



**CONSTITUTION
OF THE
AUSTRALIAN MACADAMIA SOCIETY LIMITED**

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Corporations Act

A Company Limited by Guarantee and not having a Share Capital

CONSTITUTION OF THE AUSTRALIAN MACADAMIA SOCIETY LIMITED

Name

1. The name of the Company is "AUSTRALIAN MACADAMIA SOCIETY LIMITED".

Objects

2. The objects of the Company are:
 - a) to represent and promote the interests of Australian macadamia growers, processors, marketers and other participants in matters of general interest that may affect the well being and viability of the industry;
 - b) to co-ordinate the efforts of the Industry through formulation of appropriate strategic plans, standards and policies in order to foster the development of the Industry;
 - c) to improve and facilitate communication, education and technology transfer within and between all sections of the Industry, its participants and associated industries;
 - d) to act as a facilitator and coordinator of the research and development programs that reflect the needs and aspirations of the Industry;
 - e) to act as a facilitator and coordinator of activities, including domestic and international marketing and promotion, within the Industry;
 - f) subject to the Company being recognised as the prescribed industry body under the constitution of Horticulture Australia Limited, to determine by Special Resolution, to the extent permitted by law, the rates of statutory levies imposed or proposed to be imposed (for the following and each successive year until otherwise determined) under the *Primary Industries (Custom) Charges Act 1999*, *Primary Industries (Excise) Levies Act 1999* or the *Primary Industries Levies & Charges Collection Act 1991* or any amending or succeeding legislation and payable to Horticulture Australia Limited or any successor body and otherwise to make such recommendations as to the adoption of such levies as it may deem expedient.
 - g) to do all other lawful things as are incidental or conducive to the attainment of these objects of the Company

Powers

3. For the purpose of carrying out its objects, the Company may, subject to the Act and this Constitution, exercise all the powers conferred on it by the Act both inside and outside Australia.

Application of Income and Property

4. The income and property of the Company shall be applied solely towards the promotion of the objects of the Company set forth in this Constitution and no portion of it shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever by way of profit to the Members of the Company.

Nothing in this clause shall prevent the payment in good faith of:

- (a) reasonable and proper remuneration to any officers or servants of the Company as determined by the Board in return for services rendered to the Company;
- (b) remuneration to any member of the Company as determined by the Board for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business;
- (c) interest at a reasonable and proper rate on moneys borrowed from a Member or Members for any of the purposes of the Company;
- (d) reasonable and proper rent for premises or goods leased or licensed by any Member to the Company;
- (e) annual fees to the directors as remuneration for their services as directors provided that the amount is reasonable in the circumstances and has been approved by the Members of the Company in General Meeting. The amount of annual fees determined as aforesaid shall continue to be payable from year to year until the same are otherwise altered or revoked by the Members of the Company in General Meeting; or
- (f) reasonable and proper out-of-pocket expenses incurred by the directors in performing their duties and functions as directors of the Company.

Limitation of Liability

5. The liability of the Members is limited.

Guarantee by Members

6. Every Member of the Company undertakes to contribute to the property of the Company in the event of the same being wound up while a Member, or within one year after ceasing to be a Member, for payment of the debts and liabilities of the Company (contracted before ceasing to be a Member) and of the costs, charges and expenses of winding up and for the adjustments of the rights of the contributories among themselves, such amounts as may be required not exceeding Ten Dollars (\$10.00).

Registered Office

7. The registered office of the Company shall be Suite 1, 113 Dawson Street, Lismore, NSW 2480 or elsewhere in Australia as the Board of Directors may determine from time to time.

Dissolution of the Company

8. If upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the Members of the Company, but shall be given or transferred to some other company, fund, institution or authority approved under the provisions of the Income Tax Assessment Act and having objects similar to the objects of the Company and whose Constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as that imposed on the Company under or by virtue of Clause 4 of this Constitution. Such company, fund, institution or authority is to be determined by the Members of the Company at or before the time of dissolution, but if no such determination is made then to such company, fund, institution or authority as determined by a Judge of the Supreme Court of the State in which the Registered Office of the Company shall be for the time being.

