

SOUTH AUSTRALIA

**PUBLIC CORPORATIONS (FUNDS SA SUBSIDIARY HOLDING  
CORPORATION) REGULATIONS 1998**

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**REGULATIONS UNDER THE PUBLIC CORPORATIONS ACT 1993**

*Public Corporations (Funds SA Subsidiary Holding Corporation)  
Regulations 1998*

being

No. 144 of 1998: *Gaz.* 18 June 1998, p. 2607<sup>1</sup>

<sup>1</sup> Came into operation 18 June 1998: reg. 2.

2.

**PART 1  
PRELIMINARY**

**Citation**

1. These regulations may be cited as the *Public Corporations (Funds SA Subsidiary Holding Corporation) Regulations 1998*.

**Commencement**

2. These regulations come into operation on the day on which they are made.

**Interpretation**

3. In these regulations, unless the contrary intention appears—

"**Act**" means the *Public Corporations Act 1993*;

"**board**" means the board of directors established as the governing body of the subsidiary under Part 3;

"**director**" means a person appointed or holding office as a member of the board under Part 3;

"**Funds SA**" means *Superannuation Funds Management Corporation of South Australia*;

"**securities**" includes shares, units in a trust, stock, debentures, bonds and unsecured notes;

"**the subsidiary**" means *Funds SA Subsidiary Holding Corporation* established under Part 3.

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**PART 2**  
**APPLICATION OF ACT**

**Application of Act**

4. (1) The following provisions of the Act apply to Funds SA:

- (a) Part 1 (*Preliminary*);
- (b) section 24 (*Formation of subsidiary by regulation*);
- (c) section 25 (*Dissolution of subsidiary established by regulation*);
- (d) the Schedule (*Provisions applicable to subsidiaries*).

(2) However, the Schedule of the Act does not apply to a company that is a subsidiary of Funds SA.

**PART 3**  
**FUNDS SA SUBSIDIARY HOLDING CORPORATION**

**DIVISION 1—ESTABLISHMENT AND CONSTITUTION OF SUBSIDIARY**

**Establishment of subsidiary (s. 24)**

5. (1) *Funds SA Subsidiary Holding Corporation* is established as a subsidiary of Funds SA.

(2) The subsidiary—

- (a) is a body corporate; and
- (b) has perpetual succession and a common seal; and
- (c) is capable of suing and being sued in its corporate name.

**Establishment of board**

6. (1) A board of directors is established as the governing body of the subsidiary.

(2) Anything done by the board in the administration of the subsidiary's affairs is binding on the subsidiary.

**Composition of board**

7. (1) The board consists of not more than five members appointed by the Treasurer.

(2) One director will be appointed by the Treasurer to chair meetings of the board.

(3) The Treasurer may appoint a director to be the deputy of the director appointed to chair the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.

(4) On the office of a director becoming vacant, a person may be appointed in accordance with this regulation to the vacant office.

(5) The Treasurer may appoint a suitable person to be deputy of a member of the board during any period of absence of the member (and any reference to a director in these regulations will be taken to include, unless the contrary intention appears, a reference to a deputy while acting as a member of the board).

**Conditions of membership**

8. (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and, at the expiration of a term of appointment, will be eligible for reappointment.

(2) The office of a director becomes vacant if the director—

- (a) dies; or
- (b) completes a term of office and is not reappointed; or
- (c) resigns by written notice to the Treasurer; or

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- (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (e) is convicted of an indictable offence; or
- (f) is removed from office by the Treasurer by written notice.

**Vacancies or defects in appointment of directors**

9. An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

**Remuneration**

10. A director is entitled to be paid from the funds of the subsidiary such remuneration, allowances and expenses as may be determined by the Treasurer.

**Proceedings**

11. (1) A quorum of the board consists of one-half the total number of its members (ignoring any fraction resulting from the division) plus one.

(2) The director appointed to chair the board will preside at meetings of the board at which he or she is present.

(3) If the director appointed to chair the board is absent from a meeting of the board—

- (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy; or
- (b) in any other case—a director chosen by the directors present at the meeting,

will preside.

(4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.

(5) Each director present at a meeting of the board has one vote on a question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.

(6) A telephone or video conference between directors will, for the purposes of this regulation, be taken to be a meeting of the board at which the participating directors are present if—

- (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
- (b) each participating director is capable of communicating with every other participating director during the conference.

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(7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—

- (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
- (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.

(8) The board must cause accurate minutes to be kept of its proceedings.

(9) A person authorised in writing by the Treasurer may attend (but not participate in) a meeting of the board and may have access to papers provided to directors for the purpose of the meeting.

