



ASSOCIATION OF FINANCIAL ADVISERS LTD

# **Association of Financial Advisers Limited**

## **By-Laws of The Association of Financial Advisers Limited**

**12 November 2007**

**A COMPANY LIMITED BY GUARANTEE NOT HAVING A SHARE CAPITAL**

Association of Financial Advisers Limited  
ABN 29 008 619 921

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## Interpretation

Unless contrary to or inconsistent with the context, terms defined in Clause 1 of the Constitution of the AFA have the same meaning in these By-Laws, and:

“**Fees**” means the annual subscription payable by a Member or applicant and any fee payable for post nominals; and

“**Returning Officer**” means the person appointed as Returning Officer under Clause 15.

## Membership Criteria and Benefits

1. The AFA has seven classes of membership:

- i. Practitioner Member;
- ii. Associate Member;
- iii. Corporate member:
  - a. Corporate member: Licensee.
  - b. Corporate member: Product /service provider. Associate Corporate Member
- iv. Life member;
- v. Honorary Member (by Board invitation only and approved by members at an AGM);
- vi. Student Member; and
- vii. Retired Member.

- A. A **Practitioner member** is a natural person who is registered to give financial advice. Categories of Practitioner Membership are based on individual's qualifications and career participation in the financial services industry related to the giving of financial advice and is a practicing adviser.
- B. An **Associate member** is a natural person, who has a career interest in the financial services industry but who is not a practising adviser, (i.e. business develop managers, account managers, and the like). This category of member can vote at a general meeting or election, be nominated to serve on any AFA committee and use the appropriate post-nominals but may not serve on the board.
- C. A **Corporate member** (Licensee or Product/service provider) may include the many types of corporate identities operating in the financial services industry. The Corporate member must nominate (in writing) a natural person as their representative at any general meeting or election and who will have the same membership status and rights as an Associate Member.
- D. A **Life member**, is a member that has been classified by the Board as having rendered exceptional service or special importance to the AFA and/or the Financial Services Industry and has been duly elected by a majority of 75% of voting members at a General Meeting of the Association. Such members retain all rights and privileges that applied before their election to life member.
- E. An **Honorary member** is a member so classified by the Board who does not qualify for any other class of membership but has rendered outstanding service to the AFA or the financial services industry in a general capacity. No fees are payable; there are no voting rights, and an Honorary member cannot stand as a Director except under Clause 32 (c) of the constitution.
- F. A **Student member** is a natural person who is currently studying for their RG 146 qualifications and is not a practising adviser. A Student member may be nominated to serve on any AFA committee but is not eligible to use post-nominals, vote at meetings or stand as a Director.
- G. A **Retired member** is a member who is retired from active participation in the financial services industry. A Retired member has no voting rights, but may attend meetings and serve on any AFA committee, but not eligible to stand as a director,

## Applications Generally

2. To be eligible for consideration for membership an applicant must provide to the AFA office:

- (a) a completed application;
- (b) evidence of the applicant's eligibility for membership of the relevant category; and
- (c) at the time of submitting their application, pay the Fees for the applicable category of membership.

3. Entry to each category of membership is subject to approval by the AFA Board in accordance with the Constitution. Matters of suitability, contribution, relevance, recognition and other judgment are at the sole and absolute discretion of the AFA Board.

## Post Nominals

4. The post nominals or equivalent that can be awarded for each of the categories of Membership are:

- (a) Practitioner Member: FChFP (Fellow Chartered Financial Practitioner)
- (b) Practitioner member: FAFA (Fellow of AFA)
- (c) Associate Member: AFA (Assoc)

The criteria for (a) is as follows:

The Applicant must be a current financial member and a current practitioner and have had five full years as a practitioner of the last eight years. He or she must have successfully completed the Advanced Diploma of Financial Planning (Financial Services) (FNS60404). All applicants must produce a certificate signed by a recognized Registered Training Authority (as recognised pursuant to the Corporations Act), complete an accreditation entry course and examination together with an application form and pay the prescribed fees. The onus of proof and all costs are the responsibility of the applicant.

