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## 7. CONSTITUTIONS

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*Chapter 7 sets out the general requirements with respect to constitutions of APX listed companies and the obligation to notify and provide details to APX of changes when they occur.*

### General requirements

7.1 A **listee** must have a **constitution** and the **constitution** (including any amendments to the **constitution**) must be consistent with these **Rules** and the **Listing Rule Procedures**, and the **listee** is responsible for ensuring that **constitution** meets the requirements of these **Rules** and the **Listing Rule Procedures**.

Cross reference: **Listing Rule Procedure 7.1**

7.2 A **listee's constitution** must not permit it to sell the **securities** of a holder who has less than the **minimum parcel** of those **securities** unless the **constitution** provides for the following:

- (a) the **listee** may do so only once in any 12 month period;
- (b) the **listee** must notify the **security holder** in writing of its intention;
- (c) the **security holder** must be given at least 6 weeks from the date the notice is sent in which to tell the **listee** that the holder wishes to retain the holding;
- (d) if the **security holder** tells the entity that the holder wishes to retain the holding, the **listee** will not sell it;
- (e) if a **takeover** is announced, the power to sell lapses at that time. However, the procedure may be started again after the close of the offers made under the **takeover**;
- (f) the **listee** or the purchaser must pay the costs of the sale; and
- (g) the proceeds of the sale will not be sent until the **listee** (where it is an issuer that uses paper certificates) has received any certificate relating to the **securities** (or is satisfied that the certificate has been lost or destroyed).

### Restricted securities

7.3 A **listee's constitution** must provide for each of the following:

- (a) **restricted securities** cannot be **disposed** of during the escrow period except as permitted by these **Rules** or **APX**;
- (b) the **listee** will refuse to acknowledge a **disposal** (including registering a transfer) of **restricted securities** during the escrow period except as permitted by these **Rules** or **APX**; and
- (c) during a breach of these **Rules** or **restriction agreement** relating to **restricted securities**, the holder of the **restricted securities** is not entitled to any dividend or distribution, or voting rights, in respect of the **restricted securities**.

Cross-reference: **Chapter 21, Appendix 21-1**

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## Managed investment scheme

- 7.4 A **managed investment scheme** which has rules in its **constitution** relating to the acquisition of **units** above a limit or **substantial holdings** must not have any sanctions or penalties in the **constitution** which entitle the **responsible entity** or any other party to enforce the rules.

Example: A **managed investment scheme** has rules in its **constitution** prohibiting anyone **acquiring** more than 15% of the **units** on issue without making an offer to all **unit** holders. The **constitution** must not have rules allowing enforcement of this prohibition.

A **managed investment scheme** has rules in its **constitution** saying that a person who acquires more than 80% of the **units** on issue may compulsorily acquire the outstanding **units**. The **constitution** must not have rules allowing enforcement of this right.

## Fixed interest securities

- 7.5 If a trust deed is required under the **Act** in relation to **fixed interest securities** or **convertible fixed interest securities**, that trust deed must comply with the requirements in the **Listing Rule Procedures**.

Cross reference: **Listing Rule Procedure 7.5**

## APX requirements

- 7.6 A **listee** must provide to **APX Announcement Office** a document setting out any changes to its **constitution** without delay after the change has been made, along with a letter stating that the changes comply with these **Rules**.
- 7.7 **APX** may:
- (a) request further information from the **listee** to confirm that the **constitution** complies with these **Rules**; and
  - (b) require a listee to make changes to its **constitution** if the **constitution** does not comply with these **Rules**.