Accounts

9. True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place, and of the property, credits and liabilities of the Company and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with this Constitution for the time being in force, shall be open to the inspection of the Members. Once at least in every year, the accounts of the Company shall be examined by one or more properly qualified Auditor or Auditors who shall report to the Members in accordance with the provisions of the Act.

MEMBERSHIP

10. Membership

Members of the Company shall be those persons who:

- (a) are Members of the Company at the date of adoption of this Constitution; or
- (b) are admitted to membership by the Board in accordance with this Constitution.

11. Types of membership

11.1 Classes of members

Until otherwise determined by the Members in general meeting there shall be the following classes of Members:

- (a) Class A;
- (b) Class B;
- (c) Class C.

11.2 Eligibility criteria for membership

- (a) Class A; open to all Australian macadamia growers
- (b) Class B; open to Australian individuals and enterprises, which service the Industry including but not limited to:
 - (i) processors and packers;
 - (ii) wholesalers (including agents of wholesalers);
 - (iii) retailers;
 - (iv) exporters and marketers; and
 - (v) researchers and educators
- (c) Class C; open to the following individuals and enterprises:
 - (i) overseas individuals and enterprises;
 - (ii) consumer groups; and
 - (iii) other persons with a non-commercial interest in the Industry.

11.3 Life membership

- (a) The directors shall confer life membership on any individual who has rendered outstanding service to the Company and is approved by at least a two third majority of the Board, provided that, unless the Members resolve otherwise, not more than two (2) Members shall be made Life Members in any financial year.
- (b) No more than ten (10) Life Members shall be allowed at any one time unless the Members resolve otherwise.
- (c) A Life Member is taken to be a Class A member, unless the directors otherwise determine.

11.4 Class A members

The Board may, from time to time, determine various categories of Class A members and levels of subscriptions for each category.

Class A Members are entitled to receive notice of, attend and speak at general meetings and are entitled to:

- (i) vote at a general meeting of the Company;
- (ii) nominate persons for the office of, or vote for on the election of, Directors;
- (iii) In addition, only Class A Members who are noted in the Register of Members as a macadamia Levy Payer are entitled to vote on macadamia levy issues.

11.5 Class B members

The Board may from time to time determine various categories of Class B Members and levels of subscriptions for each category.

Class B Members are entitled to receive notice of, attend and speak at general meetings and are entitled to:

- (i) vote at a general meeting of the Company;
- (ii) nominate persons for the office of, or vote for on the election of, Directors;
- (iii) Class B Members are not entitled to vote on macadamia levy issues.

11.6 Class C members

The Board may from time to time determine various categories of Class C Members and levels of subscriptions for each category

Class C Members are entitled to receive notice of, attend and speak at general meetings and are entitled to:

- (i) nominate persons for the office of Directors
- (ii) Class C Members are not entitled to vote at a general meeting of the Company;
- (iii) Class C Members are not entitled to vote on macadamia levy issues.

12. Application for Membership

- (a) The Board may, in its absolute discretion, admit as a Member any applicant who satisfies the criteria for membership.
- (b) Subject to the Act, every applicant for membership must complete, sign and date an application form as supplied by the Company. The contents and format of the form will be determined by the Board from time to time.
- (c) The entrance fee and subscription payable by Members will be determined by the Board from time to time. The Board may not deal with any application for membership unless the subscription payable in respect of the application has been received by the Company.
- (d) Despite paragraph (c) of this clause, the Board may in its absolute discretion admit or reject any applicant for membership without the necessity of assigning any reason. If an applicant is not admitted to membership, all monies paid by the person to the Company must be returned forthwith in full.

13. Subscriptions

- (a) The annual membership subscription for Members of the Company (other than Life Members) shall be payable in advance on the first day of July each year.
- (b) The amount of the annual subscription for each Financial Year shall be as determined by the Board from time to time.
- (c) A Member shall be deemed non financial and in arrears if a subscription and/or levy is not paid by 30 July following the commencement of the financial year in respect of which it is determined provided however that the Board shall have the power to extend the time for payment of any subscription and/or levy in its absolute discretion for good and sufficient cause.

