

PHARMACEUTICAL ASSOCIATION OF MALAYSIA

(Reg. No: PPM-001-10-19061972)

RULES & CONSTITUTION

1. NAME

The name of the Association is:
PHARMACEUTICAL ASSOCIATION OF MALAYSIA
(PERSATUAN FARMASEUTIKAL MALAYSIA)

2. PLACE OF BUSINESS

The registered office of the Association shall be at
Block C, No. C-18-2, 3 Two Square
(Dataran 3 2), No. 2, Jalan 19/1,
46300 Petaling Jaya

or at such other place as the Board of the Association may from
time to time decide. The registered place of business of the Association
shall not be changed without the prior approval of the Registrar of Societies.

3. LOGO



Pharmaceutical Association of Malaysia
Persatuan Farmaseutikal Malaysia

4. DEFINITIONS

In these Rules, the words in the first column of the Table shall bear the meanings set opposite them in the second column, as follows:

'Association'	PHARMACEUTICAL ASSOCIATION OF MALAYSIA
'Board'	The Board of Directors of the Association elected in the manner prescribed by these Rules.
'Company'	Any incorporated company or body corporate constituted under the laws of Malaysia or any foreign country including their operational or promotional offices established in Malaysia.

‘Firm’	Two or more persons carrying on business in partnership together and registered as such with the Registrar of Business.
‘General Meeting’	A general meeting of the Association
‘Member’	<p>“Members” means any firm or company admitted as an ordinary member in accordance with the provisions of Rule 6 and also includes an associate member unless the context provide otherwise.</p> <p>“Associate member” means any person, firm or company admitted as an associated member in accordance with Rule 6.</p> <p>“Membership” means membership of both an ordinary member and an associate member unless the context provides otherwise.</p>
‘President’	President of the Board of the Association.
‘Representative’	Any person appointed by the Member to exercise the rights and privileges of membership of the member, such appointment being in writing signed by such member or the agent of such member duly authorized to do so, and registered with the Secretary of the Association.
‘Rules’	These Rules of the Association for the time being in force.
‘Secretary’	The person or firm appointed as Secretary or Secretaries of the Association.

Words imparting the singular number shall include the plural number and vice-versa; words imparting the masculine gender shall include the feminine and vice-versa, and words denoting persons shall include bodies corporate.

5. OBJECTIVES

- i) To promote at all times the value of the pharmaceutical and healthcare products of an ethical industry providing quality products which are readily available for proper use in the prevention and treatment of human and animal diseases resulting in a better quality of life.
- ii) To make every endeavor to maintain and enhance the reputation of the industry and its contribution to public health and welfare, and to assist and

cooperate with Government and other appropriate bodies and authorities on such matters.

- iii) To formulate a Code of Ethics and schemes for regulating the conduct of members in keeping with the best traditions of the industry.
- iv) To take concerted action as one body in matters affecting the pharmaceutical industry and its members and to make representations to Government on the effect of legislation or regulations that Government may introduce from time to time.
- v) To encourage the provision of adequate qualified manpower for the pharmaceutical industry and to upgrade the skills and knowledge of industry staff especially medical representatives.
- vi) To promote co-operation between its members and when the need arises, to help in settling disputes arising between them upon request by the members concerned.
- vii) To take any lawful action incidental or conducive to the attainment of the objective of the Association.
- viii) To collect and circulate statistics and other information relating to the pharmaceutical trade and industry as may be of service and interest to members.
- ix) To hold shares or invest in, and to acquire, lease, and to manage, conduct or undertake the business of management or otherwise howsoever direct the operations of any business, company, corporation, firm or any enterprise, undertaking or venture, and generally to undertake any of the business of a holding or management company. All moneys and profits accruing to the Association from participation in any investment or business shall be applied solely towards the furtherance, promotion and execution of the objects of the Association and no portion thereof shall be paid by way of dividend, bonus or profit to any member of the Association, provided that nothing herein expressed or contained shall prevent the payment in good faith of remuneration or expenses or both to any officer or servant of the Association, or to any member for the services actually rendered by him or them to the Association.
- x) To provide the means of implementing the ideals and projects of the Association by acquiring any movable or immovable property in Malaysia as the Association may from time to time think proper to acquire and to improve, manage, develop, exchange, lease, mortgage, dispose of or otherwise deal with all or part of the property of the Association.
- xi) To borrow or raise any moneys required for the purpose of the Association upon such items and in such manner and upon such securities as the

Association may determine and particular by the issue of debentures or debenture stock charged upon all or any of property of the Association.