The criteria for (b) is as follows:

The Applicant must be a current financial member and shall have completed the RG 146 certificate and have had five full years as a practitioner or be approved by the Board. All applicants must produce a certificate signed by a recognized Registered Training Authority (as recognised pursuant to the Corporations Act), complete the application form and pay the prescribed fees. The onus of proof and all costs are the responsibility of the applicant.

The criteria for (c) is as follows:

Completion of RG 146 and the Diploma of Financial Planning (FNS50804) with at least five years career experience working in the financial services industry or field of endeavour associated with it or be approved by the Board. All the requirements as listed above apply to this as well.

## Membership Fees

5. The AFA will publish membership forms, details of the Fees for each class of membership and details of any discounted fees (if applicable) on their website.
6. Fees may be discounted where an applicant or Member is a full time student, retired, or in other circumstances at the AFA's discretion. Applicants or Members wishing to receive or renew a discounted rate must produce evidence of the relevant circumstances. Except for retired members, the discounted rate will revert to the full rate at the time of renewal of membership unless the Member has submitted a request for continuation of discount in the renewal year.
7. The AFA may in cases of ill health, misfortune, advanced age or on other grounds, refund fees.

## Board Elections

8. Nominations for election to the Board must be in writing, addressed to the Secretary and deposited at the Registered Office of the AFA not later than 42 days before the day fixed for an annual general meeting.
9. Nominees must be a current financial and Practitioner Member for a period of three (3) completed years immediately prior to the date of the AGM in which the elections is to be held.
10. A candidate must furnish a maximum of 100 words setting out the candidate's qualifications and experience in the financial services industry. The Board may in its discretion amend the statement to protect the AFA's interests.
11. The Secretary will prepare ballot papers if the number of nominations received requires a ballot to be held, for each of the positions contested, the ballot decided on first past the post.
12. As required, all Members will be sent with the notice of the annual general meeting for each of the positions contested:
  - (a) a list of candidates' names in alphabetical order showing their nominators' names and the information provided under Clause 10;
  - (b) a ballot paper;
  - (c) a sealable ballot envelope for the ballot paper;
  - (d) a membership identification form for signature and return outside the ballot envelope; and
  - (e) an outer return envelope.
13. A Member may take part in as many ballots as the Member is entitled under the current by-laws.
14. Completed ballot papers must be returned to the AFA at the address set out in the notice convening the annual general meeting, not less than 72 hours before the appointed time for the annual general meeting, this time to appear on the notice.
15. The Board will appoint a Returning Officer who may appoint assistants, none of whom can be a Director or a candidate.
16. The Returning Officer is to provide a secured ballot box at the place specified in the notice of meeting, into which all ballot papers are to be placed.
17. Opening and counting of the ballot will be carried out under the supervision of the Returning Officer after the close of the ballot and prior to the annual general meeting.
18. The Board may appoint independent scrutineers to oversee due process in the counting of the ballot. A candidate may appoint an independent scrutineer
19. After the close of the ballots, the Returning Officer must:

- (a) scrutinise the ballot papers and reject informal ballot papers;
- (b) count the votes for each position being contested;
- (c) prepare and sign a declaration of the ballot for each position being contested as to:
  - i. the number of ballot papers lodged;
  - ii. the number of formal votes;
  - iii. the number of informal votes;
  - iv. the number of votes cast for each candidate; and
  - v. the names of those persons elected; and
- (d) provide each declaration to the Chair of the annual general meeting.

**20.** A ballot paper is informal if:

- (a) it is not received sealed in the envelope supplied by the AFA, together with the required signed membership identification form;
- (b) If a member receives more than one ballot kit, then each ballot must be in its own separate sealed AFA envelope. Multiple Ballot papers in the one sealed envelope will be declared invalid.
- (c) The intention of the cast vote is not clear

**21.** Any dispute between a scrutineer appointed by a candidate and the Returning Officer or a scrutineer appointed by the Board will be conclusively resolved by the most senior elected Director who is not a candidate.

**22.** The Returning Officer must preserve the ballot papers for at least 3 months after the declaration of the ballot, and then they must be destroyed.

**23.** No election shall be voided on account of any error or omission of the Returning Officer, which did not affect the results of the election.

