

# Company Constitution Upgrade Order Form



Name	<input type="text"/>	Phone	<input type="text"/>
Firm	<input type="text"/>	E-mail	<input type="text"/>

## Company Details

Company Name

ACN

Does this Company currently have a constitution (or Memorandum & Articles of Association)?  YES  NO  Lost/Misplaced

If YES, please provide a copy of that document with this completed form. If other than Ordinary shares are on issue and the company does not presently have a constitution (or M & As), then please provide full details of the rights attached to the shares.

## Company Members

**IMPORTANT: Full, verifiable names are required.**

Member Name (include ACN if Company)	<input type="text"/>
Number of Shares	Class ORDINARY or: <input type="text"/>
Member Name (include ACN if Company)	<input type="text"/>
Number of Shares	Class ORDINARY or: <input type="text"/>
Member Name (include ACN if Company)	<input type="text"/>
Number of Shares	Class ORDINARY or: <input type="text"/>
Member Name (include ACN if Company)	<input type="text"/>
Number of Shares	Class ORDINARY or: <input type="text"/>

Is there currently a Permanent Governing Director (or equivalent) appointed?  YES  NO

The Special Resolution necessary to adopt the new Acis Constitution will be passed by a circular resolution of the members pursuant to the Corporations Act 2001 (whereby the voting members of the company will sign a document containing a statement that they are in favour of the necessary resolution).

## Additional Information

## Payment Details

Please debit the following card details by the amount of \$

Type of Card	<input type="checkbox"/> Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Diners Club* <input type="checkbox"/> Amex*	*3% SURCHARGE APPLIES
Card Number	<input type="text"/>	Expires <input type="text"/> CCV <input type="text"/>
Name on Card	<input type="text"/>	Signature <input type="text"/>

Please return this completed form to [acis@acis.net.au](mailto:acis@acis.net.au), Freefax 1800 655 556 or Locked Bag 1, Fortitude Valley Q 4006

## Share Classes and Rights

The Acis Constitution provides for multiple share classes. The private and public (limited by shares) companies' share classes have the (summarised) rights set out below. While the full rights attached to all share classes are set out in the Constitution, the directors remain able to vary the share rights or add to them on the issue of any class of shares.

Class	Full Title	Summary of Rights	Company Type
<b>ORD</b>	Ordinary Shares	vote, dividends, equity	Pty Ltd / Public Ltd by shares
<b>A</b>	A Class Shares	vote, dividends, equity	Pty Ltd / Public Ltd by shares
<b>B</b>	B Class Shares	vote, dividends, equity	Pty Ltd only
<b>C</b>	C Class Shares	no vote, dividends, equity	Pty Ltd only
<b>D</b>	D Class Shares	no vote, dividends, equity	Pty Ltd only
<b>E</b>	E Class Shares	no vote, dividends, equity	Pty Ltd only
<b>F</b>	F Class Redeemable Preference Shares	voting, dividends, no equity, redeemable	Pty Ltd / Public Ltd by shares
<b>G</b>	G Class Redeemable Preference Shares	no vote, pref dividends at prescribed rate, no equity, redeemable	Pty Ltd / Public Ltd by shares
<b>H</b>	H Class Shares	vote, no dividends, equity	Pty Ltd only
<b>I</b>	I Class Shares	no vote, dividends, no equity	Pty Ltd only
<b>J</b>	J Class Shares	no vote, dividends, no equity	Pty Ltd only
<b>K</b>	K Class Shares	no vote, dividends, no equity	Pty Ltd only
<b>L</b>	L Class Shares	vote, no dividends, no equity	Pty Ltd only
<b>M</b>	M Class Shares	no vote, no dividends, equity	Pty Ltd only

## Note on Need for Shareholders' Agreement

A Shareholders' Agreement, while considered necessary in arm's-length relationships, may be just as beneficial in related party shareholding situations. For example, consider the following real situations:

- The company's business is doing well but not as well as expected. Two shareholders agree to persevere believing that the business will ultimately succeed. A third wants to get out. The other 2 do not have the resources to buy him/her out and cannot afford to let him/her go as the company will fail without that expertise.
- A shareholder is consulting for a competitor, sells his/her shares to an unacceptable third party or simply decides that he/she won't bother turning up any more.
- A shareholder wants to stop working in the business and play golf. The other 2 don't have any difficulty with this, but they want to keep working and don't want the other to profit from their hard work.
- Imagine the 3 shareholders are siblings. They have not discussed any governance issues thinking that they don't need to because they understand each other and assume they would be totally committed. One sibling subsequently marries, has children and is frequently absent. The other 2, while sympathetic, cannot manage without the third or don't want the third to profit from their hard work.
- Imagine the shareholders are husband and wife, who have not discussed any governance issues because they thought that they didn't need to. After years working together, they become involved in a messy divorce.
- Imagine the company buys real estate. 2 shareholders provide all of the funds to acquire and develop the property while the 3rd has no money to contribute. After several years, the value of the property has increased substantially. The 2 who put all the money into the property are now faced with the 3rd being entitled to 1/3 of the net value of the property.

Without a shareholders' agreement there may be no way of resolving these issues without going to Court. Often, the process of preparing a governance agreement will present opportunities such as:

- determining what should happen when expectations are not met. Most people don't consider that there might even be a down side let alone what happens when it transpires;
- committing to paper what the parties real intentions are rather than relying on the subjective recollections of the stakeholders;
- highlighting different intentions rather than assuming everyone else knows exactly what you mean when you say something; and
- eliminating ambiguity and raising real possibilities which have not been considered.