14. Special Levy Collection and Use

The Company may, by special resolution(s) at any General Meeting of the Company from time to time determine in accordance with a recommendation of the Board that all Members, with the exception of Class C Members, shall be levied for a further payment to the Company in addition to the annual subscription. Such levy or levies (Special Levy) shall be collected and applied in such manner and at such times as the Board may determine.

15. Exclusion from Membership

- (a) If any Member shall fail to pay any subscription or any Special Levy raised under Clause 14 and required to be paid to the Company by the Members by the due date, the Board may cause notice to be given of such failure to such Member and if payment is not made within one (1) month after such notice or within any extended time granted by the Board in accordance with Clause 13(c), the Member concerned shall be liable to exclusion from membership. After the expiry of such time, the Board may exclude the Member from the Company and thereupon the Members name shall be forthwith removed from the Register and all rights and privileges previously enjoyed by the Member shall cease.

- (b) Any Member whose name has been removed from the Register for reason of non-payment of any subscription or Special Levy may be re-admitted on a majority vote of the Board.
- (c) Exclusion from Membership shall not relieve a member from legal liability to pay any annual subscriptions, levies or other moneys due and unpaid at the date of exclusion.

16. Resignation

- (a) A Member may, at any time, by giving notice in writing to the Secretary, resign from membership of the Company but shall remain liable for any annual subscription, levies and all other monies due and unpaid at the date of that resignation.
- (b) The date of resignation of a Member tendering a resignation in accordance with the provisions of Clause 16(a) shall be the date on which the notice of resignation is received by the Secretary.

17. Board Rights Re: A Member's Failure to Comply with Constitution or By-Laws

If any Member shall wilfully refuse or neglect to comply with the provision of this Constitution or any By-Law of the Company or shall be guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company or the Industry, the Board shall have power to reprimand, suspend or expel such a Member from the Company provided that:

- (a) At least seven (7) clear days' notice in writing, is given to such Member of the meeting of the Board at which a resolution to reprimand, suspend or expel such Member is to be proposed, such notice to include particulars of the alleged refusal or neglect and advise the Member of his, her or its rights under Regulation 17(b);
- (b) Such Member shall if he, she or it so desires, at such meeting of the Board and before the proposed resolution is put to the vote, be afforded the opportunity of giving orally or in writing any explanation or defence the Member may consider fit;
- (c) No Member shall be expelled from the Company unless the resolution for expulsion is passed by a majority of two-thirds of the Directors present and voting at such meeting;
- (d) A Member who is suspended shall lose the rights and privileges of membership for the period of the suspension.

18. No Appeal Allowed

No appeal whatsoever shall lie from a decision of the Board pursuant to Regulation 17 nor shall any Member reprimanded, suspended or expelled pursuant to the said Regulation have any right whether at law or in equity or other remedy whatsoever against the Company or the Board or any Member of it by reason of such reprimand, suspension or expulsion or by reason of any act done or notice given prior to or consequent on or incidental to the same.

GENERAL MEETINGS

19. Annual General Meeting

The Annual General Meeting shall be a meeting of the Members of the Company held in each year no later than five (5) months after the end of the Financial Year and at such time and place as may be determined by the Board.

20. General Meetings

- (a) General meetings of the Company may be called and held at the times and places and in the manner determined by the Board.
- (b) Except as permitted by the Act, the Members may not convene a meeting of the Company.
- (c) By resolution of the Board any general meeting (other than a general meeting that has been requisitioned or called by Members in accordance with the Act) may be cancelled or postponed prior to the date on which it is to be held.

21. Notice of General Meetings

Subject to the provisions of the Act, twenty-one (21) days' notice at the least must be given of the Annual General Meeting and any General Meeting to such Members as are entitled to receive such notices from the Company. Such notice must state the place, date and time of the meeting, the general nature of the business to be transacted and, if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the Resolution.

