the nomination of the individual, firm or company for appointment as the Auditor:

- a) before the meeting was convened; or
- b) not less than 21 days before the meeting.

### 78. Term of appointment

78.1 An Auditor holds office until the Auditor dies, is removed or resigns from office or ceases to be capable of acting as Auditor in accordance with the Act.

78.2 The Company may resolve in general meeting to remove the Auditor in accordance with the Act.

78.2 Except where a vacancy has been caused by the removal of the Auditor from office by the Company, the Board must appoint an Auditor to fill a vacancy in the office of Auditor within one (1) Month after the vacancy occurs if:

- a) there is no surviving or continuing Auditor (where the Auditor is a company); and
- b) the Company has not appointed an Auditor to fill the vacancy at a general meeting.

### 79. Auditor's report

At least once each year, the Auditor shall provide its report to the Company.

## LOGO AND MARKS

### 80. Logo & Marks of Company

The Board may permit or restrict the use of the Company's trade marks, devices, official logo and other intellectual property in such manner as prescribed by it from time to time.

## WINDING UP

### 81. Dissolution

81.1 The Company shall be dissolved in the event of membership less than 5 shareholders or upon the vote of more than three-fourths majority of members present at a Special General Meeting convened to consider such question.

81.2 The Company shall be dissolved in the event of insolvency.

### 82. Distribution of Property

82.1 If upon the winding up or dissolution of the Company there remains after the satisfaction of all its debts and the liabilities any property whatsoever the same shall be given or transferred to some other institution or institutions in Australia:

- a) having a purpose similar to the objects of the Company as set out in clause 14;
- b) which prohibits the distribution of its or their income and property amongst it or their Members to an extent at least as great as is imposed on the Company under or by virtue of clause 9; and
- c) In the event that the Company is wound up or its endorsement as a deductible gift recipient is revoked (whichever occurs first), any surplus of assets shall be transferred to another organisation to which income tax deductible gifts can be made:
  - gifts of money or property for the principal purpose of the organisation
  - contributions made in relation to an eligible fundraising event held for the principal purpose of the organisation
  - money received by the organisation because of such gifts and contributions.

### 83. Prohibition

The Members have no right to participate in any distribution or payment of the assets or property of the Company in the event of the winding up or dissolution of the Company.

## INDEMNITY & INSURANCE

### 84. Insurance

The Company may effect and maintain insurance.



## 85. Indemnity of Directors

85.1 Every Director shall be indemnified by the Company against a liability incurred as a Director other than:

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

## 86. Indemnity of Officers

86.1 Every Officer of the Company including the Secretary may by resolution of the Board be indemnified by the Company against a liability incurred as an Officer of the Company other than:

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

## 87. Indemnity for legal costs

87.1 Every Director and other Officer of the Company including the Secretary may by resolution of the Board be indemnified out of the assets of the Company against a liability for legal costs incurred by that person as a Director, Auditor or other Officer of the Company in defending an action for liability incurred in that capacity unless the costs arise:

- a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clauses 77 or 78;
- b) in defending or resisting criminal proceedings in which the person is found guilty;
- c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (other than costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- d) in connection with proceedings for relief to the person under the Act in which the court denies the relief.

87.2 For the purposes of this clause 79, "proceedings" includes the outcome of the proceedings and any appeal in relation to the proceedings.

## 88. Limit of indemnity

88.1 Subject to the provisions of the Act, a Director, Auditor and other Officer of the Company including the Secretary shall not be liable for:

- a) the acts, receipts, neglect or defaults of any other Director, Auditor and other Officer of the Company;
- b) joining in any receipt or other act of conformity or for any loss happening to the Company through:
  - (i) an insufficiency or deficiency of title to any property acquired by order of the Directors, Auditor or other Officer of the Company for or on behalf of the Company; or
  - (ii) an insufficiency or deficiency of any security in or upon which any of the monies of the Company shall be invested;
- c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited;
- d) any loss occasioned by any error of judgment or oversight on the part of a Director, Auditor and other Officer or employee of the Company; or

- e) any other loss, damage or misfortune which occurs in the execution of the duties of the office of Director, Auditor or other Officer of the Company, unless the liability was incurred against the Company or through the dishonesty of the Director, Auditor or other Officer of the Company.

## 89. Payment of insurance premiums

89.1 The Company may by resolution of the Board pay, or agree to pay, either directly or indirectly through one or more interposed entities, a premium in respect of a contract insuring a person who is or has been a Director, Auditor or other Officer of the Company including the Secretary against:

- a) a liability for legal costs; and
- b) any other liability except a liability incurred by the person as such a Director, Auditor or other Officer and arising out of conduct involving:
  - (i) conduct involving a wilful breach of duty in relation to the Company; or
  - (ii) a contravention of the Act.

# ADMINISTRATION

## 90. Amendment of Rules

90.1 These rules may be amended by

- a) a resolution passed by a two-thirds majority of shareholders present at any Annual General Meeting at which notice of the proposed amendment shall have been given or
- b) at a Special General Meeting convened for such purpose.

