



TRIATHLON NEW SOUTH WALES LIMITED

CONSTITUTION

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TABLE OF CONTENTS

INTRODUCTION	
1. NAME	3
2. DEFINITIONS AND INTERPRETATION	3
3. OBJECTS	5
4. RELATIONSHIPS WITH OTHER ORGANISATIONS	6
5. GENERAL POWERS	6
6. APPLICATION OF PROPERTY AND INCOME	7
7. ADDITION ALTERATION OR AMENDMENT	7
8. LIABILITY OF MEMBERS	7
9. MEMBERS' CONTRIBUTIONS	7
10. DISTRIBUTION OF PROPERTY ON WINDING UP	7
11. ACCOUNTS	7
12. MEMBERS	7
13. SUBSCRIPTION AND FEES	8
14. EFFECT OF MEMBERSHIP	8
15. DISCONTINUANCE OF MEMBERSHIP	9
16. DISCIPLINE OF MEMBERS	9
17. GENERAL MEETINGS	9
18. DELEGATES	10
19. NOTICE OF GENERAL MEETING	10
20. BUSINESS	10
21. NOTICES OF MOTION	11
22. SPECIAL GENERAL MEETINGS	11
23. PROCEEDINGS AT GENERAL MEETINGS	11
24. VOTING AT GENERAL MEETINGS	12
25. POWERS AND COMPOSITION OF THE BOARD	12
26. ELECTION OF INTERESTED DIRECTORS	13
27. APPOINTMENT OF INDEPENDENT DIRECTORS	13
28. TERMS OF OFFICE	14
29. VACATION OF OFFICE OF DIRECTOR	14
30. CASUAL VACANCIES	15
31. MEETINGS OF THE BOARD	15
32. CONFLICTS OF INTEREST	16
33. CHIEF EXECUTIVE OFFICER	17
34. COMMITTEES & DELEGATES	18
35. BY-LAWS	18
36. COMMON SEAL	19
37. EXECUTION UNDER COMMON SEAL	19
38. EXECUTION WITHOUT COMMON SEAL	19

39. DIRECTORS' INTERESTS	19
40. NEGOTIABLE INSTRUMENTS.....	19
41. REGISTERS.....	19
42. ACCOUNTING RECORDS.....	19
43. ACCESS TO RECORDS.....	19
44. AUDITOR.....	19
45. GIVING OF NOTICES	20
46. ENTITLEMENT TO NOTICES	20
47. INDEMNITY	20

CORPORATIONS ACT
COMPANY LIMITED BY GUARANTEE
CONSTITUTION
of
TRIATHLON NEW SOUTH WALES LIMITED

INTRODUCTION

1. NAME

The name of the company is Triathlon New South Wales Limited (“**Company**”)

2. DEFINITIONS AND INTERPRETATION

2.1 In this Constitution unless the contrary intention appears:

“**Act**” means the *Corporations Act 2001* (Cth).

“**Annual General Meeting**” means the annual general meeting of the Company conducted in accordance with this Constitution.

“**Aquathlon**” means the sport comprising the combination of the disciplines of swimming and running.

“**Board**” means the body consisting of the Directors of the Company composed in accordance with **Rule 25.2**.

“**Board Meeting**” means a meeting of the Board in person, by teleconference or by videoconference.

“**By-Law**” means any By-Law or regulation made by the Board under **Rule 35**.

“**Chief Executive Officer**” means the chief executive officer appointed by the Board having such functions as are set out under this Constitution.

“**Constitution**” means this constitution of the Company.

“**Delegate**” means a person elected or appointed from time to time by a Recognised Triathlon Club to act for and on behalf of that Recognised Triathlon Club and represent the Recognised Triathlon Club at General Meetings or otherwise.

“**Director**” means a member of the Board elected or appointed in accordance with this Constitution and includes the President, Interested Directors and the Independent Directors.

“**Duathlon**” means the sport comprising the combination of the disciplines of cycling and running.

“**Financial Year**” means the year ending 30 June in each year.

“**Former Body**” means NSW Triathlon Association Incorporated, an incorporated association.

“**General Meeting**” means the Annual General Meeting or any Special General Meeting of the Company.

“**Immediate Past President**” means the person who held the position of President of the Company prior to the current President.

“**Independent Director**” means a director appointed under **Rule 27**.

“**Individual Member**” means an individual who is a financial member of the Company.

“**Intellectual Property**” means all rights or goodwill subsisting in copyright, business names, names, trade marks, logos, designs, patents, equipment, images (including photographs, videos or films) or service marks (whether registered or registrable) relating to the Company or any

event, competition, product, publication, calendar of events or activity (including all New South Wales championships) developed, conducted, promoted, sanctioned or administered by the Company.

“**Interested Director**” means a director elected under **Rule 26**.

“**ITU**” means the International Triathlon Union, the world governing body for Triathlon recognised by the International Olympic Committee, Conseil Internationale du Sport Militaire and the General Association of International Sports Federations.

“**ITU Competition Rules**” means the competition rules published by the ITU as amended from time to time, which prescribes the rules and regulations for the conduct of Triathlon races.

“**Life Member**” means a person appointed to Life Membership under **Rule 12.3**.

“**Members**” means Recognised Triathlon Clubs, Individual Members, Life Members, and other categories of members created in accordance with **Rule 12.2**.

“**Objects**” mean the objects of the Company in **Rule 3**.

“**President**” means the president for the time being of the Company elected in accordance with **Rule 26**.

“**Recognised Triathlon Club**” means a club having a minimum membership consisting of an executive of a president, administrator and treasurer and ten (10) ordinary members, which the Company has approved as a recognised triathlon club under **Rule 5.4**.