**24.** The Secretary must retain all nominations, including every candidate's written consent, in the AFA's records for at least 7 years.

## Disciplinary Procedures

### Disciplinary matters to be dealt with by the Board

**25.** Where the AFA becomes aware that a Member:

- (a) has been convicted under the law of any jurisdiction of any offence in connection with corporations, or others involving fraud or dishonesty punishable on conviction by imprisonment;
- (b) is disqualified or suspended from performing their duties managing corporations;
- (c) has had a financial services licence revoked or cancelled, has been suspended as a financial services licensee, or has been banned from acting as a representative of a licensee or financial adviser; or
- (d) has:
  - i. been expelled or suspended from any other professional association membership; or
  - ii. had disciplinary action taken against them which has resulted in the banning of direct participation in the activities of such a body, or the banning of employment by an entity that directly participates in the financial service industry; the President, the Chief Executive Officer or another Officer nominated by the Board for that purpose, may refer the matter to the Board in writing.

**26.** Where the Board has been referred a matter under Clause 25, the Board may, without the Member being entitled to make submissions except as to mitigating circumstances affecting the type of sanction;

- (a) expel the Member from membership;
- (b) suspend the membership of the Member; and/or
- (c) reprimand the Member in such other manner as the Board deems appropriate at the time.

**27.** The Board may require written evidence and can nominate persons to gather such evidence confirming or denying that a Member falls within one or more of the categories specified in Clause 25.

**28.** Where the Board is considering making a decision under Clause 26 to impose a sanction (except where the action arises from a criminal conviction under Clause 25(a) the Board must inform the Member in writing of that fact and invite the Member to make a written submission as to whether there are any circumstances which the Member believes may affect whether a sanction should be imposed and/or the type of sanction that should be imposed.

**29.** Where the Board has expelled or suspended a Member under Clause 26, the Board may, in its absolute discretion, revoke any such suspension or expulsion and reinstate or re-admit the Member to the extent it thinks fit.

#### **Disciplinary matters to be dealt with by a Disciplinary Committee**

**30.** Where the Board becomes aware that a Member may:

- (a) have become bankrupt or insolvent or made any arrangement with creditors; or
- (b) have become of unsound mind; or
- (c) have engaged in conduct which is in breach of the Constitution or any By-Law; or
- (d) have engaged in conduct which is discreditable to, against the interests of, or brings disrepute to the AFA; or
- (e) not be a fit and proper person to be a Member, relating to Clause 25.

Then the Board may ask the President, the Chief Executive Officer or another Officer nominated by the Board for that purpose, ("**Investigating Officer**") to investigate any Member who is suspected of being in one or more of the situations in Clause 30. If the Investigating Officer determines on the evidence before them that the Member could reasonably be in one or more of the situations in Clause 30 the Investigating Officer may:

- (a) request the Board to convene a Disciplinary Committee; and
- (b) refer the matter to the Disciplinary Committee.

**31.** A Disciplinary Committee appointed by the Board must have 3 members, including at least 1 Director, all of whom must be present to constitute a quorum. The Investigating Officer may not form part of the Disciplinary Committee, nor may a person with a conflict of interest.

**32.** The Disciplinary Committee must within a reasonable time investigate a matter of discipline referred to it by the Investigating Officer and determine, on the evidence before it and by at least a majority of committee members, whether or not the Member is in one or more of the situations in Clause 30 and the kind of sanction that is appropriate. The Disciplinary Committee's decision shall be reported to the Board.

**33.** The Disciplinary Committee must give any Member who has been referred to it:

- (a) written notice:
  - i. of the circumstances under Clause 30 which are believed to have occurred; and
  - ii. that the Disciplinary Committee is considering whether these circumstances have occurred and if so what action should be taken; along with
- (b) an invitation to:
  - i. provide additional written information or comments of a reasonable length; and
  - ii. (if the Disciplinary Committee decides in its discretion) appear before it either personally or by telephone or electronic means of communication to give evidence or present arguments regarding matters under consideration.

