

Constitution
of
Gilchrist Foundation CT Ltd

A public company limited by guarantee

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Purpose and powers

1. Purpose

1.1 The company's purpose is to act as a corporate trustee for a public ancillary fund.

1.2 To achieve its purpose, the company may, without limitation do all other things incidental or conducive to the attainment of its purpose.

2. Powers

The company has all of the powers of:

- a. an individual; and
- b. a public company limited by guarantee under the Corporations Act.

Not-for-profit

3. No distribution of income or property

3.1 The income and property of the company must only be applied towards promoting the company's purpose set out in this constitution.

3.2 The company must not distribute any of its income or property directly or indirectly to a member, except that the company may pay a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company.

4. Limited liability of members

4.1 The liability of members is limited to the amount of the guarantee in rule 4.2.

4.2 A member must contribute an amount not more than \$10 (the guarantee amount) to the property of the company if the company is wound up whilst they are a member, or within 12 months after they stop being a member, towards the:

- a. debts and liabilities of the company incurred before the member stopped being a member; or
- b. costs of winding up.

Membership

5. Membership

5.1 The members of the company are:

- a. the initial members; and
- b. any other member admitted to membership in accordance with this constitution.

5.2 The only class of membership is ordinary membership.

5.3 Membership is personal to the member and is not transferable.

5.4 An individual who has the nomination of another member and who agrees to:

- a. support the purpose of the company; and
- b. comply with the company's constitution, including paying the guarantee amount, may apply for membership in the form approved by the board.

5.5 The members may accept or reject an application for membership at their absolute discretion and do not need to give a reason for their decision.

5.6 A person immediately stops being a member if they:

- 5.6.1 die
- 5.6.2 resign, by writing to the secretary
- 5.6.3 are expelled by special resolution of the members at a members meeting.

Member's meetings

6. Annual General Meeting

6.1 A general meeting, called the annual general meeting, must be held:

- 6.1.1 within 18 months after registration of the company, and
- 6.1.2 after the first annual general meeting, at least once in every calendar year.

6.2 Even if these items are not set out in the notice of meeting, the business of an annual **general meeting** may include:

- 6.2.1 a review of the company's activities
- 6.2.2 a review of the company's finances
- 6.2.3 any auditor's report
- 6.2.4 the election of directors, and
- 6.2.5 the appointment and payment of auditors, if any.

6.3 Before or at the annual general meeting, the directors must give information to the members on the company's activities and finances during the period since the last annual general meeting.

6.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the company.

7. General Meetings calling holding and notices

7.1 The directors may call a general meeting of the members.

7.2 A member may make a written request to the company for a general meeting to be held. If the directors do not call the meeting within 21 days of being requested under this rule, the member who made the request may call and arrange to hold a general meeting.

7.3 Notice of a general meeting must be given to:

- 7.3.1 each member entitled to vote at the meeting
- 7.3.2 each director, and
- 7.3.3 the auditor (if any).

7.4 Notice of a general meeting must be provided in writing at least 21 days before the meeting.

7.5 Shorter notice than 21 days may be given if all the members entitled to attend and vote at the annual general meeting agree, unless the meeting is to

- 7.5.1 remove a member
- 7.5.2 remove a director
- 7.5.3 appoint a director in order to replace a director who was removed, or
- 7.5.4 remove an auditor.

7.6 Notice of a general meeting must include:

- 7.6.1 the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
- 7.6.2 the general nature of the meeting's business
- 7.6.3 if applicable, that a special resolution is to be proposed and the words of the proposed resolution

7.7 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

7.8 For a general meeting to be held, at least 2 members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

7.9 No business may be conducted at a **general meeting** if a quorum is not present.

7.10 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:

- 7.10.1 if the date is not specified – the same day in the next week
- 7.10.2 if the time is not specified – the same time, and
- 7.10.3 if the place is not specified – the same place.

7.11 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

7.12 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

7.13 The company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard. Anyone using this technology is taken to be present in person at the meeting.