“**Related Entity**” has the same meaning ascribed to that term in the Act.

“**Special General Meeting**” means a meeting of the Company convened in accordance with **Rule 22**.

“**Special Resolution**” means a resolution passed in accordance with the Act:

- (a) of which at least 21 days notice has been given; and
- (b) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

“**Triathlon**” means the sport comprising the combination of the disciplines of swimming, cycling and running and includes the sports of Duathlon and Aquathlon and it’s related other multi-sports as prescribed from time to time by Triathlon Australia Limited.

2.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include any other gender;
- (e) references to persons include corporations, incorporated associations, partnerships, joint ventures and bodies politic, whether created or formed under Australian law or not;
- (f) references to a person include the legal personal representatives, trustees, successors and permitted assigns of that person;

- (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction);
- (h) expressions referring to “writing” shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

2.3 If any provision of this Constitution or any phrase contained in it is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of the Constitution or affecting the validity or enforceability of that provision in any other jurisdiction.

2.4 Except where the contrary intention appears in this Constitution, an expression in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, has the same meaning as that provision of the Act.

2.5 The Company is established solely for the purpose of pursuing the Objects.

2.6 The replaceable rules referred to in the Act are displaced by this Constitution.

OBJECTS

3. OBJECTS

3.1 The Objects are to:

- (a) be the governing body for Triathlon in New South Wales and be recognised as such by Triathlon Australia Limited and the New South Wales Government;
- (b) be the successor to the Former Body and assume its assets;
- (c) unite the Recognised Triathlon Clubs and Individual Members;
- (d) encourage, administer, promote, advance and manage Triathlon in New South Wales through participation, competition and commercial means;
- (e) ensure that Triathlon in New South Wales is carried on in a manner which secures and enhances the safety of participants, officials, spectators and the public and which allows the sport to be competitive and fair;
- (f) adopt, formulate, issue, interpret, implement and amend from time to time By-Laws, rules and such other regulations as are necessary for the control and conduct of Triathlon in New South Wales;
- (g) develop, manage and govern Triathlon in New South Wales in accordance with, and having regard to, this Constitution, the By-Laws, and any rules and policies formulated by the Company;
- (h) arrange, administer, manage and/or conduct state championships for Triathlon;
- (i) select teams to represent New South Wales in national Triathlon championship races and events, and appoint such coaches and managers as appropriate to assist such teams and the competitors selected in them;
- (j) select competitors to participate in Triathlon training squads, and appoint such coaches and managers as appropriate to assist such squads and the competitors selected in them;
- (k) determine, arrange and publish an annual New South Wales Triathlon calendar of events;
- (l) pursue through itself or other such entity commercial arrangements, including sponsorship and marketing opportunities, as are appropriate to further the Objects;
- (m) formulate or adopt and implement appropriate policies, including policies in relation to sexual harassment, equal opportunity, equity, doping, drugs in sport, safety, infectious diseases and such other matters as arise from time to time as issues to be addressed in connection with Triathlon;
- (n) use and protect the Intellectual Property:

- (o) do all that is reasonably necessary to enable these Objects to be achieved and to enable the members to receive the benefits which these Objects are intended to achieve;
- (p) co-operate or join with or support any association, organisation, society, individual whose activities or purposes are similar to those of the Company or which advance Triathlon in New South Wales;
- (q) have regard to the public interest in its operations; and
- (r) undertake and or do all such things or activities as are necessary, incidental or conducive to the advancement of these Objects.

4. RELATIONSHIPS WITH OTHER ORGANISATIONS

- 4.1** The Company is the controlling body in New South Wales for Triathlon, and is recognised as such by the New South Wales Government and Triathlon Australia Limited.
- 4.2** The Company is the only entity affiliated with Triathlon Australia Limited in respect of Triathlon in New South Wales under the provisions of the constitution of Triathlon Australia Limited.
- 4.3** The Company has, under its affiliation to Triathlon Australia Limited, agreed to be bound by the constitution of the ITU.
- 4.4** The Company will use its best endeavours to comply with the standards and technical requirements set out in the ITU Competition Rules and will apply where possible those standards and technical requirements to all Triathlon races in New South Wales that are sanctioned by the Company.
- 4.5** The Company may, subject to consideration by its technical committee, grant or withhold race sanctioning in respect of any Triathlon race conducted in New South Wales.
- 4.6** The Company will, to the best of its ability, uphold and enforce the policies and procedures as published from time to time by the ITU and Triathlon Australia Limited.
- 4.7** The Company will, to the best of its ability, uphold and enforce the doping policy of the ITU and will, to the best of its ability ensure that its Members uphold the doping policy of the ITU.
- 4.8** In respect of any Triathlon race to be conducted in New South Wales the Company will accept as valid any race licence issued by the ITU to any athlete competing in the professional or elite category.
- 4.9** The Company requires its members to uphold and comply with all of the provisions of this Constitution, to the extent permitted by the laws governing the members in the jurisdiction in which they reside, are formed or operate, as the case may be.

POWERS

5. GENERAL POWERS

- 5.1** The Company has the legal capacity and powers set out under section 124 of the Act for the purpose of pursuing and promoting the Objects.
- 5.2** Without limiting the powers of the Company under **Rule 5.1**, it is expressly acknowledged that the Company may adopt and publish, from time to time, such rules, By-Laws, policies and procedures, as it may in its absolute discretion deem appropriate for the proper organisation and administration of Triathlon in New South Wales.
- 5.3** As the governing body in New South Wales for Triathlon the Company will oversee, manage and control:
 - (a) the operation of Triathlon in New South Wales;
 - (b) New South Wales' representation in Triathlon races at a national level; and
 - (c) compliance by the Members with this Constitution, By-Laws, and any rules, policies and procedures established under this Constitution, as amended from time to time.
- 5.4** The Company may, subject to the requirements of this Constitution, approve and register Recognised Triathlon Clubs and admit such Recognised Triathlon Clubs to Membership of the Company.