22. Business at Annual General Meeting

The business of any Annual General Meeting shall be to receive and consider Financial Statements prescribed by the Act, the report of the Directors and auditors, the election of directors as required under this Constitution, the appointment of the auditors, if necessary and any other business or notices of motion as the Board may determine or of which written notice has been given to the Secretary at least thirty-five (35) days prior to the date of such meeting.

23. Quorum

No business shall be transacted at any General Meeting unless a quorum of Members is present in person or by proxy or attorney at the time when the meeting is due to commence. Save as otherwise provided, twenty (20) Members present in person or by proxy or attorney shall constitute a quorum.

24. Adjournment Procedures - Lack of Quorum

If within half an hour from the time appointed for commencement of a General Meeting a quorum is not present, the meeting, if convened upon the requisition of Members, shall be dissolved but in all other cases it shall stand adjourned to the same day in the next week at the same time and place, or to such other day, time and place as the Chairperson may determine, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for commencement of the meeting, the Members present (being not less than ten) shall constitute a quorum.

25. Adjournment Procedures - General

The Chairperson may, with the consent of the Members present, at any meeting at which a quorum is present (and shall if so directed by those Members), 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 (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

26. Chairing of Meetings

The Chair shall preside as Chairperson at every General Meeting of the Company, or if there is no Chair, or if the Chair is not present within 15 minutes after the time appointed for commencement of the meeting or is unwilling to act, the Vice-Chair shall be Chairperson or if the Vice-Chair is not present or is unwilling to act then the Members present shall elect one of their number to be Chairperson of the meeting.

27. Voting by Show of Hands

- (a) At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
 - (i) by the Chairperson; or
 - (ii) by at least three (3) Members present in person or by proxy or attorney.
- (b) Unless a poll is so demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried or carried as a Special Resolution, or by a particular majority, or lost, and an entry to that effect in the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

28. Conduct a Poll

- (a) If a poll is duly demanded, it shall except as otherwise provided be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chairperson directs. Notwithstanding the foregoing, a poll demanded on the election of a Chairperson or on a question of adjournment shall be taken forthwith. The result of the poll shall be the resolution of the meeting at which the poll was demanded.
- (b) The demand for a poll may be withdrawn.

29. Chairperson's Second or Casting Vote

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

30. Vote Limited to one per Member

A Member (other than a Class C Member) may vote in person, by proxy, by attorney or by nominee and whether on a show of hands or on a poll, every such Member present in person, by proxy, by attorney or nominee shall have one vote only.

31. Trustee Voting

A Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the laws relating to mental health or bankruptcy may only vote, whether on a show of hands or on a poll, through committee or by trustee or by such other person as properly has the management of the Member's estate, and any such committee, trustee or other person may vote by proxy or attorney.

32. Appointment of a Proxy

The instrument appointing a proxy shall be in writing under the hand of the Member or of the Member's attorney duly authorised in writing. The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Member shall be entitled to instruct his or her proxy to vote in favour of or against any proposed resolution. Unless otherwise instructed the proxy may vote as the proxy sees fit.

33. The Proxy Form

The Board may issue with any notice of general meeting of Members, or any class of Members, forms of proxy for use by the Members. Each form is to make provision for the Member to write in the name of the person to be appointed as proxy and may provide that, if the Member does not so write in a name, the proxy is to be the person named on the form. The form may include the names of any of the members of the Board or of any other person as a suggested proxy. The forms are to be worded so that a proxy may be directed to vote either for, against or to abstain from each or any of the resolutions to be proposed.

34. Lodgement and Timing of the Proxy Form or Power of Attorney

The instrument appointing a proxy and the power of attorney, if any, under which it is signed or a certified copy of that power or where a Member appoints an Attorney to vote, the power of attorney or a certified copy of that power shall be deposited at the Office or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than twenty-four (24) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote and in default, the instrument of proxy or the appointment of the attorney shall not be treated as valid.

