

**EXPLANTORY MEMORANDUM
to and forming part of**

**NOTICE OF ANNUAL GENERAL MEETING
of**

**.au DOMAIN ADMINISTRATION LTD (auDA)
to be held on 27 November 2003 at 10.30am
at Hotel Intercontinental, Sydney**

Agenda Item 7: PROPOSED AMENDMENTS TO CONSTITUTION

auDA's directors have proposed the following amendments to auDA's constitution in order to streamline auDA's membership procedures and to make it more difficult for a single person or organisation to gain inappropriate control over auDA's Board by "stacking" new members into a particular Class.

Each resolution is proposed and will be voted upon separately and the resolutions do not need to be passed as a block in order to come into effect.

As each resolution must be passed as a Special Resolution under auDA's Constitution each resolution must be passed by 75% of the members present or by proxy voting in favour of it.

Under clause 16.2.a of auDA's Constitution a 75% majority of members in every Class must vote in favour of a special resolution in order for it to take effect.

A copy of auDA's current Constitution is available from auDA's website at <http://www.auda.org.au/about/constitution.html>.

The directors of auDA recommend that members pass each of the proposed special resolutions.

Each proposed resolution is explained in greater detail below:

7a. Clarification of Membership as Personal Right and Prohibition on Voting Agreements

It is common in proprietary companies for shareholders to enter into agreements to govern the way in which the company is administered and which require members to vote in particular ways. Such agreements (often called shareholders' agreements) are legally binding and a Court may order a shareholder to vote their shares in a particular way in order to uphold such an agreement.

However, companies limited by guarantee without shares may be regarded as being fundamentally different, in that a member's right to vote is personal and must not be "sold" in exchange for any material benefit.

Clause 11.1 of the Constitution currently provides that membership of auDA is personal and not transferable.

Accordingly, it is proposed that the members consider and, if thought fit, pass the following resolution to insert a new clause after clause 11.1 to clarify that members must not enter into or give effect to any contract,

arrangement or understanding to vote in a particular way in order to receive any material benefit:

1. **RESOLVED as a Special Resolution** that the Constitution be amended by inserting the following after clause 11.1:

'11.2 Prohibition on Voting Agreements

A Member must not enter into or give effect to any contract, arrangement or understanding under which the Member (or any associate of the Member) has or will receive any material benefit in consideration for voting in a particular way (including not voting) on any matter before a general meeting including any election.'

7b. Three Month qualifying period prior to becoming entitled to vote

The most recent examples of attempted Board stacking have occurred in the periods immediately prior to Annual General Meetings.

Accordingly, it is proposed that the following resolution be considered and, if thought fit, passed to introduce a requirement that all new members (whose application for membership is accepted after 14 October 2003) be required to serve three months as a member prior to becoming entitled to vote at a general meeting:

b) **RESOLVED as a Special Resolution** that the Constitution be amended by deleting clause 16.1 and replacing it with the following:

'16.1 Entitlement to Vote

Every Member who:

- a) was a Member on 14 October 2003 and has continuously been a Member since that date; or
- b) becomes a Member on or after 15 October 2003 and has been a Member for not less than three (3) months,

present at a general meeting in person or represented by proxy or representative has one vote, whether by show of hands or on a poll.'

7c. Candidates proposed by member of same Class and Single Proposal or Seconding of Directors

Under clause 19.4.a of the Constitution, prospective directors are required to be proposed and seconded by current financial Members.

However the directors consider that it is more appropriate that candidates for election by a Class be proposed and seconded by members of that Class, and that a member be limited to nominating or seconding one candidate for each election.

Accordingly, it is proposed that that the following resolution be considered and, if thought fit, passed to introduce a requirement that the nominating and seconding Members be in the same Class as that by which the candidate is to be elected and to limit a Member to nominating or seconding only one candidate at each election:

3. RESOLVED as a Special Resolution that the Constitution be amended be deleting clause 19.4.a and replacing it with the following:

'19.4 Nomination for Election

- a. Each candidate for election as a Director by a Class in accordance with clause 19.2 or 19.3 must be proposed by a Member of auDA in that Class and seconded by another Member of auDA in that Class.
- aa. A Member may only propose or second a candidate for Election as a Director if they have:
 - (i) paid their entrance fee (if any) and their membership fees as at the time that the proposal takes place; and
 - (ii) in respect of a candidate for election by a Class with 4 or more Members, not proposed or seconded any other person for election as a Director at that election.'

7d. Clarification of procedure for terminating non-financial member's membership

Under current clause 13.2 of the Constitution, the Board may terminate the membership of a Member for non-payment fees if the fees are more than 3 months overdue and not paid within a further month of notice of default being given to the member following a resolution of the Board to do so.

It is proposed to adopt a more streamlined procedure to remove the effective requirement for the Board to consider the Member's non-payment on 2 separate occasions, by allowing the Secretary to send the initial

notice of default and the Board then considering the termination of the membership if the notice of default is not complied within a further 30 days.

Accordingly it is proposed that the following resolution be considered and, if thought fit, passed as a special resolution:

4. RESOLVED as a special resolution that the Constitution be amended by deleting clause 13.2 and replacing it with the following:

'13.2 Termination of Membership for Non-Payment of Membership Fees

The Board may at any time terminate the membership of a Member for non-payment of membership fees if:

- a. the membership fees payable by the member have remained unpaid for a period of not less than three (3) months after the due date for payment; and
- b. after the end of that three (3) month period, a notice of default has been given to the Member by the Secretary; and
- c. the membership fees payable by the member remain in arrears for a period of one (1) month after the date of service of the notice of default upon the Member in relation to those outstanding fees.'