5.5 The Company may, subject to the requirements of this Constitution, admit individuals to Membership of the Company.

6. APPLICATION OF PROPERTY AND INCOME

6.1 The income and property of the Company must be applied solely towards the promotion of the Objects.

6.2 No portion of the income or property of the Company may be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member.

6.3 No remuneration or other benefit in money or money's worth may be paid or given by the Company to any Member who holds any office of the Company.

6.4 Nothing contained in **Rules 6.2 or 6.3** prevents payment in good faith of or to any Member:

- (a) for any services actually rendered to the Company whether as an employee or otherwise;
- (b) for goods supplied to the Company in the ordinary and usual course of business;
- (c) of interest on money borrowed from any Member;
- (d) of rent for premises demised or let by any Member to the Company;
- (e) for any out-of-pocket expenses incurred by a Member on behalf of the Company;

provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

7. ADDITION ALTERATION OR AMENDMENT

No addition, alteration or amendment shall be made to this Constitution unless it has been approved by Special Resolution.

8. LIABILITY OF MEMBERS

The liability of the Members is limited in the manner set out in **Rule 9**.

9. MEMBERS' CONTRIBUTIONS AND LIABILITY

Every Member undertakes to contribute to the assets of the Company in the event of it 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 the time at which the Membership ceases, and the costs, charges and expenses of winding up and for an adjustment of the rights of Members among themselves, such amount as may be required not exceeding one dollar.

10. DISTRIBUTION OF PROPERTY ON WINDING UP

If upon winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be paid to or distributed to an organisation or organisations having objects similar to the Objects of the Company and which prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company by **Rule 6** and which is also not carried on for profit and which is similarly exempt (or entitled to be exempt) from income tax. Such organisation will be determined by the Members at or before the time of dissolution, and in default thereof by such judge of a court having jurisdiction in New South Wales as may have or acquire jurisdiction in the matter.

11. ACCOUNTS

True accounts shall be kept of the sums of money received and expended by the Company and the manner in respect of which such receipt and expenditure takes place and of the property, assets and liabilities of the Company. 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.

COMPANY MEMBERSHIP

12. MEMBERS

12.1 Categories of Members

Membership of the Company is divided into the following categories:

- (a) the Recognised Triathlon Clubs which subject to this Constitution must be represented by their Delegates who may attend, debate and vote at General Meetings for, and on behalf of, the Recognised Triathlon Clubs.
- (b) Individual Members, who subject to this Constitution may attend General Meetings and participate in debates at General Meetings, but have no right to vote at General Meetings;
- (c) Life Members, who subject to this Constitution, may attend and participate in debates at General Meetings, but have no right to vote at General Meetings; and
- (d) such other classes of Members as are created from time to time under **Rule 12.2**.

12.2 Creation of new categories

- (a) Subject to **Rule 12.2(b)**, the Board may create new categories of Membership from time to time with such rights, privileges and obligations as the Board may determine, even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members.
- (b) Any new category of Membership established by the Board under **Rule 12.2(a)** may not be granted voting rights at General Meetings.

12.3 Life Members

- (a) Each year the Board will call for nominations from Recognised Triathlon Clubs for persons to be considered for Life Membership of the Company. The Board may recommend to the Annual General Meeting that one or more persons duly nominated who has rendered distinguished or special service to Triathlon in New South Wales, have Life Membership conferred on them.
- (b) A resolution of the Annual General Meeting to confer Life Membership must be passed by Special Resolution.
- (c) Conditions, obligations and privileges of Life Membership shall be as prescribed in the By-Laws.

12.4 Membership Procedure

Every person who at the date of incorporation of this Company was a member of the Former Body and who on or before the day of incorporation agrees in writing to become a Member of the Company shall be admitted by the Company to the same category of Membership of the Company as that Member held in the Former Body and shall not be required to pay any further membership fees until the next due date of payment of that membership fee.

12.5 Membership Renewal

In order to remain Members, Individual Members and Recognised Triathlon Clubs must:

- (a) renew their Membership with the Company annually;
- (b) otherwise remain registered financial Members;
- (c) pay the annual fees prescribed by the Company from time to time.

13. SUBSCRIPTION AND FEES

13.1 The Board shall determine the annual subscription (if any) and fees payable by Members (or any category of Members) to the Company, and the time for and manner of payment.

13.2 Any Member which or who has not paid all money due and payable by that Member to the Company will (subject to the Board's discretion, which shall be exercised reasonably) have all rights under this Constitution (including the right to vote at General Meetings if applicable) immediately suspended from the expiry of the time prescribed for payment of that money. The Member's rights will be suspended until the money is fully paid or otherwise in the Board's discretion. In the meantime, the Member will have no automatic right to resign from the Company, and will be dealt with in the Board's discretion, which includes the right to expel, suspend, disqualify, fine, discipline or retain that Member as a Member, or impose such other conditions or requirements as the Board considers appropriate.