35. Validity of Proxy or Attorney Vote

A vote given in accordance with the terms of any instrument of proxy or attorney shall be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no notification in writing of such death, unsoundness of mind or revocation has been received by the Company at the Office before the commencement of the meeting or adjourned meeting at which the instrument is used.

THE BOARD

36. Election of the Board

The Board will consist of nine directors elected in accordance with this Constitution from among the Members of the Company.

37. Election of Chair and Vice-Chair

- (a) The Board, at the first meeting after the declaration of its election in each year, shall appoint from its number a Chair and a Vice-Chair who, subject to the Constitution,

shall serve until the first meeting of the Board after the following year's election. The appointment of both the Chair and Vice Chair shall be by way of secret ballot.

- (b) Notwithstanding anything herein contained, the Board shall have the power at any time and from time to time to remove the Chair and/or Vice-Chair from his or her office and to appoint from its number a new Chair or Vice-Chair as the case may be.

38. Remuneration of Directors

The Directors shall receive no remuneration in respect of their office other than the remuneration, if any, approved by the Members in General Meeting pursuant to Clause 4(e) of this Constitution.

39. Nomination Procedures

The nomination procedure for the election of the directors shall take place in the following manner:

- (a) Any two Members of the Company shall be at liberty to nominate any other Member to serve as a director;
- (b) The nomination shall be in writing, signed by the proposer and seconder and be endorsed by way of acceptance of the nomination by the Nominee.
- (c) The nomination shall be lodged with the Secretary by a date not less than two (2) months before the day for holding the Annual General Meeting at which the results are to be declared or, in the event that there are insufficient nominations by that date to fill all vacancies, by such later date as the Board may determine.

40. Election of Directors

- (a) The election of directors shall be by way of secret postal ballot conducted prior to the date of the Annual General Meeting at which the results are to be declared.
- (b) Directors will hold office from the close of the annual general meeting at which they are taken to be elected until the third annual general meeting after their election or re-election, as the case may be.
- (c) A retiring director shall be eligible for re-election provided that no director may serve more than three (3) consecutive terms in office.
- (d) The closing date for the receipt by the Company of postal votes and other procedural matters relating to the election of directors shall be as determined by the Board and notified to Members from time to time.

41. Returning Officer

A Returning Officer, who need not be a Member of the Company, shall be appointed by the Board for the conduct of the election of the directors in accordance with the provisions of the Constitution. The Returning Officer may be an employee or holder of any other office in the Company but shall not be a candidate for election as a director. Should the Returning Officer be unable or unwilling to act as and when required the Chair shall appoint a Returning Officer to act in his or her stead.

42. Ballot Procedures - Irregularities

If any irregularity should occur in the conduct of an election and in the opinion of the Returning Officer such irregularity will affect the result of such election then such election and each and every step taken in connection with it shall be null and void and another election under the Constitution shall be held forthwith. Any person holding an office immediately prior to an election, which is null and void, shall remain in office until a successor is elected.

43. Ballot Procedures - Determination of Result and Declaration

- (a) On each such ballot the candidate with the highest number of votes shall be deemed to be the successful candidate.
- (b) Where candidates receive an equal number of votes the Returning Officer shall determine by lot which candidate shall be elected.
- (c) The result of the ballot shall be declared during the Annual General Meeting by the Returning Officer or, if the Returning Officer is not present, by the Chairperson.

44. Insufficient Nominations

In the case where there shall not be a sufficient number of candidates nominated, the Board may at any time, after the Annual General Meeting at which the result of the ballot is declared, fill the remaining vacancy or vacancies.

45. Power to fill Casual Vacancies

The Board shall have the power, at any time and from time to time, to appoint any Member to fill a casual vacancy or as an addition to the existing members of the Board but so that the total number of directors shall not at any time exceed nine (9). Any member of the Board so appointed shall hold office only until the conclusion of the next Annual General Meeting.

46. Removal of Office Bearers

The Company may, by ordinary resolution of which special notice has been given, remove any director or directors before the expiration of his, her or their period of office, and may by ordinary resolution appoint another or other Members instead. Any Member so appointed shall hold office only until the conclusion of the next Annual General Meeting.