6. MEMBERSHIP

A. Ordinary Members

Ordinary members shall consist of firms or companies engaged in pharmaceuticals as manufactures, agents, representatives or distributors in Malaysia, who have been approved by the board of the Association.

B. Associate Members

Associate members shall consist of individuals, firm, or companies which are not eligible for ordinary membership. An associate member shall have the rights and duties of an ordinary member save that he shall not be entitled to vote at General Meeting of the Association nor be appointed or elected as a member of the Board managing the affairs of the Association.

C. General

- i. Application for membership shall be made in writing to the Secretary in a prescribed form.
- ii. Every individual, firm or company who has accepted the invitation of the Board to join the Association and paid the required Entrance Fee and the subscription, shall ipso facto and without election, be made a member of the Association.
- iii. Any firm or company eligible for election shall become a Member in its conventional or corporate name.
- iv. Members other than individuals shall be presented by one person each and shall notify the Secretary in writing of the name of representative who is to attend meetings on their behalf. Nominations of representatives shall be entered in a Register and shall hold good until revoked.

D. Dual Membership

- i. Ordinary and Associate members shall not be members of any similar or competing bodies within the pharmaceutical industry in order to avoid any potential conflict of interest.

- ii. Exemptions can be granted by the Board of Directors if the member company make a declaration of the member company's other membership.

E. Honorary Membership

The Board of Directors may confer Honorary Membership to deserving individuals who have, in their opinion, contributed to the development of the pharmaceutical industry.

7. ELECTION OF MEMBER

- i. Candidates for election as members shall be proposed by one Member and seconded by another. The proposal shall be in writing signed by or on behalf of the Proposer and Seconder and shall state such particulars as the Committee may from time to time by Rules direct.
- ii. Notice of the Proposal shall be circulated by the Secretary to the members of the Board prior to the date of the Board Meeting at which the proposal is to be considered.
- iii. Each proposal for election shall come before a meeting of the board and shall be subject to the approval of the majority of the Members of the Board present and voting at the meeting. Should a proposal be rejected by the majority of the Members of the Board, the Candidate, Proposer and Seconder shall be so notified and the Board shall not be bound to give any, reasons.
- iv. The Board shall not accept for membership any individual, firm or company if the said applicant or its representative:
 - a) Holds membership in an organisation or association whose objectives are in the opinion of the Board to be in a conflict with those of the Association;
 - b) Is engaged directly or indirectly in any business or activities that may be injurious to the reputation or interest of the Association.

8. ENTRANCE FEE AND SUBSCRIPTION

- i. An Entrance Fee, '*the rate as determined by the Board from time to time*' for ordinary members and for associate members is payable within two weeks of election to membership, in default of which, membership may be cancelled by order of the Board, Entrance Fee paid shall not be refundable.

- ii. The annual subscription for Ordinary Members shall be such sums as the Members in General Meetings may from time to time prescribe.
- iii. The subscription for Associate Members, *the rate as determined by the Board from time to time* shall be payable on the 1st day of January of each year.

9. RESIGNATION

Any member who wishes to resign from the Association shall give two weeks' notice in writing to the Secretary and shall pay up all dues.

10. CESSATION OF MEMBERSHIP

- i) A member shall cease to be a Member of the Association if:
 - a) Being an individual Member he dies or he is adjudicated bankrupt or he makes or enters into any arrangement or composition with his creditors;
 - b) Being the firm, a Receiving Order is made against the firm;
 - c) Being a company, a resolution is passed or an order of the Court is made for the winding-up of the company.
 - d) The subscription payable by the Member is three months in arrears and the Member fails to pay within one month from the date of a written notice sent to him by the Secretary. The Board shall be empowered to waive the operation of this Rule and may restore the full benefits of the membership on full payment of arrears;
 - e) The Member resigns;
 - f) Being an Ordinary member, he ceases to engage in pharmaceutical business as defined in Rule 6A(1).
 - g) In the case of foreign company as defined in the Companies Act 1965, and any amendments thereto, that foreign company is de-registered;
 - h) Its membership is terminated by the Board under Rule 10.B.
- ii) Every member shall be bound by the Board of Directors' decision in matters relating to his rights, obligation, duties and privileges as a member of the Association. If a member resorts to court proceedings in respect of his rights, obligations, duties and privileges or on behalf of any other members or in respect of the rendering or meaning of the provisions of this Constitution without first exhausting all avenues for appeal within the

Association, he shall also cease to be a member of the Association and shall not be entitled to exercise any of the rights of a member.