14. EFFECT OF MEMBERSHIP

14.1 Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Company and that they are bound by this Constitution and the By-Laws;

- (b) they must comply with and observe this Constitution, the By-Laws, and any rule, policy, determination or resolution which may be made or passed by the Company or by the Board in accordance with this Constitution or the By-Laws;
- (c) by submitting to the Constitution and the By-Laws, they are subject to the direction and control of the Company in its administration of Triathlon in New South Wales;
- (d) this Constitution is made in the pursuit of a common object, namely the mutual and collective benefit of the Company, the members and Triathlon;
- (e) the Constitution and By-Laws are necessary and reasonable for promoting the objects and particularly the advancement and protection of Triathlon; and
- (f) they are entitled to all benefits, advantages, privileges and services of Company membership.

15. DISCONTINUANCE OF MEMBERSHIP

15.1 Notice of Resignation

Subject to this Constitution, any Member who has paid all money due and payable to the Company and has no other liability (contingent or otherwise) to the Company may resign from the Company by giving one month's notice in writing to the Company of such intention to withdraw or resign. Upon the expiration of that period of notice, the Member shall cease to be a Member. A Life Member who has paid all money due and payable to the Company may resign by notice in writing with immediate effect.

15.2 Expiration of Notice Period

Subject to **Rule 15.3**, upon the expiration of any notice period applicable under **Rule 15.1**, an entry recording the date on which the Member who or which gave notice ceased to be a Member, shall be recorded in the register of Members.

15.3 Delegate Position Lapses

The position of Delegate of a Recognised Triathlon Club lapses immediately on cessation of membership of the Recognised Triathlon Club.

15.4 Forfeiture of Rights

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon the Company and its property including intellectual property. Any Company documents, records or other property in the possession, custody or control of that Member shall be returned to the Company immediately.

15.5 Reinstatement of Membership

Membership which has lapsed, been withdrawn or terminated under this Constitution may be reinstated at the discretion of the Board, which shall be exercised reasonably, on application in accordance with this Constitution and otherwise on such conditions as the Board sees fit.

16. DISCIPLINE OF MEMBERS

Where the Board is informed or considers that a Member has allegedly:

- (a) breached, failed, refused or neglected to comply with a provision of this Constitution, the By-Laws or any resolution or determination of the Board or any duly authorised committee made in accordance with this Constitution or the By-Laws; or
- (b) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company and/or Triathlon; or
- (c) brought the Company or Triathlon into disrepute;

the Board may commence or cause to be commenced disciplinary proceedings against that Member, and that Member will be subject to, and submits unreservedly to the procedures, directions, determinations and appeal mechanisms (if any) of the Company set out in the By-Laws.

MEETINGS OF MEMBERS

17. GENERAL MEETINGS

17.1 Powers of the General Meeting

The Members in General Meeting must act in accordance with the Objects and for the mutual and collective benefit of the Members and Triathlon in New South Wales. The Members in General Meeting may in addition to the other powers and functions under the Act:

- (a) elect and dismiss Directors in accordance with this Constitution and the Act;
- (b) alter this Constitution in accordance with its terms;
- (c) consider and if considered appropriate, endorse any strategic plan published by the Board;

- (d) consider and accept or reject the annual report;
- (e) consider and pass or reject any Special Resolutions including any Special Resolution to alter this Constitution;
- (f) be the final arbiter on matters referred to it by the Board.

17.2 An Annual General Meeting of the Company must be held in accordance with the provisions of the Act and this Constitution and on a date and at a venue to be determined by the Board.

17.3 All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

17.4 The Company may hold a General Meeting at two or more venues using any technology that gives the Delegates as a whole a reasonable opportunity to participate.

18. DELEGATES

18.1 Appointment of Delegates

Each Recognised Triathlon Club must appoint one (1) Delegate for such term as is deemed appropriate by the Recognised Triathlon Club. A Delegate must:

- (a) be a member of the Company;
- (b) be an individual member of the Recognised Triathlon Club that appoints the Delegate;
- (c) be appropriately empowered by the appointing Recognised Triathlon Club to consider, make decisions and vote at General Meetings on its behalf; and
- (d) not be a Director.

18.2 Recognised Triathlon Club to Advise

Each Recognised Triathlon Club shall, at least 48 hours prior to any General Meeting, advise the Chief Executive Officer of its appointed Delegate.

19. NOTICE OF GENERAL MEETING

19.1 Notice of General Meetings

- (a) Notice of every General Meeting must be given to Members recorded in the register kept by the Company. No other person is entitled as of right to receive notices of General Meetings.
- (b) Subject to the provisions of the Act regarding agreements for shorter notice periods, not less than 28 days' written notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) must be given of any General Meeting. The notice must:
 - (i) set out 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);
 - (ii) state the general nature of the meeting's business; and
 - (iii) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state its terms.

19.2 Entitlement to Attend General Meeting

Notwithstanding any other rule, a Member has no entitlement to be represented at, or take part in a General Meeting, unless all money then due and payable to the Company by the Member has been paid.

20. BUSINESS

20.1 Business of General Meetings

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts, reports of the Board (including in relation to the activities of the Company during the last preceding financial year) and auditors, appointment of the auditor and the election of the Directors and Life Members.
- (b) All business that is transacted at a General Meeting, and also all that is transacted at the Annual General Meeting, with the exception of those matters set out in **Rule 20.1(a)** shall be Special Business. "Special Business" is business of which a notice of motion has been submitted in accordance with **Rule 21**.

20.2 Business Transacted

No business other than that stated on the notice convening a meeting shall be transacted at that meeting.

21. NOTICES OF MOTION

All notices of motion for the inclusion of Special Business at a General Meeting must be submitted in writing (in the required form) to the Chief Executive Officer not less than 35 days (excluding receiving date and meeting date) prior to the General Meeting.