47. Vacation of Office

The office of a director shall become vacant if the Member holding that office:

- (a) becomes non financial;
- (b) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (c) becomes prohibited from being a director of a company by reason of any order made under the Act;
- (d) ceases to be a member of the Board by operation of any provision of the Act;
- (e) 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;

- (f) resigns by notice in writing to the Company;
- (g) is absent from three (3) consecutive meetings of the Board without having previously obtained the leave of the Board; or
- (h) ceases for any reason to be a Member of the Company.

48. Management of the Business vested in the Board, including Powers to make By-Laws

- (a) The management of the Company is the responsibility of the Board and the Board may exercise all such powers of the Company as are not, by the Act or by the Constitution, required to be exercised by the Company in General Meeting. The Board may make By-laws which are not inconsistent with this Constitution or the Act for the general management and running of the affairs of the Company and for the conduct of elections required to be held by the Constitution.
- (b) The Board shall be entitled to appoint advisers (who are not Members) to the Board on such terms and conditions as it may see fit provided that any such advisers are not to be entitled to vote on any resolution put to the Board for determination.
- (c) An Executive Officer may be appointed by the Board. The Board shall determine the duties to be performed, the remuneration payable to, and the other terms and conditions applicable to the appointment.

49. Board Responsibility to Borrow/Mortgage for Debt/Liability of the Company

The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property or any part of it, and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Company.

50. Board Meetings

The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Any two (2) directors may at any time, and the Secretary shall, on the requisition of any two (2) directors, summon a meeting of the Board by giving reasonable notice to each director of the time, date and place of the meeting and the general nature of the business to be transacted.

51. Voting Procedures and the Casting Vote

Subject to the Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination by a majority of the members of the Board shall for all purposes be deemed a determination of the Board. In case of an equality of votes, the Chairperson of the meeting shall have a second or casting vote.

52. Quorum at Meetings of the Board

Subject to Clause 53, the quorum necessary for the transaction of the business of the Board shall be five (5).

53. Acting in the Absence of a Quorum

The continuing directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below five (5), the continuing directors may act only for the

purpose of increasing the number of directors to at least five (5) or for the purpose of summoning a General Meeting of the Company, but for no other purpose.

54. Chairing Procedures

The Chair shall preside as Chairperson at every meeting of the Board, or if there is no Chair, or if at any meeting the Chair is not present within ten minutes after the time appointed for holding the meeting, the Vice-Chair shall be Chairperson or if the Vice-Chair is not present at the meeting then the Board may choose one of its number to be Chairperson of the meeting.

55. Meetings of the Board by Electronic Communication Devices

- (a) For the purpose of the Constitution the contemporaneous linking together by telephone, radio, closed circuit television or other electronic means of audio or audio-visual communication (in this Clause called "electronic communication devices") of a number of the directors not less than the quorum (whether or not any one or more of the directors is out of Australia) shall be deemed to constitute a meeting of the directors duly convened and held with persons actually present so long as:
- (i) All the directors for the time being entitled to receive notice of a meeting of the directors (including any alternate for any director) shall have been given reasonable and proper notice of any such meeting. Notice of any such meeting, the general nature of the business to be transacted and the proposed means of holding the meeting by electronic communication devices may be given by facsimile transmission or by electronic communication devices or by any other means authorised under the Constitution for the giving of notice of directors' meetings;
 - (ii) Each of the directors taking part in the meeting by electronic communications devices must be able to hear each of the other directors taking part in the meeting; and
 - (iii) At the commencement of the meeting, each director must acknowledge his or her presence for the purposes of the meeting to all the other directors taking part.
- (b) A director may not leave the meeting by disconnecting the electronic communication device unless the director has first obtained the consent of the Chairperson to do so.
- (c) A meeting of directors by electronic communications devices shall not be invalidated by any voluntary or involuntary disconnection of a director, provided there shall remain or be reconnected sufficient directors able to hear each other as constitutes a quorum.
- (d) A minute of the proceedings at such meeting by electronic communications devices shall be prepared and shall be prima facie evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting.
- (e) Except as is provided to the contrary by this Regulation, all of the provisions of the Constitution relating to the meetings and proceedings of directors shall apply to meetings of directors by electronic communications devices so far as they are applicable to such meetings.

