Replaceable Rules

(As per section 141 of the Corporations Act 2001, and as per the cross-referenced sections therein.)

The Replaceable Rules automatically apply to all newly formed Australian companies which have not specifically adopted a constitution (except companies with the same person as their sole director and sole shareholder, in which case sections 198E and 201F of the Corporations Act 2001 automatically apply) – see sections 135(1) and 135(2) of the Corporations Act 2001.

Incorporator.com.au considers that this version of the Replaceable Rules is current as at 1 August 2016 . You may check to see whether Incorporator.com.au considers that there have been any subsequent changes to this version of the Replaceable Rules by visiting the Incorporator website (www.incorporator.com.au) anytime, and by going to the 'Resources' tab, and by clicking on 'Replaceable Rules – Full Version'. If you are particularly concerned, or ought to be particularly concerned, to ascertain the precise content of the Replaceable Rules at any particular time, you should not rely on this version but should instead seek legal advice.

References in these Replaceable Rules to a 'section' or 'sections' or 'subsections' are references to sections or subsections of the Corporations Act 2001. Likewise, references to 'this Act' are references to the Corporations Act 2001. You may view the provisions of the Corporations Act 2001 by visiting the AUSTLII website (www.austlii.edu.au, more specifically, http://www.austlii.edu.au/au/legis/cth/consol_act/ca2001172) or by visiting the ComLaw website (www.comlaw.gov.au).

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Officers and employees

1 Voting and completion of transactions - directors of proprietary companies (per section 194)

If a director of a proprietary company has a material personal interest in a matter that relates to the affairs of the company and:

(a) under section 191 the director discloses the nature and extent of the interest and its relation to the affairs of the company at a meeting of the directors; or
(b) the interest is one that does not need to be disclosed under section 191;

then:

(c) the director may vote on matters that relate to the interest; and
(d) any transactions that relate to the interest may proceed; and
(e) the director may retain benefits under the transaction even though the director has the interest; and
(f) the company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under section 191, paragraphs (e) and (f) apply only if the disclosure is made before the transaction is entered into.

> Note: A director may need to give notice to the other directors if the director has a material personal interest in a matter relating to the affairs of the company (see section 191).

2 Powers of directors (per section 198A)

(1) The business of a company is to be managed by or under the direction of the directors.

> Note: See section 198E for special rules about the powers of directors who are the single director/shareholder of proprietary companies.

(2) The directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting.

> Note: For example, the directors may issue shares, borrow money and issue debentures.

3 Negotiable instruments (per section 198B)

(1) Any 2 directors of a company that has 2 or more directors, or the director of a proprietary company that has only 1 director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

(2) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

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4 Managing director (per section 198C)

(1) The directors of a company may confer on a managing director any of the powers that the directors can exercise.

(2) The directors may revoke or vary a conferral of powers on the managing director.

5 Company may appoint a director (per section 201G)

A company may appoint a person as a director by resolution passed in general meeting.

6 Directors may appoint other directors (per section 201H)

Appointment by other directors

(1) The directors of a company may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum.

Proprietary company—confirmation by meeting within 2 months

(2) If a person is appointed under this section as a director of a proprietary company, the company must confirm the appointment by resolution within 2 months after the appointment is made. If the appointment is not confirmed, the person ceases to be a director of the company at the end of those 2 months.

Public company—confirmation by next AGM

(3) If a person is appointed by the other directors as a director of a public company, the company must confirm the appointment by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a director of the company at the end of the AGM.

7 Appointment of managing directors (per section 201J)

The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.

8 Alternate directors (per section 201K)

(1) With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.

(2) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.

(3) When an alternate exercises the director's powers, the exercise of the powers is just as effective as if the powers were exercised by the director.

(4) The appointing director may terminate the alternate's appointment at any time.

(5) An appointment or its termination must be in writing. A copy must be given to the company.

Note: ASIC must be given notice of the appointment and termination of appointment of an alternate (see subsections 205B(2) and (5)).

9 Remuneration of directors (per section 202A)

(1) The directors of a company are to be paid the remuneration that the company determines by resolution.

Note: Chapter 2E makes special provision for the payment of remuneration to the directors of public companies.

(2) The company may also pay the directors' travelling and other expenses that they properly incur:

(a) in attending directors' meetings or any meetings of committees of directors; and
(b) in attending any general meetings of the company; and
(c) in connection with the company's business.

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10 Director may resign by giving written notice to company (per section 203A)

A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office.

11 Removal by members - proprietary company (per section 203C)

A proprietary company:

(a) may by resolution remove a director from office; and
(b) may by resolution appoint another person as a director instead.

12 Termination of appointment of managing director (per section 203F)

(1) A person ceases to be managing director if they cease to be a director.

(2) The directors may revoke or vary an appointment of a managing director.

13 Terms and conditions of office for secretaries (per section 204F)

A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

Inspection of books

14 Company or directors may allow member to inspect books (per section 247D)

The directors of a company, or the company by a resolution passed at a general meeting, may authorise a member to inspect books of the company.

Directors' meetings

15 Circulating resolutions of companies with more than 1 director (per section 248A)

Resolutions

(1) The directors of a company may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

Copies

(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.

When the resolution is passed

(3) The resolution is passed when the last director signs.

Note: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

16 Calling directors' meetings (per section 248C)

A directors' meeting may be called by a director giving reasonable notice individually to every other director.

Note: A director who has appointed an alternate director may ask for the notice to be sent to the alternate director (see subsection 201K (2)).

17 Chairing directors' meetings (per section 248E)

(1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.