- 7.14 The chairperson is responsible for the conduct of the **general meeting**, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 7.15 The directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution). A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution. The company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.
- 7.16 Each member has one vote at a members meeting.
- 7.17 Voting must be conducted and decided by:
- 7.17.1 a show of hands
 - 7.17.2 a vote in writing (secret ballot), or
 - 7.17.3 another method chosen by the chairperson that is fair and reasonable in the circumstances.

Directors

8. Number of directors

The company must have at least three and not more than seven directors, consisting of:

- a. up to 4 persons appointed by the member using such process as the members determines; and
- b. up to 3 persons appointed by the board using such process as the board determines.

9. Eligibility to be a director

- 9.1 A majority of the directors must fall within the definition of an ITAA Community Responsible Person.
- 9.2 The board must have a policy which sets out the necessary skills, experience knowledge and capacity required by a director of the company, to guide the member and the board in appointments to the board.

9.3 If the number of directors is reduced to less than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three or to facilitate the appointment of directors by the member but for no other purpose.

10. Election of chairperson

The board must appoint a director as the chairperson.

11. Term of office

11.1 A director's term of office is for a period of three years.

11.2 An eligible person may be re-elected or re-appointed as a director except that a person who has held office for a continuous period of nine years must stand down for at least 2 years before being eligible for election or appointment as a director.

12. When a director stops being a director

A director ceases to be a director if they:

- a. give written notice of resignation as a director to the company;
- b. die;
- c. are removed from office by the member;
- d. are absent for three consecutive directors' meetings without approval from the directors;
- e. become ineligible to be a director of the company under the Corporations Act or this constitution; or
- f. were appointed by the board and the board determines to remove them as a director;
- g. were a director by virtue of their employment by the company and they cease to be employed by the company.

Powers of directors

13. Powers of directors

13.1 The directors are responsible for managing and directing the activities of the company to achieve the purpose.

13.2 The directors may exercise all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be exercised by members.

13.3 The directors must oversight the responsible financial management of the company and any trust of which the company is trustee.

13.4 The directors may make regulations and policies consistent with this constitution for the proper control, management and administration of the company and amend or rescind those documents.

14. Delegation of directors' powers

14.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.

14.2 A person must exercise any delegated powers in accordance with any instructions or directions from the board.

15. Payments to directors

15.1 The company must not remunerate a director for their performance of the role of director.

15.2 The company may:

- a. pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
- b. reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.

15.3 Any payment made under rule 15.2 must be approved by the board.

15.4 The company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

16. Validity of acts

16.1 All acts done at any meeting of the directors or by a committee or by any person acting as a director are, notwithstanding that it is afterwards discovered:

- a. that there was some defect in the appointment of any of the directors;
or
 - b. the committee or the person acting as a director or that any of them
were disqualified,
- valid as if every person had been duly appointed and was qualified and continued to be a director or a member of the committee (as the case may be).

Duties of directors

17. Duties of directors

- 17.1 The directors must comply with their duties as directors under legislation and common law (judge-made law).

18. Conflicts of interest

- 18.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- a. to the other directors; or
 - b. if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- 18.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 18.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under rule 18.4:
- a. be present at the meeting while the matter is being discussed; or
 - b. vote on the matter.
- 18.4 A director may still be present and vote if:
- a. their interest arises because they are a member of the company, and the other members have the same interest;

- b. their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see rule 30);
- c. their interest relates to a payment by the company under rule 29 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
- d. the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- e. the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company; and
 - (ii) provides that those directors are satisfied that the interest should not stop the director from voting or being present.

18.5 A contract or arrangement made between the company and a director is not invalid or voidable merely because the director has an interest in that contract or arrangement.

Directors' meetings

19. When the directors meet

The directors may decide how often, where and when they meet.

20. Calling directors' meetings

20.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

20.2 A director may be given notice of a meeting in writing or by any other means of communication that has previously been agreed to by all of the directors.

20.3 A notice of a directors meeting:

- a. must specify the time and place of the meeting;

- b. need not state the nature of the business to be transacted at the meeting;
- c. may be given immediately before the meeting.

