

IN THE SUPREME COURT OF WESTERN AUSTRALIA

CIV 2163 of 2020

**IN THE MATTER OF SECTIONS 89 AND 92 OF THE *TRUSTEES ACT 1962*
(WA)**

**IN THE MATTER OF THE GENERAL GUMALA FOUNDATION_TRUST
(ABN 50 336 714 927)**

EX PARTE:

**GUMALA INVESTMENTS PTY LTD (ACN 077 593 581)
AS TRUSTEE FOR THE GENERAL GUMALA
FOUNDATION_TRUST (ABN 50 336 714 927)**

Plaintiff

NOTICE OF ORIGINATING MOTION

Date of document: 25 November 2020

Date of filing: 25 November 2020

Filed on behalf of: The Plaintiff

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At the hearing below in the Supreme Court, the Plaintiff will apply for orders that:

1. Pursuant to the inherent jurisdiction of the Court, Clause 16.1 of the Consolidated Trust Deed be varied to read as follows (variation emphasised):

An annual general meeting of the Beneficiaries shall be held between 1st August and 31st December in each Accounting Period. *In the case of an emergency, natural disaster, health epidemic, or other potential risk to the health and safety of persons who may attend an annual general meeting, the Trustee may, acting reasonably, in good faith and in the best interests of the Beneficiaries, hold the annual general meeting after 31st December. All*

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general meetings other than the annual general meeting shall be called extraordinary general meetings.

2. Alternatively, pursuant to s. 89 of the *Trustees Act 1962* (WA), the necessary power be conferred on the Plaintiff to hold the Trust's 2020/21 AGM on a date later than that provided for in the Consolidated Trust Deed, to be by no later than 1 March 2021.
3. Alternatively, directions that the Plaintiff is justified in holding the AGM of the Trust outside of the period prescribed by the Consolidated Trust Deed.

And that the costs of and incidental to this application may be paid by: The Trust.

The grounds of the application are:

1. On 27 February 1997, the trust known as the General Gumala Foundation_Trust (ABN 50 336 714 927) (**Trust**) was created.
2. The Trust was created pursuant to cl. 2 of the General Gumala Foundation Trust Deed (**Trust Deed**).
3. Pursuant to cl. 2 of the Trust Deed, the Plaintiff was named trustee of the Trust.
4. The Trust Deed was amended on or around 26 May 2009 and 2011 (**Amendments**).
5. The Trust Deed was consolidated on 14 February 2012 (**Consolidated Trust Deed**) to incorporate the Amendments.

6. Pursuant to cl. 16.1 of the Consolidated Trust Deed, the Plaintiff is required to convene an Annual General Meeting (**AGM**) between 1st August and 31st December in each financial year.
7. For the reasons set out in the supporting affidavit, it is expedient, impractical, difficult and of serious concern for the Plaintiff to convene the AGM for the 2020/21 financial year as required by the Consolidated Trust Deed.
8. This Honourable Court has the inherent jurisdiction to vary a trust on the grounds that there is a peculiar or emergency state of circumstances which has arisen for which provision has not been expressly made in the trust instrument and which is desirable and for the benefit of the Trust and Beneficiaries.
9. Further, s. 89 of the *Trustees Act 1962* WA (the **Act**), where additional powers may be conferred on a trustee when an “expenditure or other transaction”, namely postponement of the AGM, would be:
 - (a) expedient in the management or administration of any property vested in a trustee; or
 - (b) in the best interests of the majority of persons beneficially interested under the trustand it is inexpedient, difficult or impracticable to affect the transaction without the assistance of the Court, or there is an absence of power vested in the trustee by the trust instrument.
10. On 15 March 2020, the Honourable Francis Michael Logan, Minister for Emergency Services, declared a state of emergency in respect of the pandemic

caused by COVID-19. The state of emergency applies to the entire State of Western Australia, restricts movement and gatherings within the State, and substantially affects the ability of the Plaintiff to plan the 2020/21 AGM.

11. Given the inexpediency, impracticalities, difficulties and serious concerns of the Plaintiff to hold the AGM during the period 1 August 2020 to 31 December 2020, in compliance with cl. 16.1 of the Consolidated Trust Deed, the Plaintiff seeks an order:
 - (a) varying the Consolidated Trust Deed; or alternatively,
 - (b) conferring a power on the Plaintiff to hold the AGM for the 2020/21 financial year outside the period prescribed by cl. 16 of the Trust Deed.
12. Alternatively, s.92 of the Act provides that this Honourable Court may give directions respecting the management or administration of trust property, or exercise of any power or discretion vested in the trustee.
13. If this Honourable Court is not prepared to make an order varying the Consolidated Trust Deed, or to confer a power on the Plaintiff to hold the AGM at a later time, given the inexpediency, impracticalities, difficulties and serious concerns of the Plaintiff to hold the AGM during the period 1 August 2020 to 31 December 2020 in compliance with cl. 16.1 of the Consolidated Trust Deed, the Plaintiff seeks a direction that it is justified in holding the AGM of the Foundation outside of the period prescribed by the Consolidated Trust Deed.
14. This application is supported by an affidavit setting out the grounds of the application.

15. It is proposed that the Beneficiaries will be notified of this application, the proposed deferral and Court date by an SMS, which will refer them to a notice on the websites of the Plaintiff and GAC. If Orders are made, the Beneficiaries will also be informed of any Orders via SMS and notice on the websites of the Plaintiff and GAC.

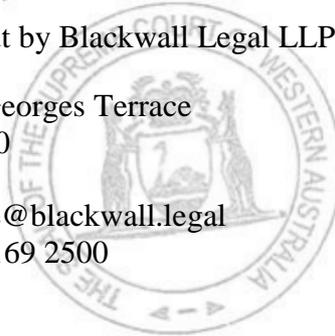
Dated 25 November 2020

Hearing details

The court will hear this application on _____ at _____ at the Supreme Court, David Malcolm Justice Centre, 28 Barrack Street, Perth.

This notice was taken out by Blackwall Legal LLP, whose address for service is –

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