## 91. Change of name, objects and constitution

An application to the Director-General for registration of a change in the Company's name, objects or constitution in accordance with section 10 of the Act is to be made by the public officer or a committee member.

## 92. Notices

92.1 Any notice required to be given under this Constitution or any rule or regulation of the Company must be:

- a) in writing; and
- b) given to the recipient:
  - (i) personally;
  - (ii) (if a Member) by sending it by post to the address for the Member in the Register of Members or the alternative address (if any) nominated by the Member, and otherwise to the recipient's last known place of residence or business; or
  - (iii) by sending it or notification of its availability to the fax number or electronic address (if any) nominated by the recipient.

92.2 The non-receipt of a notice of meeting of Members shall not invalidate any meeting of Members held pursuant to such notice.

92.3 Members who have no place of address in Australia registered with the Company shall notify the Company of an alternative address in Australia for the purposes of this clause.

92.4 Any notice sent by:

- a) post is taken to be given on the next business day after it is posted (if to an address within Australia) or seven business days after it is posted (if to an address outside Australia); and
- b) fax or electronic message is taken to be given on the same day if it is transmitted on a business day by 5:00pm AEST and otherwise on the next business day.

92.5 Unless it is otherwise provided, a given number of days' notice or notice extending over any period includes the day of service but does not include the day on which such notice is to expire. Where at least (or not less than) a given period is prescribed, then both the day of service and the day on which the period expires are excluded.

92.6 Subject to the Act, the signature to any notice given by the Company may be written, printed or typed.

### 93. Internal Disputes

93.1 The Board shall ensure that a mechanism is established for resolving internal disputes within its membership, This should logically include:

- i. a process to bring the parties together to resolve the dispute at an early stage;
- ii. the appointment of an independent person to negotiate in the dispute;
- iii. a process to ensure that all parties receive a full and fair opportunity of presenting their case;
- iv. where the dispute cannot be resolved internally, to refer the matter to a mediator either through a Community Justice Centre which functions as "a centre for dispute settlement" for mediation under the Community Justice Centres Act 1983 or by an independent accredited mediator.
- v. If a dispute is not resolved by mediation within 3 months of the referral to a Mediation, the dispute is to be referred to arbitration. The *Commercial Arbitration Act 1984* applies to any such dispute referred to arbitration.

### 94. Complaints

94.1 The Board shall ensure that a mechanism is established that will properly and effectively deal with complaints made by members of the public and grievances from employees, that any member:

- a) has refused or neglected to comply with a provision(s) of this constitution, or
- b) has willfully acted in a manner prejudicial to the interests of The Company.

94.2 The Board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.

94.3 If the Board decides to deal with the complaint, the Board:

- a) must cause notice of the complaint to be served on the member concerned, and
- b) must give the member at least 14 days from the time the notice is served within which to make submissions to the Board in connection with the complaint, and
- c) must take into consideration any submissions made by the member in connection with the complaint.

### 95. Disciplining of members

95.1 The Board may, by resolution, expel the member from the Company or suspend the member from membership and shareholder of the Company if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the expulsion or suspension is warranted in the circumstances.

95.2 If the Board expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the Board for having taken that action and of the member's right of appeal under clause 11.

95.3 The expulsion or suspension does not take effect:

- a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
- b) if within that period the member exercises the right of appeal, unless and until The Company confirms the resolution under clause 12, whichever is the later.

## 96. Right of appeal of disciplined member

96.1 A member may appeal to the Company in a general meeting against a resolution of the Board under clause 11, within seven (7) days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.

96.2 The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.

96.3 On receipt of a notice from a member under clause 29 the secretary must notify the Board which is to convene a general meeting of The Company to be held within 28 days after the date on which the secretary received the notice.

96.4 At a general meeting of The Company convened under clause 27:

- a) no business other than the question of the appeal is to be transacted, and
- b) the committee and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
- c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.