- iii) The decision of the Board as to whether any Member comes within the provisions of this Rule shall be final and binding on the Member concerned.
- iv) Any member who ceases to be a Member in accordance with this Rule shall be liable to pay all dues owing by him to the Association at the date of so ceasing to be a Member.
- v) A firm shall not cease to be a Member by reason only of a change in its constitution occasioned by the admission or retirement or death of a partner, provided the business of the firm is carried on under the conventional name of which it became or was elected a Member.
- vi) If by reason of death or retirement there remains only one surviving or continuing partner of a firm, and that surviving partner acquires and continues the business in the original name, he may on application and without election be registered as a Member in place of the firm, provided application for registration is made within one month after the dissolution of the firm.

10.A Suspension of Membership

If any member in the opinion of the Board is found guilty of conduct derogatory to the dignity of or injurious to the reputation or interest of the Association not to an extent for consideration under Section II – Expulsion, the Board may suspend such member for a specified period. At the end of the period of suspension the Board may upon application by the member, restore the full benefits of membership on full payment of arrears of all dues and subscriptions.

10.B Termination of Membership

- i) The Board shall have the power to terminate the membership of any Member if such Member or its representative is found to:
 - a) Hold membership in any organisation or association whose objectives are in the opinion of the Board to be in conflict with those of the Association;
 - b) Is engaged directly or indirectly in any business or activities that may be injurious to the reputation or interest of the Association.

and such Member shall henceforth cease to be a member of the Association.

- i) However, before the Board terminates the membership of a Member, the Board shall inform the Member of the allegation against the Member in writing and shall hold an inquiry on the allegation and give the member an opportunity to explain or answer the allegation against the Member. If within two weeks of service of such notice the member has not responded in writing, the Board shall proceed with the termination of the membership of the Member.

11. EXPULSION

- i. If any Member in the opinion of the Board fails to conform to any of the Rules and regulations of the Association, or is found guilty of conduct derogatory to the dignity of or injurious to the reputation or interests of the Association, the Board may by notice invite such Member to resign. Such notice shall state generally the grounds on which the invitation is based. If within two weeks of service of such notice the Member concerned has not resigned, the Board may convene an Extra-Ordinary General Meeting to consider the expulsion of such Member.
- ii. At such Extra-Ordinary General Meeting, the Member who is proposed to be expelled, and in the case of such Member being a firm or company, then a representative of such firm or company shall be permitted to address the meeting or to require the Chairman of the Meeting to read to the Meeting a written statement with regard to the matter complained of.
- iii. If two-thirds of the Members present and voting at such meeting are in favour of expelling such Member, such Member shall be expelled accordingly and shall henceforth cease to be a Member of the Association. The voting shall be by ballot if not less than five Members present so demand.
- iv. A member expelled from the Association under this Rule may not be proposed for re-election as a Member until a period of three years has elapsed since the date of expulsion.

12. ELECTION OF BOARD MEMBERS

- i. Each Board member shall be proposed and seconded on a prescribed Nomination Form signed by the proposing and seconding Ordinary Members and also by the Candidate signifying his willingness to serve if elected, and this should reach the Secretary or Secretaries 14 days before

the date of the Annual General Meeting in the year of election. A list of nominations shall be circulated to all Members 7 days before the Annual General Meeting.

- ii. The Immediate Past President will automatically elected to the Committee for 2 years.
- iii. In the event that there are less than eleven nominations, other nominations may be put at the Annual General Meeting on the prescribed Nomination Forms, each duly signed by the proposer, seconder and candidate.
- iv. Eleven Board Members shall be elected by secret ballot at the Annual General Meeting and they shall hold office for a 2 year term when they shall retire and shall be eligible for re-election. The Immediate Past President will be the 12th member of the Board. Should the Past President due to unforeseen circumstances be unable to hold the post, the 12th Board Member may either be elected or co-opted depending on the circumstances. The 13th Board Member will be subsequently appointed by the Board.
- v. The President is empowered to proposed up to two (2) additional Directors provided that such appointment is agreeable to the majority of the Board of Directors during the term of his office. In deciding on the appointment, the President shall abstain from voting. This two (2) additional Directors will not have any voting rights in the Board.
- vi. Ordinary member companies can propose their own Country Head or the Country Head of another member company as a candidate for election to the Board of Director. The proposal needs to be seconded by 2 other member company if it is a self-nomination or by 1 if it is a nomination through another company. The proposal can be made either by way of a form provided by the association or by e-mail with mail confirmation from the seconder. The position of Country Head would vary from member company to member company and would include CEO, Managing Director, General Manager, Country President, Head of Division and similar designation and in all situations what would be considered as Country Head would be decided by the member company themselves.

13. ELECTION OF PRESIDENT AND VICE-PRESIDENTS

The elected Board members among themselves shall elect the President and the two Vice-Presidents.