(10) If the board considers that a matter dealt with at a meeting attended by a representative of the Treasurer should be treated as confidential, the board may advise the Treasurer of that opinion giving the reason for the opinion and the Treasurer may, subject to subregulation (11), act on that advice as the Treasurer thinks fit.

(11) If the Treasurer is satisfied on the basis of the board's advice under subregulation (10) that the subsidiary owes a duty of confidence in respect of a matter, the Treasurer must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.

(12) Subject to these regulations, the board may determine its own procedures.

### **Disclosure**

**12.** (1) Where the subsidiary discloses to the Treasurer in pursuance of the Act or these regulations a matter in respect of which the subsidiary owes a duty of confidence, the subsidiary must give notice in writing of the disclosure to the person to whom the duty is owed.

(2) A director of the subsidiary does not commit any breach of duty by reporting a matter relating to the affairs of the subsidiary to the Treasurer.

## **DIVISION 2—FUNCTIONS AND PERFORMANCE**

### **Functions of subsidiary**

**13.** (1) The subsidiary's functions are limited to the following:

- (a) to form, or participate in the formation of, subsidiary companies limited by shares under the *Corporations Law* or unit trusts to operate the Adelaide casino, the Hyatt Regency Hotel and the Riverside Building; and
- (b) to acquire, and sell or otherwise dispose of, interests in those subsidiary companies or unit trusts; and
- (c) to acquire, and sell or otherwise dispose of, other securities; and

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- (d) to do all acts necessary or convenient for enabling the subsidiary to carry out its functions in any foreign jurisdiction, including obtaining the registration or legal recognition of the subsidiary in foreign jurisdictions; and
- (e) to carry out other functions conferred on the subsidiary by Funds SA.

(2) The subsidiary must obtain the approval of Funds SA before it makes a material change to its policy direction or budget.

### **Charter**

**14.** (1) Funds SA must prepare a charter for the subsidiary after consultation with the Treasurer.

(2) The charter must address—

- (a) the nature and scope of the subsidiary's operations;
- (b) the subsidiary's obligations to report on its operations;
- (c) the form and contents of the subsidiary's accounts and financial statements;
- (d) any accounting, internal auditing or financial systems or practices to be established or observed by the subsidiary;
- (e) the acquisition or disposal of capital or assets.

(3) The charter may deal with any other matter not specifically referred to in subregulation (2).

(4) The charter must be reviewed by Funds SA at the end of each financial year.

(5) Funds SA may, after consultation with the Treasurer, amend the charter at any time.

(6) The charter, or an amendment to the charter, comes into force and is binding on the subsidiary on a day specified in the charter or amendment (but without affecting any contractual obligations previously incurred by the subsidiary).

(7) On the charter or an amendment to the charter coming into force, the Treasurer must, within 12 sitting days, have copies of the charter, or the charter in its amended form, laid before both Houses of Parliament.

### **Performance statement**

**15.** (1) Funds SA must, when preparing the charter for the subsidiary, also prepare, after consultation with the subsidiary and the Treasurer, a performance statement setting the various performance targets that the subsidiary is to pursue in the coming financial year or other period specified in the statement and dealing with such other matters as Funds SA considers appropriate.

(2) Funds SA must, after consultation with the subsidiary and the Treasurer, review the performance statement when reviewing the subsidiary's charter.

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(3) Funds SA may, after consultation with the subsidiary and the Treasurer, amend the performance statement at any time.

**Other subsidiary companies**

16. (1) Except as contemplated by regulation 13, the subsidiary must not, without the approval of the Treasurer—

- (a) form a subsidiary company; or
- (b) acquire, or enter into any arrangement under which it will at a future time or would on the happening of some contingency hold, relevant interests in shares in a company such that the company becomes a subsidiary of the subsidiary.

(2) The Treasurer may, as a condition of approval under this section, or by direction, require the subsidiary to take steps to include in a subsidiary company's memorandum or articles of association such provisions as the Treasurer considers appropriate—

- (a) imposing limitations on the nature or scope of the company's operations; or
- (b) imposing other controls or practices,

consistent with those applicable to the subsidiary.

**Indirect or joint operations**

17. Except as contemplated by regulation 13, the subsidiary must not, without the approval of the Treasurer, establish a trust scheme or a partnership or other scheme or arrangement for sharing of profits or joint venture with another person or undertake any operations or transactions pursuant to such a scheme or arrangement.

**DIVISION 3—FINANCIAL AND RELATED MATTERS**

**Internal audit**

18. (1) The subsidiary must, unless exempted by the Treasurer, establish and maintain effective internal auditing of its operations.