(2) The directors must elect a director present to chair a meeting, or part of it, if:

(a) a director has not already been elected to chair the meeting; or
(b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

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18 Quorum at directors' meetings (per section 248F)

Unless the directors determine otherwise, the quorum for a directors' meeting is 2 directors and the quorum must be present at all times during the meeting.

Note 1: For special quorum rules for public companies, see section 195.

Note 2: For resolutions of 1 director proprietary companies without meetings, see section 248B.

19 Passing of directors' resolutions (per section 248G)

(1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

(2) The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

Note: The chair may be precluded from voting, for example, by a conflict of interest.

Meetings of members

20 Calling of meetings of members by a director (per section 249C)

A director may call a meeting of the company's members.

21 Notice to joint members (per section 249J(2))

Notice to joint members must be given to the joint member named first in the register of members.

22 When notice by post or fax is given (per section 249J(4))

A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

22A When notice under paragraph 3(cb) is given (per section 249J(5))

A notice of meeting given to a member under paragraph (3)(cb) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

23 Notice of adjourned meetings (per section 249M)

When a meeting is adourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

24 Quorum (per section 249T)

(1) The quorum for a meeting of a company's members is 2 members and the quorum must be present at all times during the meeting.

Note: For single member companies, see section 249B.

(2) In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than 1 proxy or representative, count only 1 of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

Note 1: For rights to appoint proxies, see section 249X.

Note 2: For body corporate representatives, see section 250D.

(3) A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:

(a) if the date is not specified—the same day in the next week; and
(b) if the time is not specified—the same time; and
(c) if the place is not specified—the same place.

(4) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

25 Chairing meetings of members (per section 249U)

(1) The directors may elect an individual to chair meetings of the company's members.

(2) The directors at a meeting of the company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).

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(3) The members at a meeting of the company's members must elect a member present to chair the meeting (or part of it) if:

(a) a chair has not previously been elected by the directors to chair the meeting; or
(b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

(4) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

26 Business at adjourned meetings (per section 249W(2))

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

27 Who can appoint a proxy [replaceable rule for proprietary companies and mandatory rule for public companies] (per section 249X)

(1) A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.

(1A) The person appointed as the member's proxy may be an individual or a body corporate.

Note: A body corporate may appoint a representative to exercise the powers that the body corporate may exercise as the member's proxy, see section 250D

(2) The appointment may specify the proportion or number of votes that the proxy may exercise.

(3) Each member may appoint a proxy. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.

(4) Disregard any fractions of votes resulting from the application of subsection (2) or (3).

28 Proxy vote valid even if member dies, revokes appointment etc. (per section 250C(2))

Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

(a) the appointing member dies; or
(b) the member is mentally incapacitated; or
(c) the member revokes the proxy's appointment; or
(d) the member revokes the authority under which the proxy was appointed by a third party; or
(e) the member transfers the share in respect of which the proxy was given.

Note: A proxy's authority to vote is suspended while the member is present at the meeting (see subsection 249Y(3)).

29 How many votes a member has (per section 250E)

Company with share capital

(1) Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital:

(a) on a show of hands, each member has 1 vote; and
(b) on a poll, each member has 1 vote for each share they hold.

Note: Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).

Company without share capital

(2) Each member of a company that does not have a share capital has 1 vote, both on a show of hands and a poll.

Chair's casting vote

(3) The chair has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.

Note 1: The chair may be precluded from voting, for example, by a conflict of interest.

Note 2: For rights to appoint proxies, see section 249X.

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30 Jointly held shares (per section 250F)

If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.

31 Objections to right to vote (per section 250G)

A challenge to a right to vote at a meeting of a company's members:

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

32 How voting is carried out (per section 250J)

(1) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded.

(1A) Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

(2) On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Note: Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll (see paragraph 250L(3)(c)).

33 When and how polls must be taken (per section 250M)

(1) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

(2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

Shares

33A Pre-emption for existing shareholders on issue of shares in proprietary company (per section 254D)

(1) Before issuing shares of a particular class, the directors of a proprietary company must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.

(2) To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:

(a) the number of shares offered; and
(b) the period for which it will remain open.

(3) The directors may issue any shares not taken up under the offer under subsection (1) as they see fit.

(4) The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with subsection (1).

33B Other provisions about paying dividends (per section 254U)

(1) The directors may determine that a dividend is payable and fix:

(a) the amount; and
(b) the time for payment; and
(c) the method of payment.

The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

(2) Interest is not payable on a dividend.

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34 Dividend rights for shares in proprietary companies (per section 254W(2))

Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends as they see fit.

Transfer of shares

35 Transmission of shares on death (per section 1072A)

If shares not held jointly

(1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.

(2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:

(a) the personal representative may:
(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
(ii) by giving a completed transfer form to the company, transfer the shares to another person; and
(b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.

(3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.

(4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

If shares held jointly

(5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

36 Transmission of shares on bankruptcy (per section 1072B)

(1) If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:

(a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or

(b) by giving a completed transfer form to the company, transfer the shares to another person.

(2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.

(3) A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

(4) This section has effect subject to the *Bankruptcy Act 1966*.

37 Transmission of shares on mental incapacity (per section 1072D)

(1) If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

(a) the person may:
(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
(ii) by giving a completed transfer form to the company, transfer the shares to another person; and
(b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.

(2) On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.

(3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

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38 Registration of transfers (per section 1072F)

(1) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.

(2) The directors are not required to register a transfer of shares in the company unless:

(a) the transfer and any share certificate have been lodged at the company's registered office; and

(b) any fee payable on registration of the transfer has been paid; and

(c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

(3) The directors may refuse to register a transfer of shares in the company if:

(a) the shares are not fully-paid; or

(b) the company has a lien on the shares.

(4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.

39 Additional general discretion for directors of proprietary companies to refuse to register transfers (per section 1072G)

The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.

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