**34.** The Disciplinary Committee must give such an invitation at least 14 days before the date the disciplinary matter will be considered by the Disciplinary Committee. If the Member fails to give written submissions at least 48 hours before the time specified for the Disciplinary Committee's deliberations, or does not take up an invitation to appear, the Disciplinary Committee may make a decision without taking any further action to allow or enable the Member to participate. Where, after investigation and deliberation, a Disciplinary Committee determines that a Member falls within one or more of the disciplinary categories set out in Clause 30, the Disciplinary Committee may, upon passing a resolution specifying the reason for its action:

- (a) terminate the Member's membership of the AFA and remove the Member's name from the Register; or
- (b) suspend all or any of the Member's rights of membership; or
- (c) reprimand the Member in such other manner as the Disciplinary Committee deems appropriate at the time; and must notify the Member in writing of the resolution.

**35.** Any action taken pursuant to Clause 26 or 34 shall not affect the rights of the AFA to recover any Fees or other moneys owing to the AFA from the Member.

**36.** A Member who has been the subject of a decision by the Disciplinary Committee may, by serving written notice on the AFA at the Registered Office within 14 days of notice of the decision being sent, appeal the decision. Where a Member appeals the decision, the Board must appoint a further committee ("**The Review Committee**") of 3 members (one of whom must be a Director, and none of whom must have served on the original Disciplinary Committee) to review the matter. The Review Committee must give the same notice of meeting and opportunity for the Member to appear or make submissions as the Disciplinary Committee.

## Meetings of Members

**37.** The Board must call an extraordinary general meeting validly requested by:

- (a) a group of Members with at least 5% of the votes that may be cast at the extraordinary general meeting; or
- (b) 100 members or more, who are entitled to vote at the extraordinary general meeting, (in accordance with the Act).

**38.** The percentage of votes that Members have under Clause 37 is to be worked out as at midnight on the day before the meeting is called, which will typically be 14 days before the date of the meeting.

**39.** The Board may postpone, cancel or change the venue for an extraordinary general meeting, but a general meeting called pursuant to section 249D, 249E or 249F of the Act may not be cancelled or postponed in breach of any of those provisions or may only be postponed or cancelled with such consents of Members of the AFA as enable the general meeting to be lawfully postponed or cancelled.

**40.** A person's attendance at a general meeting:

- (a) waives any objection that the person may have to a failure to give notice, or the giving of an effective notice, of the meeting.

**41.** The Chair of a general meeting may refuse admission, or require to leave and remain out of the meeting, any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of an article considered by the Chair to be dangerous, offensive or liable to cause disruption;
- (c) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
- (d) who behaves or threatens to behave in a dangerous, offensive or disruptive manner;
- (e) who disrupts the meeting or demands to be heard for a period beyond what the Chair reasonably considers to be a reasonable period; or
- (f) who is not a member, or a proxy, attorney or representative of a Member, or an auditor of the AFA. An instrument appointing a proxy must be made in accordance with the Act.

## Sponsorship and Funding

**42.** The Board may approach businesses to support the AFA aims and purposes and shall prescribe any benefits that individual sponsorships can receive such as:

- (a) exhibition space, or
- (b) advertising materials

at National Conferences and/or other Forums conducted by the AFA.

Sponsorship supporters or their individual nominated representatives may be invited to serve on various committees that the Board may put in place providing that there is clear disclosure of any conflicts of interest that may arise.

**43.** The position of the Financial Adviser is unique. The Financial Adviser owes a professional duty towards clients and must act at all times in their best interest. By observing the highest ethical standards, the Financial Adviser can ensure their clients' mutual needs are satisfied.

- *Act in the best interest of my clients to extend their financial life and abide by the laws and regulations under which I conduct business.*
- *Strive to achieve the highest standards of professional competence by maintaining and improving my knowledge and skills.*
- *Hold in strictest confidence and consider privileged, all business and personal information pertaining to my clients' affairs.*
- *Present accurately, honestly and completely, every fact known to me which is essential to my clients' decision making.*
- *Use all ethical means to educate my clients about their present and future financial needs.*
- *To provide an appropriate level of service to my clients and their beneficiaries.*
- *Maintain high standards of personal and professional conduct to reflect favourably upon the profession of Financial Adviser and serve as an example to others.*