(2) The subsidiary must, unless exempted by the Treasurer, establish an audit committee.

(3) The audit committee will comprise—

- (a) a member of the board of the subsidiary, or such members of the board as the board may from time to time determine; and
- (b) such other person or persons as the board may from time to time appoint,

but may not include the chief executive of the subsidiary.

(4) The functions of the audit committee include—

- (a) reviewing annual financial statements to ensure that they provide a true and fair view of the state of affairs of the subsidiary; and
- (b) liaising with external auditors; and
- (c) reviewing the adequacy of the accounting, internal auditing, reporting and other financial management systems and practices of the subsidiary on a regular basis.

#### **Quarterly reports**

**19.** The subsidiary must report on its financial position to Funds SA (in a manner determined by Funds SA) on a quarterly basis or, if Funds SA so requires, on some other more frequent basis.

#### **Loans, borrowings, etc., require approval**

**20.** (1) The subsidiary must not lend or advance to any person any money, securities or property without the prior written approval of the Treasurer.

(2) The subsidiary must not borrow money or obtain any other form of financial accommodation unless authorised to do so by the Treasurer.

#### **Provision of information**

**21.** (1) The subsidiary must, at the request in writing of the Treasurer, furnish the Treasurer with such information or records in the possession or control of the subsidiary as the Treasurer may require in such manner and form as the Treasurer may require.

(2) If a record in the possession or control of the subsidiary is furnished to the Treasurer under this regulation, the Treasurer may make, retain and deal with copies of the record as the Treasurer thinks fit.

(3) If the board considers that information or a record furnished under this regulation contains matters that should be treated as confidential, the board may advise the Treasurer of that opinion giving the reason for the opinion and the Treasurer may, subject to subregulation (4), act on that advice as the Treasurer thinks fit.

(4) If the Treasurer is satisfied on the basis of the board's advice under subregulation (3) that the subsidiary owes a duty of confidence in respect of a matter, the Treasurer must ensure the observance of that duty in respect of the matter, but this subregulation does not prevent a disclosure as required in the proper performance of ministerial functions or duties.

(5) The subsidiary must notify Funds SA if a request is made under this regulation.

#### **Dividends**

**22.** (1) The subsidiary must, before the end of each financial year, after consultation with Funds SA, recommend by writing to the Treasurer that the subsidiary pay a specified dividend, or not pay any dividend, for that financial year, as the subsidiary considers appropriate.

(2) The Treasurer may by notice in writing to the subsidiary—

- (a) approve a recommendation of the subsidiary under subregulation (1); or
- (b) determine that a dividend specified by the Treasurer be paid, or that no dividend be paid,

as the Treasurer considers appropriate.

(3) The subsidiary must, if so required by the Treasurer by notice in writing to the subsidiary at any time during a financial year, after consultation with Funds SA, recommend by writing to the Treasurer that a specified interim dividend or specified interim dividends be paid by the subsidiary for that financial year, or that no such dividend or dividends be paid by the subsidiary as the subsidiary considers appropriate.

(4) The Treasurer may by notice in writing to the subsidiary—

- (a) approve a recommendation of the subsidiary under subregulation (3); or
- (b) determine that an interim dividend or interim dividends specified by the Treasurer be paid, or that no interim dividend be paid,

as the Treasurer considers appropriate.

(5) If the Treasurer approves a recommendation or determines under this regulation that a dividend or interim dividend or dividends be paid by the subsidiary, the dividend or interim dividend or dividends must be paid to Funds SA, in the manner and at the time or times determined by the Treasurer, after consultation with the subsidiary and Funds SA.

(6) A recommendation under this regulation must be made by the board and may not be made by any person or committee pursuant to a delegation.

#### **Common seal and execution of documents**

**23.** (1) The common seal of the subsidiary must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

(2) The board may, by instrument under the common seal of the subsidiary, authorise a director, an employee of the subsidiary (whether nominated by name or by office or title) or any other person to execute documents on behalf of the subsidiary subject to limitations (if any) specified in the instrument of authority.

(3) Without limiting subregulation (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the subsidiary.

(4) A document is duly executed by the subsidiary if—

- (a) the common seal of the subsidiary is affixed to the document in accordance with this regulation; or

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- (b) the document is signed on behalf of the subsidiary by a person or persons in accordance with authority conferred under this regulation.

**Annual report**

**24.** (1) The subsidiary must, within three months after the end of each financial year, deliver to Funds SA a report on the operations of the subsidiary during that financial year.

(2) Funds SA must incorporate the information contained in the subsidiary's report for a financial year in its annual report to the Minister for that financial year under the *Superannuation Funds Management Corporation of South Australia Act 1995*.