22. SPECIAL GENERAL MEETINGS

The Board may, whenever it thinks fit, convene a Special General Meeting of the Company and, where, but for this rule more than 15 months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

23. PROCEEDINGS AT GENERAL MEETINGS

23.1 Quorum

No business may be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for general meetings of the Company shall be ten (10) Delegates of the Recognised Triathlon Clubs.

23.2 President to Preside

Subject to this Constitution, the President must preside as chair at every General Meeting of the Company. If the President is not present, or is unwilling or unable to preside, the Directors must choose one of their number present who must, subject to this Constitution, preside as chair for that meeting only.

23.3 Adjournment of Meeting

- (a) If within half an hour from the time appointed for the General Meeting a quorum is not present, the meeting must be adjourned to such other day and at such other time and place as the chair may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting will lapse.
- (b) The chair may, with the consent of any General Meeting at which a quorum is present, and must, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business must be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a General Meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except as provided in **Rule 23.3(c)** it is not necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

23.4 Voting Procedure

At any General Meeting a resolution put to the vote of the meeting must 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:

- (a) by the chair; or
- (b) by the majority of the Delegates present.

23.5 Recording of Determinations

Unless a poll is demanded under **Rule 23.4**, a declaration by the chair that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company will be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

23.6 Where Poll Demanded

If a poll is duly demanded under **Rule 23.4** it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs and the result of the poll will be the resolution of the meeting at which the poll was demanded.

23.7 Resolutions at General Meetings

Except where a Special Resolution is required by this Constitution, all questions at General Meetings must be determined by the majority of votes.

23.8 Minutes

The Chief Executive Officer must keep minutes, or cause to have minutes kept, of the resolutions and proceedings of each General Meeting in books provided for that purpose, together with a record of the names of persons present at each such meeting.

24. VOTING AT GENERAL MEETINGS

Subject to this Constitution each Recognised Triathlon Club represented at a General Meeting is entitled to one (1) vote on any matter or resolution. No other member (including the Directors) is entitled to a deliberative vote, but subject to this Constitution will have, and be entitled to exercise, those rights set out in **Rule 12.1**.

24.1 Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the chair will have a casting vote.

24.2 Disallowance of Vote

A challenge to a right to vote at a General Meeting:

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

Every vote not so disallowed is valid for all purposes.

24.3 Proxy Voting

Proxy voting shall be permitted at General Meetings in such manner as directed by the Board from time to time.

24.4 Written Resolutions

The Company may pass a resolution without a General Meeting being held if the majority of Delegates sign a document containing a statement that they are in favour of the resolution set out in the document. The provisions of this rule do not apply to a resolution to remove the auditor.

24.5 Separate Documents

Separate copies of a document referred to in **Rule 24.4** may be used for signing by Delegates if the wording of the resolution statement is identical on each copy.

THE BOARD

25. POWERS AND COMPOSITION OF THE BOARD

25.1 Powers of the Board

Subject to the Act and this Constitution the business of the Company will be managed, and the powers of the Company will be exercised, by the Board. In particular, the Board as the controlling authority of the Company will be responsible for acting on all issues in accordance with the Objects and will operate for the collective and mutual benefit of the Company and Triathlon throughout New South Wales and must:

- (a) govern triathlon in accordance with the Objects;
 - (b) enact the strategic direction of the Company as endorsed by the Members;
 - (c) by itself or by delegation to a committee, formulate, approve, issue, adopt, interpret and amend such By-Laws, regulations and policies for the proper advancement, management and administration of the Company, and the advancement of the Objects and Triathlon as it thinks is necessary or desirable;
 - (d) review the Company's performance in achieving its pre-determined aims, and objectives, as set out in this Constitution, the By-Laws and any policies established by the Company;
 - (e) manage the Company's international responsibilities.
- (f)

25.2 Composition of the Board

Unless otherwise determined by the Company in General Meeting the Board will comprise not less than six (6) but no more than eight (8) directors as follows:

- (a) Six (6) Interested Directors who will be elected under **Rule 26**; and
- (b) Up to two (2) Independent Directors who may be appointed by the Board in accordance with **Rule 27**.

The Board may determine the interests of the Company are best served by the allocation of portfolios to Directors. The Board may vary the titles and portfolios of each of the Directors in accordance with the needs of the Company from time to time.

25.3 Qualifications for Directors

- (a) Nominees for the position of Interested Director on the Board must meet the qualifications as prescribed from time to time by the Board and set out in the By-Laws.
- (b) Independent Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills, which complement the Board composition, but need not have experience in or exposure to Triathlon. They do not need to be members of the Company.
- (c) Nominees for any position as a Director must declare any position they hold in a Recognised Triathlon Club, including as an office bearer, director or a paid appointee. If the nominee is elected they must resign from any paid position in the Recognised Triathlon Club.
- (d) Notwithstanding **Rule 25.3(c)**, the Board shall not be comprised of more than one member from any single Recognised Triathlon Club.

25.4 Immediate Past President

If passed by a simple majority of the Board, the Immediate Past President will act as an adviser to the Board performing the duties set out in the By-Laws. In any Board decision, the Immediate Past President will have no voting rights.