96.5 The appeal is to be determined by a simple majority of votes cast by shareholders of

# DEFINITIONS & INTERPRETATION

## 97. Definitions

96.1 In this Constitution, unless the context otherwise requires:

<b>The Company</b>	Indian (Sub-Cont) Crisis & Support Company.
<b>[Indian] Sub-Cont</b>	The Indian Sub-Continent includes India, Pakistan, Sri Lanka, Bangladesh, Nepal and Bhutan and any adjoining country which may be included in the definition of Indian Sub-Continent.
<b>Target Community</b>	The people from or with heritage from any of the Indian Sub-Continent countries irrespective of their country of birth.
<b>Board</b>	Board of Directors
<b>AGM</b>	Annual General Meeting
<b>Accounting Standards</b>	has the meaning ascribed to it in the Act
<b>Act</b>	means the Corporations Act 2001 and where any provision of the Act is referred to the reference is to such provision as amended, modified or re-enacted from time to time
<b>AEST</b>	means Australian Eastern Standard Time;
<b>Alternate Director</b>	means a person appointed to this position pursuant to clause 43;
<b>ASIC</b>	means the Australian Securities and Investments Commission;
<b>Auditor</b>	means the Auditor for the time being of the Company;
<b>Board</b>	means the Board of Directors of the Company;
<b>By-Law</b>	means any By-Law determined by the Board from time to time;
<b>Chair</b>	means the chairwoman or chairman of the Board elected in accordance with clause 50.1(a);
<b>Chief Executive Officer</b>	means the person (not being a Director) who is appointed by the Board as the chief executive officer of the Company from time to time;
<b>Committee</b>	means the committees described in clause 55 and such other committees established by the Board from time to time;
<b>Company</b>	means the company named in clause 1;
<b>Constitution</b>	means this Constitution as amended from time to time;
<b>Deputy Chair</b>	means the Director elected in accordance with clause 50.1(b);
<b>Director</b>	means a member of the Board;
<b>Financial Year</b>	means the period of twelve Months commencing from 1 July and ending on 30 June of that year;
<b>Guarantee</b>	means the maximum amount each Member agrees to pay to the Company in accordance with clause 7;
<b>Industry</b>	means the liquor industry in Australia;

<b>Initial Directors</b>	means a Director as defined in clause 38.2;
<b>Initial Member(s)</b>	means a Member as defined in clause 14.4;
<b>Insolvency Event</b>	means: (a) a Member is or becomes: (i) an externally-administered body corporate; (ii) subject to control by a Controller; or (iii) an insolvent company under administration, as those terms are defined in the Act; (b) a resolution is passed or a court order made or analogous proceedings are taken for the winding up of the Member other than for the purposes of solvent amalgamation or reconstruction; (c) the Member, being a natural person, dies, commits an act of bankruptcy or is declared bankrupt or insolvent or the Member's estate otherwise becomes liable to be dealt with under any law relating to bankruptcy or insolvency or becomes incapable of managing the Member's own affairs by reason of any medical or mental condition; (d) the Member, being a partnership, is dissolved or threatens or resolves or is in jeopardy of dissolving; (e) the Member ceases or threatens to cease conducting business in the normal manner; (f) the Member has received a deregistration notice or applied for deregistration; (g) the Member has been issued with a writ of execution; or (h) the Member files a voluntary petition in bankruptcy, a petition seeking any re-organisation, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors or makes an assignment for the benefit of the Member's creditors;
<b>ICSA Code of Ethics</b>	means the Code of Ethics as determined by the Board from time to time;
<b>Member</b>	means a person admitted as a member of the Company in accordance with this Constitution;
<b>Month</b>	means calendar month;
<b>Officer</b>	means an Officer of the Company as defined in the Act;
<b>Ordinary Resolution</b>	means any resolution passed by a simple majority of persons entitled to vote;
<b>Outstanding Monies</b>	means any monies owing to the Company for a sum in excess of one thousand dollars (\$1,000) and for a period of more than ninety (90) days;
<b>Register of Members</b>	means the Register of Members to be kept as required under the Act;
<b>Registered Office</b>	means the registered office for the time being of the Company;
<b>Replaceable Rules</b>	means the Replaceable Rules contained in the Act;
<b>Schedule</b>	means a schedule to this Constitution;
<b>Secretary</b>	means any person appointed in accordance with this Constitution and the Act as a Secretary of the Company and includes an Honorary, assistant or acting Secretary or any substitute for the time being for the Secretary;
<b>Special Resolution</b>	means a resolution of which notice as set out in the Act has been given and has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution;
<b>Subscription</b>	means the membership application fees, annual subscriptions and other membership levies payable by a Member, a class of Members or

	the Members as a whole as determined by the Board from time to time pursuant to clause 16;
<b>Tax Act</b>	means the Income Tax Assessment Act 1997 (Cth); and
<b>Voting Member</b>	means a shareholding Member with a fully paid up guarantee having voting rights.
<b>Voting Committee Member</b>	means a Member of a class prescribed by the Board from time to time as having voting rights.

## 98. Interpretation

- (a) Reference to “Constitution” includes its Schedule.
- (b) Words and phrases which are given a special meaning by the Act have the same meaning in this Constitution, unless the contrary intention appears.
- (c) Words in the singular include the plural and vice versa and words importing a gender include all other genders.
- (d) Persons include companies and corporations and vice versa.
- (e) A reference to the Act or any other statute or regulation is to be read as though the words “as modified or substituted or re-enacted from time to time” were added to the reference.
- (f) Headings are inserted for convenience and do not affect the interpretation of this Constitution.
- (g) “Including” and other similar words are not words of limitation.
- (h) General words following words describing a particular class or category are not restricted to that class or category.
- (i) A duty, obligation, covenant or agreement on the part of two or more persons benefits and binds them jointly and severally.
- (j) If there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of such inconsistency.
- (k) A reference to a corporation is a reference to a body corporate however constituted, and includes an incorporated association.
- (l) A reference to notification in writing includes a reference to notification using any electronic means permitted by the Act.