- (f) The provisions of this Clause shall apply to meetings of any committee of directors and shall apply to the same extent where one or more directors are linked up by electronic communications devices with the body of directors convened in person at a particular place.

56. Alternate Directors

A Director may not appoint an alternate Director, proxy or representative.

57. Circulating Resolution

- (a) The directors of the Company may pass a resolution without a directors meeting being held if a majority 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.
- (b) 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.
- (c) Copies of a document to be signed by directors for the purpose of this clause may be circulated to, from and between directors by facsimile or by other electronic means including email transmission.
- (d) Subject to a copy of the document having been provided to each director in Australia entitled to receive notice of a meeting of the directors, the resolution is passed when the Secretary receives a written response from a majority of the directors that they are in favour of the resolution

GENERAL

58. Maximum Interest Rate for Members "Loaned" Funds

For the purposes of Clause 4 of this Constitution the rate of interest payable in respect of money lent by a Member or Members to the Company shall not exceed the highest rate paid for the time being by the Company's Bank for deposits of a similar amount and term.

59. Procedures for Money Transactions

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two members of the Board or in such other manner as the Board may from time to time determine.

60. Delegation of Non Executive Powers under Law

The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees as set out in the By-Laws.

61. By-Laws

The Board may make such regulations and by-laws not inconsistent with the Constitution, as in the opinion of the Board are necessary or desirable for the proper control, administration and management of the Company's finances, affairs and property or are necessary for the convenience, comfort and well-being of the Members and amend or rescind from time to time any such regulations and by-laws.

62. Validity of Acts carried out by Board/Committees

Every act done by any meeting of the Board or of a committee or by any person acting as a member of the Board shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such member of the Board or of a committee or of a person acting as such a member, or that the members of the Board or of any committee or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board or of the committee as the case may be.

63. Directors Contracting with the Company

- (a) No director shall be prevented by holding office from contracting with the Company.
- (b) A contract or arrangement entered into by the Company in which a director is in any way materially interested shall not be avoided and a director so contracting or being interested shall not be liable to account to the Company for any profit realised by the contract or arrangement by reason of the director holding that office or of the fiduciary relationship established, if the nature of the interest is disclosed by that director at the meeting of the Board at which the contract or arrangement is determined (if interest then exists) or in any other case at the first meeting of the Board after the acquisition of interest.
- (c) No director may be present whilst the proposed resolution to enter into a contract or arrangement in which the director has an interest is being considered at the meeting of Board and may not vote on the matter unless the Board has passed such resolution as may be permitted under the Act entitling the director to be present and to vote on the matter.
- (d) A general notice that a director is a member of a specified company or firm and is to be regarded as interested in any subsequent transaction between the Company and that specified company or firm shall be sufficient disclosure under this Clause if:
 - (i) The notice states the nature and extent of the interest of the director in the specified company or firm; and
 - (ii) When the question of confirming or entering into the transaction is first taken into consideration the extent of the director's interest in the specified company or firm is not greater than is stated in the notice; and
 - (iii) The notice is given at the meeting of the Board or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the Board after it is given.
- (e) The giving of a general notice under this Clause shall not entitle a director to be present or to vote at a meeting in relation to a particular contract or arrangement unless a resolution of the Board under sub-paragraph (c) has first been passed.

COMPANY SECRETARY

64. Appointment and Conditions set by the Board

The Secretary shall in accordance with the Act be appointed by the Board for such term and upon such conditions as it thinks fit, and the Secretary so appointed may be removed by it. Nothing in the Constitution shall prevent the Board from appointing a Member of the Company as the Secretary.