26. ELECTION OF INTERESTED DIRECTORS

- (a) The Chief Executive Officer must call for nominations for election as an Interested Director at least two calendar months before the date of the Annual General Meeting. All Recognised Triathlon Clubs must be notified of the call for nominations.
- (b) Nominations for election as an Interested Director must be:
 - (i) in writing;
 - (ii) on the prescribed form (if any) provided for that purpose;
 - (iii) endorsed by the Recognised Triathlon Club confirming that the nominee is an individual member of the Recognised Triathlon Club; and
 - (iv) certified by the nominee (who must be a Member) expressing his or her willingness to accept the position for which he or she is nominated.
- (c) Nominations must be received by the Chief Executive Officer at least 35 days prior to the Annual General Meeting.
- (d) If the number of nominations received for the Interested Director positions is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all Interested Director vacancies on the Board, then those nominated must only be elected if they are elected by the Members by secret ballot in such usual and proper manner as the chair directs. If the nominees are not elected or if there are vacancies to be filled, further nominations shall be called for at the Annual General Meeting from the floor.
- (e) If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken in such usual and proper manner as the chair directs.
- (f) The voting shall be conducted by exhaustive ballot, the procedure for which is set out in the By-Laws.

27. APPOINTMENT OF INDEPENDENT DIRECTORS

- (a) Subject to this Constitution, Independent Directors may be appointed by the Board to meet such needs or requirements as are identified by the Board from time to time.
- (b) An Independent Director appointed under this clause cannot be a person who, within the previous twelve (12) months, was an unsuccessful nominee for the position of an Interested Director, unless such appointment is approved by a majority of members.
- (c) In appointing Independent Directors under this Constitution, the Board shall have regard to the desire to achieve gender equity amongst the membership of the Board.

28. TERMS OF OFFICE

28.1 Term of Office for Interested Directors

All Directors other than those appointed under **Rule 27.1** shall hold office for term of two (2) years.

28.2 Term of Office for Independent Directors

Directors appointed under **Rule 27.1** shall hold office for such term as is determined by the Directors appointing them but in any event for a maximum of two (2) years.

28.3 Eligibility for Re-election or Re-appointment

All Directors shall, upon the expiration of their respective terms of office, be eligible for re-election or re-appointment (as the case may be).

28.4 Time of Election of Directors

Three (3) Interested Directors shall be elected in each year of odd number. The remaining three (3) Interested Directors shall be elected, in each year of even number.

28.5 Rotation of Directors

Should any adjustment to the term of Directors elected under this Constitution be necessary to ensure rotational terms in accordance with this Constitution, this shall be determined by the Board. If the Board cannot determine as between Directors who have been in office for the same period, those to retire are to be selected by lot. Elections for subsequent periods shall then proceed in accordance with the procedures in this Constitution with approximately half the Board retiring each year.

28.6 Remuneration and Expenses

Subject to this Constitution the Directors are not entitled to be paid remuneration. The Directors may be paid travelling and other expenses that they properly incur:

- (a) in attending Board Meetings or any meetings of committees of the Board;
- (b) in attending any General Meetings; or
- (c) in connection with the Company's business.

29. VACATION OF OFFICE OF DIRECTOR

29.1 Grounds for termination of a Director

The office of a Director is automatically vacated if the director:

- (a) becomes bankrupt; or
- (b) 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; or
- (c) resigns office by written notice to the Company at its registered office; or
- (d) becomes prohibited from being a director by virtue of the Act; or
- (e) accepts remuneration, payment or other benefits, other than prize money from the Company other than in accordance with this Constitution; or
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest in the manner required by this Constitution; or
- (g) is removed from office under **Rule 29.2**; or
- (h) dies.

29.2 Removal of a Director

- (a) The Company in General Meeting may remove any Director, before the expiration of their term of office, in accordance with the provisions of the Act. If a Director is removed in accordance with this Rule the office of the Director becomes vacant and shall be filled in accordance with **Rule 30**.
- (b) Subject to **Rule 29.2(c)**, where:
 - (i) a resolution that a Director be removed from office is proposed to Members; and
 - (ii) the Director makes representations in writing to the Chief Executive Officer and requests that such representations be notified to the Members,the Chief Executive Officer may send a copy of the representations to each Individual Member or, if they are not so sent, the Director may require that they be read out at the meeting, and the representations shall be so read.
- (c) Where the President or the Chief Executive Office is concerned that representations provided by a Director under Rule 29.2(b) may be defamatory of any person, the President or Chief Executive Officer will confer with the Director to seek a revised draft of the representations.

Where the Director refuses to revise the representations, the Chief Executive Officer may decline to send or read out the representations from the Director. The Director may, however, make such statement to the meeting as he or she considers appropriate.

30. CASUAL VACANCIES

30.1 In the event of the death, removal, resignation or disqualification from office of a Director, the Board may appoint a new Director to fill the casual vacancy. Such new Director will hold office for the balance of the term of the Director who has vacated the Board.

30.2 In the event of the death, removal, resignation or disqualification from office of the President, the Board:

- (a) will appoint a new President from within its number to fill the casual vacancy and such person will hold office for the balance of the term of the President; and
- (b) may appoint a new Director to fill the office previously held by the new President. The new Director will hold office for the balance of the term of the Director appointed as President.

30.3 In the event of a vacancy or vacancies in the office of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a Board Meeting, they may act only for the purpose of ensuring the number of Directors is a number sufficient to constitute a quorum or of calling a General Meeting of the Company.

31. MEETINGS OF THE BOARD

31.1 Board to Meet

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business and may adjourn and, subject to this Constitution otherwise regulate its meetings as it thinks fit. The Chief Executive Officer shall, on the requisition of two (2) Directors, convene a meeting of the Board within a reasonable time.

31.2 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than seven (7) days oral or written notice of a Board Meeting shall be given to each Director by the Chief Executive Officer. The agenda shall be forwarded to each Director not less than three (3) days prior to such Board Meeting.

31.3 Election of Chairperson

- a) The directors may elect one of their number to be the President by a majority vote.
- b) The Director elected to be President under clause 31.3(a) will remain President for a term of 1 year.

