

## EXPLANATORY NOTES TO CONSTITUTION

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### 1. Introduction

- 1.1 The company's operations, as a registered club, are governed by:
- 1.1.1 the Corporations Act 2001 (Cth) (*'Corporations Act'*);
  - 1.1.2 the Registered Clubs Act 1976 (NSW) (*'Registered Clubs Act'*);
  - 1.1.3 the Liquor Act 2008 (NSW) (*'Liquor Act'*); and
  - 1.1.4 its Articles of Association and Memorandum of Association.
- 1.2 There has not been a major amendment to the company's articles of association and memorandum of association since 1997. Since that time, the main piece of legislation regulation companies in Australia, the *Corporations Act* has been enacted and the *Registered Clubs Act* has been amended.
- 1.3 The board of directors have determined it appropriate to replace the articles of association and memorandum of association with a new constitution so that the board may readily ascertain the regulatory framework applying to the company's operations without having to review the legislation in significant detail.

### 2. Form of constitution

- 2.1 The proposed constitution is expansive and incorporates the existing rules of the company with the legislative requirements of the *Corporations Act* and the *Registered Clubs Act*.
- 2.2 The advantage of the proposed constitution is that it merges the two previous documents into one document, providing a single point of reference for determining the regulatory framework for the company, without having to frequently consult the legislative requirements in addition to the rules of the company.
- 2.3 The proposed constitution also includes commentary on the legislative requirements. If the legislative requirements change, the commentary can be updated without requiring a special resolution to be passed in a general meeting of the members.
- 2.4 The disadvantage of the proposed constitution is that it is lengthy and prescriptive in nature. If there are changes to the legislative requirements which reduce or remove obligations of the company, the obligations contained in the proposed constitution will still apply, unless the constitution is amended by special resolution.
- 2.5 The alternative is to implement a minimalist constitution, which will have the advantage of being shorter in length. However, the

legislative requirements will additionally need to be consulted when interpreting the constitution.

**3. Major changes**

3.1 There have been changes to the format and readability of the document through setting out the legislative requirements in the constitution. The legislative requirements apply whether or not they are set out in the constitution, however now they are easily apparent to the reader of the proposed constitution.

**4. Directors**

4.1 To ensure compliance with the *Registered Clubs Act* and to reflect current practice:

4.1.1 the number of directors has been amended to 9; and

4.1.2 the roles of secretary, assistant secretary and assistant treasurer have also been removed from the board, to ensure the constitution reflects current practise.

4.2 The *Corporations Act* requires that there be a company secretary, so that there is still provision for appointment of them, they will just not necessarily be a director.

**Liquor and gaming**

4.3 A more thorough section on liquor and gaming is included, to reflect the current requirements under legislation including the *Registered Clubs Act* and the *Gaming Machine Act 2001 (NSW)*.

**Membership**

4.4 Clearer layout of rights and requirements of each type of membership.

**Disciplinary proceedings**

4.5 More detailed provision, to give greater powers to directors and staff.

**Removal of persons from the premises of the club**

4.6 Increased powers, to reflect the powers given to directors and employees under the *Liquor Act*.

4.7 Also makes it clearer that any person may be removed from the premises, whether a member or a guest.

**Procedure for election of the board**

4.8 This section reflects the mandatory rules imposed by the *Registered Clubs Act*.

### **Committees**

- 4.9 The specific existence of the Executive has been removed. This clause permits the board to establish an Executive (or any other committee to delegate its powers to).

### **Winding up**

- 4.10 A more detailed process of what is to occur upon the dissolution of the Club has been drafted.
- 4.11 There will be 2 votes – both a vote of the ordinary and life members, as well as the general membership.
- 4.12 The type of organisations who may receive the surplus upon winding up has been widened from only charities (which would prevent transfer to other registered clubs).

### **Board meetings – written resolutions of the Board**

- 4.13 Gives the Board the power to pass resolutions by signing a written resolution, which allows them greater flexibility in the operation of their power.

### **Interests of directors, and contracts with directors and secretary**

- 4.14 Increased details about directors' interests and the disclosure requirements, and the ability of the Club to make commercial arrangements with directors, to reflect current legislation.

### **Members' resolutions**

- 4.15 Provides for members to submit items of business for Annual General Meetings, and details the requirements around these.

### **Auditor**

- 4.16 Notes that auditor is required to be given notice of the meeting, per current legislation

### **Accounts**

- 4.17 Details that the club must comply with the reporting requirements under the *Registered Clubs Act*, which involves each member being sent a copy of the reports.

### **By-laws**

- 4.18 Consolidates references to by-laws and their binding nature into one section.

## **A G A Club Germania Limited**

### **Notice**

4.19 Increased detail as to how notice is given, in line with legislation.

### **Objects**

4.20 The objects remain the same, except regarding out of date legislative reforms.

4.21 The only substantive change is that Subsection 'Y' has been deleted, at the request of the Board.

[May need further change, depending on other proposed changes]

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