21. Chairperson for directors' meetings

- 21.1 The chairperson is entitled to chair directors' meetings.
- 21.2 The chairperson does not have a casting vote.
- 21.3 The directors at a board meeting may choose a director to be the chairperson for that meeting if the chairperson is:
 - a. not present within 30 minutes after the starting time set for the meeting;
or
 - b. present but does not want to act as chairperson of the meeting.

22. Quorum at directors' meetings

- 22.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors.
- 22.2 A quorum must be present for the whole directors' meeting.

23. Using technology to hold directors' meetings

- 23.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 23.2 The directors' agreement may be a standing (ongoing) one.
- 23.3 A director may only withdraw their consent within a reasonable period before the meeting.

24. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

25. Circular resolutions of directors

A resolution in writing of which notice has been given to all directors and which is signed or consented to by all of the directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the directors duly

called and constituted and may consist of several documents in the same form, each signed or consented to by one or more of the directors.

Secretary

26. Appointment and role of company secretary

- 26.1 The company must have at least one company secretary, who may also be a director.
- 26.2 A company secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.
- 26.3 The directors must decide the terms and conditions under which the company secretary is appointed, including any remuneration.
- 26.4 The role of the company secretary includes:
- a. maintaining a register of the company's members; and
 - b. maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

Financial year and financial records

27. Company's financial year

The company's financial year is from **1 July** in one year to **30 June** in the following year, unless the directors pass a resolution to change the financial year.

28. Financial and related records

- 28.1 The company must make and keep written financial records that:
- a. correctly record and explain its transactions and financial position and performance; and
 - b. enable true and fair financial statements to be prepared and to be audited.

28.2 The company must also keep written records that correctly record its operations.

28.3 The company must retain its records for at least 7 years.

28.4 The directors must take reasonable steps to ensure that the company's records are kept safe.

Indemnity, insurance and access

29. Indemnity

29.1 The company indemnifies each officer of the company out of the property of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.

29.2 In this rule, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

29.3 In this rule, 'to the relevant extent' means:

- a. to the extent that the company is not precluded by law (including the Corporations Act) from doing so; and
- b. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

29.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

30. Insurance

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

31. Directors' access to documents

31.1 A director has a right of access to the financial records of the company at all reasonable times.

- 31.2 If the directors agree, the company must give a director or former director access to:
- a. certain documents, including documents provided for or available to the directors; and
 - b. any other documents referred to in those documents.

Winding up

32. Surplus property not to be distributed to members

If the company is wound up, any surplus property must not be distributed to a member or a former member of the company.

33. Distribution of surplus property

- 33.1 Any surplus property that remains after the company is wound up must be distributed to a not-for-profit entity which prohibits the distribution of any surplus property to its members to at least the same extent as the company.
- 33.2 The decision as to the entity to be given the surplus property is to be made by a special resolution of the members at or before the time of winding up.

Definitions and interpretation

34. Definitions

In this constitution:

<i>company</i>	means Gilchrist Foundation CT Ltd
<i>Corporations Act</i>	means the <i>Corporations Act 2001</i> (Cth)
<i>initial member</i>	means a person who is named in the application for registration of the company, with their consent, as a proposed member of the company
<i>ITTA Community</i>	1 an individual who:
<i>Responsible Person</i>	2 performs a significant public function;
	3 is a member of a professional body having a code of ethics or rules of conduct;

- 4 is officially charged with spiritual functions by a religious institution;
- 5 is a director of a company whose shares are listed on the Australian Securities Exchange;
- 6 has received formal recognition from government for services to the community;
- 7 is an individual before whom a statutory declaration may be made; or
- 8 is approved as a Responsible Person by the Commissioner.

surplus property means any property of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up.

A word or expression that is defined in the Corporations Act or used in that Act and covering the same subject, has the same meaning as in this constitution.

35. Reading this constitution with the Corporations Act

35.1 The replaceable rules set out in the Corporations Act do not apply to the company.

36. Interpretation

In this constitution:

- a. the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
- b. reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations);
- c. a reference to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position;
- d. unless the contrary intention appears:
 - i) reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;

- ii) a reference to a person includes that person's successors, legal personal representatives, permitted substitutes and permitted assigns;
- iii) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- iv) a reference to a rule is a reference to a rule of this constitution.