31.4 Chair of Board Meeting

The President shall preside at every Board Meeting. If the President is not present, or is unwilling or unable to preside, the Directors shall choose one (1) of their number to preside as chair for that meeting only.

31.5 Decisions of Board

Subject to this Constitution, questions arising at any Board Meeting shall be decided by a majority of votes and all questions so decided shall for all purposes be deemed a determination of the Board. Each Director shall have one (1) vote on any question. The chair shall also have a casting vote where voting is equal.

31.6 Resolutions not in Meeting

- (a) A resolution in writing, signed or assented to by facsimile, telex, electronic mail or other form of visible or other electronic communication by all the Directors shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Directors.
- (b) Without limiting the power of the Board to regulate their meetings as they think fit, a Board Meeting may be held where one (1) or more of the Directors is not physically present at the meeting, provided that:
 - (i) all persons participating in the Board Meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication;
 - (ii) notice of the Board Meeting is given to each Director entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board and such notice specifies that Directors are not required to be present in person;
 - (iii) in the event that a failure in communications prevents **Rule 31.6(b)(i)** from being satisfied by that number of Directors that constitutes a quorum, and an insufficient number of Directors are present at the place where the meeting is deemed to be held by virtue of the further provisions of this rule, then the meeting shall be suspended until **Rule 31.6(b)(i)** is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption the Board Meeting shall be deemed to have terminated;
 - (iv) any Board Meeting held where one (1) or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a director is there present and if no director is there present the Board Meeting shall be deemed to be held at the place where the chair is located.

31.7 Quorum

At Board Meetings the number of Directors whose presence (or participation under **Rule 31.6**) is required to constitute a quorum is the number of directors equal to majority of the number of Directors but, where casual vacancies exist, shall be a minimum of three (3) Directors.

31.8 Validity of Board Decisions

A procedural defect in a decision taken by the Board shall not result in such a decision being invalidated.

31.9 Minutes

The Board must cause minute books to be kept in which the Company records within one month:

- (a) proceedings and resolutions of General Meetings and other meetings of Members; and
- (b) proceedings and resolutions of Board Meetings (including meetings of a committee of the Board); and
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by the Board without a meeting.

The Board must ensure that minutes of a Board Meeting are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting. The Board must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution was passed.

32. CONFLICTS OF INTEREST

32.1 Directors' Interests

- (a) Subject to Rule 32.1(b), a person may not be elected or appointed or remain as a Director if the person holds any office of profit or position of employment in:
 - (i) the Company; or
 - (ii) any Recognised Triathlon Club; or
 - (iii) in any company, incorporated association, trust, joint venture or partnership in which the Company is a shareholder or otherwise interested.
- (b) Upon an undertaking given to the Company to resign or otherwise divest any such interest as referred to in Rule 32.1(a), upon election or appointment, a person referred to in Rule 32.1(a) may be elected, appointed or remain as a Director.
- (c) A person may not be elected or appointed or remain as a Director if the person either directly or through a Related Entity contracts with the Company either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any

contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested shall, to the extent permitted by law, be voided for such reason.

32.2 Conflict of Interest

A Director shall declare their interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter; or
- (d) other financial matter;

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent themselves from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Director votes the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent themselves from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred.

32.3 Disclosure of Interests

The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a contract or other matter after it is made or entered into the declaration of the interest must be made at the first Board Meeting held after the Director becomes so interested.

32.4 General Disclosure

A general notice that a Director, or a Related Entity of the Director, is a member of any specified firm, company or other entity and is to be regarded as interested in all transactions with that firm, company or entity is sufficient declaration under **Rule 32.3** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm, company or entity.

32.5 Recording Disclosures

It is the duty of the Chief Executive Officer to record in the minutes, or cause to be recorded, any declaration made or any general notice given by a Director in accordance with **Rule 32.3 and 32.4**.

MANAGEMENT

33. CHIEF EXECUTIVE OFFICER

33.1 Appointment of Chief Executive Officer

The Board must appoint a Chief Executive Officer for such term and on such conditions as it thinks fit. The Chief Executive Officer shall be entitled to notice of, and to attend and participate in debate at, all Board Meetings and General Meetings, but shall have no entitlement to vote.

33.2 Chief Executive Officer to act as Secretary

The Chief Executive Officer shall act as and carry out the duties of company secretary.

33.3 Broad Power to Manage

The Company shall be managed by the Chief Executive Officer who may exercise all powers of the Company which are not, under the Act or this Constitution, required to be exercised by the Board or by the Company in General Meeting. The Chief Executive Officer shall, on behalf of the Company, administer Triathlon in New South Wales in accordance with the rules and regulations of the ITU, this Constitution, the By-Laws and all policy directions and the terms of his or her appointment.

33.4 Chief Executive Officer May Employ

The Chief Executive Officer, in consultation with the Board, may employ such office personnel as are deemed necessary from time to time and such appointments shall be for such period and on such conditions as the Chief Executive Officer and the Board determine.

DELEGATED BODIES

34. COMMITTEES & DELEGATES

34.1 Board may Delegate Functions to Committees

The Board may, by instrument in writing, create or establish or appoint from amongst the Directors, the Members, or otherwise, committees to carry out such duties and functions, and with such powers, as the Board determines.

34.2 Delegation by Instrument

The Board may, in the establishing instrument, delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board by the Act or any other law or this Constitution.

