

The Acis Constitution: Successor Directors

**We've
Got This.**

The Acis constitution, for private companies limited by shares, does not as a matter of course, make provision for Directors of the Company to nominate Successor Directors.

The provision for, and nomination of, Successor Directors can provide an efficient business continuation and/or estate planning mechanism in certain circumstances. It can also create unintended consequences after your death or loss of capacity in circumstances where, for example, a company acts in multiple capacities, is run by more than one family, or undergoes substantial changes in control after a nomination has been made.

It is for this reason that we do not include Successor Director provisions in our standard Pty Ltd constitution. We do, however, appreciate that they are an appropriate mechanism in certain circumstances, and have provisions available for inclusion in a company's constitution [on request](#).

It is important to note that Successor Directors are distinct and separate from alternate directors.

Alternate Directors

The Corporations Act 2001 (Cth) and the Acis Pty Ltd constitution allow a Director (the "appointor") to appoint an alternate director to act in his or her place during any period the appointor requires, but only while the appointor is unable to act and only with the consent of the other Directors.

The appointment of an alternate director terminates automatically if the appointor ceases to be a Director. Thus, while the appointment of an alternate director suits circumstances where a Director is otherwise unable to act, for example in the event of an extended holiday or recovery from surgery, it automatically ceases if the appointor ceases to be a Director. If the appointor passes away or loses capacity, he or she will be removed as a Director of the Company. So too, therefore, the alternate director is removed and can no longer act as a Director of the Company.

Successor Directors

Provisions allowing for the nomination of Successor Directors, which are available for inclusion in the Acis constitution on request, allow each Director to nominate a Successor Director to act as Director in their place if they die or are Legally Disabled for any period. The nomination must be approved by the Directors and the nominee must consent to their nomination. Where the appointment of a Successor Director has become effective because of the Legal Disability of a Director, the Successor Director is removed and ceases to be a Director, and the Director who made the nomination is re-appointed if he or she ceases to be Legally Disabled.

For the purposes of these provisions, "Legal Disability" or "Legally Disabled" in relation to a Director means:

- a lack of legal capacity because the Director becomes an intellectually disabled person who is liable to have their affairs administered by another person under any law dealing with the intellectually disabled; or
- is suffering from a mental illness, or is mentally disabled, and is liable to have their affairs administered by another person under any law dealing with mental health or the mentally disabled.

The Acis Constitution

If you require provisions for the nomination of Successor Director in a company's constitution, simply [let us know](#) when you order and we'll be more than happy to accommodate this request.

Other Resources

Further information about the Acis constitution is available. You might want to check the following:

- [Summary of Changes](#)
- [Factsheet: Dividend Access Shares](#)

Notes:

- Specific legal advice should always be sought prior to the nomination of Successor Directors.
- Variations to the standard Acis constitution can be made [on request](#).
- A copy of the Acis constitution can be emailed [on request](#).
- The Acis team is [contactable](#) at any time to discuss the constitution.

Acis does not provide advice in relation to taxation, duty, the Corporations Act, company law or any other matter. We do not purport to provide advice in relation to the Acis Pty Ltd company constitution nor should you construe anything in the constitution, any correspondence with us, or material provided by us, as advice of any kind.

If you would like further information or have any questions, please contact us toll-free on [1800 773 477](tel:1800773477) or email acis@acis.net.au.