



MEMO

To: Board of Directors
From: Company Secretary
Subject: **CONSTITUTION CHECKLIST**

A company which is listed on the ASX must include in its constitution certain rules that comply with the ASX Listing Rules, in addition to what is usual to find in a public company constitution and as required by the Corporations Act.

I would suggest that many of such rules could reasonably apply to all companies, and that the directors (ie, 'technically' the shareholders – as it is they who must approve the constitution) should consider including them in their companies' constitutions, as and where applicable.

Checklist for Listed Companies

The ASX has provided the following checklist, the purpose of which is to assist companies seeking to list and those revising their constitution or adopting a new one, to ensure that it complies with the Listing Rules (and the Settlement Rules).

For your information, I have included below the applicable rule references from our constitution.

LISTING RULE / ASTC SETTLEMENT RULE REFERENCE	DESCRIPTION	LOCATION IN CONSTITUTION*
1.1 Condition 2, 15.11, & Appendix 15A/ Appendix 15B	Constitution to be consistent with the Listing Rules. Does the constitution contain the provisions of Appendix 15A or 15B?	Error! Reference source not found.
2.1 Condition 1, 2.5 Condition 1, & 6.1	Requirements of securities to be quoted.	Error! Reference source not found., Error! Reference source not found.
2.1 Condition 3	Satisfaction of requirements for securities to be CHESSE approved.	Error! Reference source not found.



LISTING RULE / ASTC SETTLEMENT RULE REFERENCE	DESCRIPTION	LOCATION IN CONSTITUTION*
3.13	Information to be given to ASX about meetings.	Error! Reference source not found., Error! Reference source not found., Error! Reference source not found.
3.17, 15.2.1, & 15.2.2	Copies of all documents sent to security holders to be given to ASX.	Error! Reference source not found. See also Error! Reference source not found.
3.19	Disclosure about specified ownership limits.	Error! Reference source not found.
6.2	Entity to have only one class of ordinary securities.	Error! Reference source not found.
6.3, 6.4	Voting rights of preference security holders.	Error! Reference source not found.
6.5	Distribution or dividend rights of preference security holders.	Error! Reference source not found.
6.6	Rights of preference security holders about returns of funds or returns of capital.	Error! Reference source not found.
6.7	Rights of preference security holders about notices, reports, accounts and meetings.	Error! Reference source not found.
6.8	Voting rights – on a show of hands.	Error! Reference source not found.
6.9	Voting rights – on a poll.	Error! Reference source not found.



LISTING RULE / ASTC SETTLEMENT RULE REFERENCE	DESCRIPTION	LOCATION IN CONSTITUTION*
6.10	Removal or change to voting and distribution or dividend rights of security holders.	Error! Reference source not found.
6.10, 6.12, & ASTCSR 5.12	Restricted use of divestment and disenfranchisement provisions in constitutions. CHESS Holdings – requirements for Notices of Divestment.	# Error! Reference source not found.
6.11	Proportion of dividends, distributions, and issues of bonus securities for partly paid securities. Amounts paid in advance of call ignored.	Error! Reference source not found.
6.13, & ASTCSR 8.15	Lien on securities, distributions and dividends restricted to unpaid calls and instalments, amounts owed under employee incentive schemes, and amounts payable by law. Holding Lock – liens.	# Error! Reference source not found., Error! Reference source not found.
6.24, Appendix 6A, & ASTCSR 5.22.1	Timetables – dividends and distributions, interest on debt securities, calls, expiry of options, conversions of convertible debt securities.	Error! Reference source not found.
Appendix 6A para 5.1	Requirements of call notices.	Error! Reference source not found.
7.1	Restriction on issues of securities.	Error! Reference source not found.
7.10	No interference with issue of securities.	Error! Reference source not found.
7.24	Reorganisations of issued capital – partly paid shares.	Error! Reference source not found.
7.26	Cancellation of forfeited partly paid shares by limited liability company.	# Error! Reference source not found., Error! Reference source not found.