65. Minutes to be recorded by Secretary

The Secretary shall cause minutes to be made and entered of:

- (a) The names of Members and other persons present at all meetings of the Company and of the Board; and
- (b) All proceedings at all meetings of the Company and of the Board including resolutions put to such meetings and whether the same were carried or lost.

Such minutes shall be signed by the Chairperson, or Executive Officer, of the Meeting at which the proceedings were held or by the Chairperson, or Executive Officer, of the next succeeding meeting.

66. Seal

The Board shall provide for the safe custody of any Seal which shall only be used by the authority of the Board.

ACCOUNTS**67. Appointment of Auditor**

The Auditor of the Company shall be the person appointed as such by the Company in a General Meeting and shall hold office in accordance with the Act.

68. Accounting Procedures

The Board shall cause proper accounting and other records to be kept and shall send to every Member with the notice of each Annual General Meeting a copy of all reports which pursuant to the Act are to be presented to the Annual General Meeting in respect of the immediately preceding Financial Year including without limitation a copy of the Financial Report of the Company, a copy of the Directors' Report and a copy of the Auditors' Report on the Financial Report.

NOTICE**69. Legal Requirements for Issuing Notices to the Members**

Any Notice required by law or by under the Constitution to be given to any Member shall be given by sending it by post to the member at the member's address shown in the Register. Where a Notice is sent by post, service of the Notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the Notice, and to have been effected in the case of a Notice of a meeting seven (7) days after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.

70. Notices of General Meetings

Notice of every General Meeting shall be given in any manner authorised by the Constitution to:

- (a) Every Member except those Members who have not supplied to the Company an address for the giving of Notices to them; and
- (b) The Auditor or Auditors for the time being of the Company.

No other person shall be entitled to receive Notice of General Meetings.

INDEMNITY

71. Indemnity of Officials

Every Director, Secretary and other Officer for the time being of the Company shall be indemnified out of the assets of the Company to the full extent permitted by the Act against any liability incurred as such officer. Such indemnity shall extend to any liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, irrespective of the outcome of such proceedings.

INTERPRETATION

72. Definitions

In this Constitution:

“The Company” means AUSTRALIAN MACADAMIA SOCIETY LIMITED;

‘Act’ means the Corporations Act 2001 (Cth);

“Annual General Meeting” means the general meeting held each year as required by the Act and this Constitution;

“By-Laws” means the By-Laws of the Company made under Regulation 61 for the time being in force;

“Clause” means a clause of this Constitution:

“Directors” or “Board of Directors” or “Board” means the Members for the time being elected directors of the Company;

“Financial Year” means the financial year of the Company and covers the period from 1 July in a calendar year through to 30 June in the next calendar year or such other period of 12 consecutive months determined by the Board;

“Industry” means the cultivation, nurturing, harvesting, processing, packaging, value adding, marketing, promotion and sale of Australian grown macadamia nuts;

“Member” means a member whether a person, a partnership or a corporate member and includes a Class A Member, Class B Member or Class C Member;

“Membership Year” means the same term as the Financial Year;

“Month” means calendar month;

“Office” means registered office for the time being of the Company;

“Register” means the Register of Members kept pursuant to the Act;

“Seal” means the seal, if any, from time to time of the Company;

“Secretary” means any person appointed to perform the duties of a secretary of the Company and includes an honorary secretary;

“Special Levy” means a levy payable by Members to the Company under Regulation 14;

“Special Resolution” means a resolution of the Company proposed and passed at a meeting of the Company of which not less than 21 days’ notice has been given to Members

specifying the intention to propose the resolution as a Special Resolution and passed by a majority of at least three quarters of those Members who, being present at the meeting and eligible to do so, vote in person or by proxy at the meeting; and

“State” means the State of New South Wales or other State in which the Registered Office of the Company for the time being shall be located.

73. Meaning of Expressions

Unless the contrary intention appears in the Constitution, an expression used in a particular Part or Division of the Act that is given a special meaning for the purposes of that Part or Division has, in any of the Constitution that deals with a matter dealt with by that Part or Division, the same meaning as in that Part or Division.