34.3 Delegated Function Exercised in Accordance With Terms

A function, the exercise of which has been delegated under this rule, may, whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

34.4 Procedure of Committee

- (a) The procedures for any committee established shall, with any necessary or incidental amendment, be the same as that applicable to Board Meetings under **Rule 31**. The quorum shall be determined by the committee, but shall be no less than the number of members of the committee equal to the majority of the total number of committee members.
- (b) A Director or the Chief Executive Officer shall be ex-officio members of any committee so appointed.
- (c) Within seven (7) days of any meeting of any committee, the committee shall send a copy of the minutes and any supporting documents to the Chief Executive Officer.

34.5 Delegation may be Conditional

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

34.6 Revocation of Delegation

The Board may, by instrument in writing, revoke, wholly or in part, any delegation made under this rule, and may amend, repeal or veto any decision made by such committee under this rule where such decision is contrary to this Constitution, the By-Laws, the Act, the Objects or the delegation to the committee.

BY-LAWS

35. BY-LAWS

35.1 Board to Formulate By-Laws

The Board may from time to time as circumstances dictate, formulate, interpret, adopt, make, alter and amend the By-Laws for the proper advancement, management and administration of the Company and the advancement of the Objects and Triathlon as it thinks necessary or desirable. The By-Laws must (as far as practicable) be in conformity with the rules and regulations of the ITU and must be consistent with this Constitution and all policy directives of the Company. The By-Laws are binding on all Members.

35.2 By-Laws Deemed Applicable

All By-Laws and regulations of the Former Body in force at the date of the approval of this Constitution (including existing By-Laws) insofar as such rules and regulations are not inconsistent with, or have been replaced by this Constitution, shall continue in force under this Constitution.

35.3 Notices in relation to By-Laws

The Chief Executive Officer must give notice to each Recognised Triathlon Club of the propagation, interpretation, amendment, alteration or repeal of any By-Law. Recognised Triathlon Clubs shall be obliged to draw such notices to the attention of their members. The content of any and all such notices are binding upon all Members.

MISCELLANEOUS

36. COMMON SEAL

The Company may have a common seal. If it does then:

- (a) the common seal must comply with the Act;
- (b) the Board must provide for the safe custody of the common seal; and
- (c) the seal may only be used with the authority of the Board.

37. EXECUTION UNDER COMMON SEAL

If the Company does have a common seal then it may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

- (a) two (2) Directors of the Company; or
- (b) a Director and the Chief Executive Officer.

38. EXECUTION WITHOUT COMMON SEAL

The Company may execute a document without using the common seal if the document is signed by:

- (a) two (2) Directors of the Company; or
- (b) a Director and the Chief Executive Officer.

39. DIRECTORS' INTERESTS

A Director may NOT sign a document to which the seal of the Company is affixed where the Director is interested, either directly or through an interest in a company, partnership, joint venture, trust or other Related Entity, in the contract or arrangement to which the document relates.

40. NEGOTIABLE INSTRUMENTS

Any two (2) Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument. This provision is subject to the Board determining that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

41. REGISTERS

Subject to the Act, the Board will cause the following registers to be kept:

- (a) a register of Members;
- (b) where debentures are issued, a register of debenture holders.

Having regard to privacy and confidentiality considerations, an extract of the register of Members, excluding the address and contact details of any Individual Member or Director shall be available for inspection and copying by Members, upon reasonable request.

42. ACCOUNTING RECORDS

The Board will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Act.

43. ACCESS TO RECORDS

The Board will from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members not being Directors. No Member (other than Directors or a Recognised Triathlon Club) has any right of inspection of any accounting or other record of the Company except as conferred by statute or authorised by the Board or by a resolution passed by Members entitled to vote at a General Meeting.

44. AUDITOR

44.1 A properly qualified auditor or auditors shall be appointed pursuant a resolution passed by the Members entitled to vote at a General Meeting.

44.2 The duties of such auditor or auditors are as specified and regulated in accordance with the Act.

44.3 The accounts of the Company including the profit and loss statement and balance sheet shall be examined by the auditor at least once every year.

45. GIVING OF NOTICES

45.1 The Company may give notice to any Director or Member:

- (a) personally; or
- (b) by sending it by post to the address of the Director as notified to the Board or the address for the Member in the register of Members or the alternative address (if any) nominated by the Director or Member; or
- (c) by sending it to the facsimile number or electronic address (if any) nominated by the Director or the Member; or
- (d) by publishing it on the Company's website.

45.2 Any notice sent by post is taken to have been given three days after it is posted. Any notice sent by facsimile or other electronic means is taken to be given on the business day after it is sent.

46. ENTITLEMENT TO NOTICES

46.1 Notice of every General Meeting will be given in any manner authorised by this Constitution to:

- (a) the Recognised Triathlon Clubs;
- (b) the Members;
- (c) the Directors; and
- (d) the auditor for the time being of the Company.

46.2 No other person has a right to receive notices of General Meetings.

47. INDEMNITY

47.1 To the extent permitted by law, the Company shall indemnify its Directors and employees out of the assets of the Company for any liability (including legal costs) incurred by a Director or employee:

- (a) in or arising out of the conduct of the business of the Company, or in or arising out of the discharge of the duties or employment of the Director or employee, as the case may be; and
- (b) to a person, other than the Company or a related body corporate of the Company, unless the liability arises out of conduct on the part of the Director or employee which involves a lack of good faith, or a liability for a pecuniary penalty or compensation order under sections 1317G or 1317H of the Act.

47.2 Where the Board considers it appropriate, and to the extent to which the Company is not precluded by law from doing so, the Company may make payments of amounts by way of premium in respect of any contract effecting insurance on behalf of, or in respect of a Director or employee of the Company against any liability incurred by the Director or employee in or arising out of the conduct of the business of the Company, or in or arising out of the discharge of the duties or employment of the Director or employee, as the case may be.