LISTING RULE / ASTC SETTLEMENT RULE REFERENCE	DESCRIPTION	LOCATION IN CONSTITUTION*
7.40, Appendix 7A, & ASTCSR 5.22.1	Timetables – bonus issues, pro rata issues, reorganisation of capital.	Error! Reference source not found.
8.1, & ASTCSR 1.2	Compliance with ASTC Settlement Rules.	Error! Reference source not found.
8.3	CHESS approved securities – Issuer Sponsored Subregister.	Error! Reference source not found.
8.5, 8.6, 8.7, & 8.14	Statement requirements for holders on Issuer Sponsored Subregister.	Error! Reference source not found. – Listing Rule 8.7
8.10, & ASTCSR 5.8.1	No interference with registration of paper-based transfers or generation of proper ASTC transfers.	Error! Reference source not found.
8.11	Prohibition on use of pre-registration statutory declarations.	Error! Reference source not found.
8.12	Reservation of securities for takeover offeror.	Error! Reference source not found., Error! Reference source not found.
8.14	Registration of transfers and issue of certificates etc without charge.	26
8.17	Registry offices to remain open.	Error! Reference source not found.
8.21, Appendix 8A, & ASTCSR 5.22.1	Time limits – sending certificates, marking of transfer forms, conversions between subregisters.	Error! Reference source not found., Error! Reference source not found.
Appendix 8A	CHESS approved securities – Conversion from Certificated to Issuer Sponsored Subregister.	Error! Reference source not found.



LISTING RULE / ASTC SETTLEMENT RULE REFERENCE	DESCRIPTION	LOCATION IN CONSTITUTION*
10.11	Participation of related parties in new issues.	Error! Reference source not found.
10.17	Payments to directors of a company. Increase of fees subject to approval. Notice requirements.	Error! Reference source not found.
10.18, & 10.19	Service agreements.	Error! Reference source not found.
11.2	Disposal of main undertaking requires approval of holders of ordinary securities.	Error! Reference source not found., Error! Reference source not found.
14.2	Requirements for proxy forms.	Error! Reference source not found.
14.3	Time for acceptance of nominations for elections of directors of companies.	# Error! Reference source not found.
14.4	Limit on directors of companies holding office including those appointed to fill casual vacancy and managing directors where more than one.	Error! Reference source not found.
14.5	Election of directors of companies each year	Error! Reference source not found.
15.10	Documents for overseas security holders to be sent by air or fax.	Error! Reference source not found.
15.12.1	Prohibition on disposal of restricted securities during escrow period.	# Error! Reference source not found.



LISTING RULE / ASTC SETTLEMENT RULE REFERENCE	DESCRIPTION	LOCATION IN CONSTITUTION*
15.12.2	Entity must refuse to acknowledge a disposal of restricted securities in escrow period.	# Error! Reference source not found.
15.12.3	Distribution, dividend and voting rights to end if breach of listing rules or restriction agreement.	# Error! Reference source not found.
15.13, & ASTCSR 5.12	Restriction on provisions for sale of security holdings of less than a marketable parcel. Requirements for notices of divestment.	# Error! Reference source not found.
15.15	Foreign companies – prohibition on sanctions or penalties to enforce provisions relating to takeovers or substantial shareholdings.	#
ASTCSR definitions of “Record Date” & “End of Day”	Record date.	Error! Reference source not found.
ASTCSR 8.6.1	CHESS Subregister forms part of principal register.	Error! Reference source not found.
ASTCSR 8.10.1	CHESS holdings – maximum 3 joint holders.	# Error! Reference source not found.
ASTCSR 8.10.2	Restricted ability to establish holdings of less than a marketable parcel.	# Error! Reference source not found.
ASTCSR 8.10.3	Recognition of equitable interests.	Error! Reference source not found.
ASTCSR 8.12.1	Registration date.	Error! Reference source not found.



LISTING RULE / ASTC SETTLEMENT RULE REFERENCE	DESCRIPTION	LOCATION IN CONSTITUTION*
ASTCSRs 8.13.1 & 5.4.4	Subregisters to remain open.	Error! Reference source not found.
ASTCSR 9.8.4	Certain documents to be received by Issuers.	Error! Reference source not found.
ASTCSR 5.10	Non-issue of certificates.	Error! Reference source not found.
ASTCSR 5.21.1	Nil paid rights record.	Error! Reference source not found.
ASTCSR 14.17	Completion of takeover transfers.	Error! Reference source not found.

* *If the Listing Rule is not covered by the constitution, please indicate that there is no specific reference.*

Means the Listing Rule may require specific provisions to be included or may prohibit the inclusion of certain provisions in the constitution. Alternatively, the L/R may allow the constitution to make provision for the matter.

ASX Compliance / Requirements

Listed companies must comply with the provisions of Listing Rules 15.1.1, and 15.11. In summary, L/R 15.1.1 requires draft proposed alterations to a company's constitution to be supplied to ASX for examination. L/R 15.11 provides that if a company amends its constitution, the constitution (including the amendments), must be consistent with the Listing Rules, so listed companies should be prepared for ASX to conduct a full review of the complete constitution. This L/R does not apply if the company's constitution includes the provisions in Appendix 15A or Appendix 15B. Companies should advise ASX when submitting documents for review if their constitution does contain these provisions.

A copy of the constitution (as amended) is required to be released to the market (through ASX) after shareholder approval is obtained.



DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.

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