14. MANAGEMENT

- i. The affairs of the Association shall be managed by a Board consisting of the following:
 - A President
 - Two Vice Presidents
 - An Immediate Past President
 - Nine Directors of the Board, one of whom will be appointed by the Board of Directors from ordinary members of the Association.
- ii. The Board shall appoint an individual or professional firm of accountants to act as Secretary and Treasurer or Secretaries and Treasurers of the Association, and shall have power from time to time to appoint and remove the Secretary or Secretaries, solicitors, technical advisers or any other persons employed by the Association, and also to delegate all or any of its powers to any such persons or to any one or more of the Officers of the Association and/or Members of the Board.
- iii. In cases where the Association has been granted by Government the privilege to nominate persons to any public body, the right of nomination shall be entrusted to the Board who shall be empowered to make such rules and regulating as it may deem necessary.
- iv. The Board alone can authorise all expenditure on behalf of the Association.
- v. The Board shall have power to make any by-laws it considers necessary to give effect to these Rules provided such by-laws are approved by the Registrar of Societies.
- vi. The Board of the Association shall hold meetings as and when it deems necessary and five shall form a QUORUM for all purposes.
 - a) A resolution posted or circulated to all members of the Board and agreed in writing by a majority of them shall have the same effect as a resolution carried at a meeting of the Board.
- vii. The Board shall have power to appoint Committees who shall be responsible to the Board.
- viii. The Immediate Past President will assist the President or Vice President in their duties and advise the Board as and when necessary.
- ix. Any documentation of contracting, change or removal of treasures, secretaries or advisors shall be approved by the Board of Directors and copy of document received by each Board of Directors member to ensure continuity of documentation. Any new Board of Directors will receive this current contracts.

15. VACATION OF OFFICER OF DIRECTOR OF THE BOARD

A. Director of the Board shall vacate officer:

- a) if he becomes of unsound mind;
- b) if he ceases to be a Member or a representative of a Member of the Association;
- c) if he has a Receiving Order made against him or he compounds with his creditors generally;
- d) if by notice in writing he resigns his offices;
- e) if he absents himself from three consecutive Board Meetings without leave of absence from the Board and the Board passes a resolution that he has by reason of such absence vacated his office;
- f) if he be removed from office by a resolution of the Members at a General or Extra-ordinary General Meeting.

16. ALTERNATE DIRECTOR OF THE BOARD

- i. A Director of the Board may from time to time appoint in writing any other person to be his alternate, provided the person so appointed is an employee of the Member firm or company and such appointment is approved by the Board.
- ii. The appointer shall be responsible to the Association for all acts done or omitted to be done by his alternate. The appointment may be revoked at any time by the appointer or by resolution of the Board. Any appointment or revocation under this Rule shall be effected by notice in writing to be delivered to the Secretary. The alternate member shall ipso facto vacate office if and when his appointer ceases to be a Director of the Board.

17. VACANCIES IN THE BOARD

- i. In case a casual vacancy occurs the continuing Directors of the Board may appoint an ordinary Member of the Association to fill such vacancy.
- ii. The continuing Directors of the Board may act notwithstanding any vacancies, but if and so long as the number of Board Members is reduced below five, the continuing Board Members may act for the purpose of electing new Board Members to fill such vacancies or of summoning a General Meeting of the Association, but not for any other purpose. If there be no Board Members able or willing to act, then any two Ordinary Members of the Association may summon a General Meeting for the purpose of electing Board Members.

18. GENERAL MEETING

- i. An Annual General Meeting shall be held as soon as possible after the end of each financial year, but not later than three months after the date, to consider the Annual Report of the Board, to receive and approve the audited annual accounts of the financial year, to elect Board Members every 2 years and to appoint Hon. Auditors and any other business of which due notice has been given seven days before the date of the Annual General Meeting. Four weeks' notice in writing of an Annual General Meeting shall be given to each member.
- ii. An Extra-Ordinary General Meeting may be convened by the Board and the Board must call for such meeting and the requisition in writing of ten or more ordinary Members. At least one week's notice shall be given to each Member for such meeting.
- iii. No business shall be transacted at any General Meeting unless a QUORUM is present. ONE QUARTER OF THE ORDINARY MEMBERSHIP SHALL BE A QUORUM FOR ALL PURPOSES. If within half-an-hour from the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of ordinary members, shall be dissolved. In other cases, it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present, then those present shall constitute a quorum, but they shall have no power to alter, amend or make additions to any of the existing Rules.

19. PROCEEDINGS AT GENERAL MEETING

- i. At all General Meetings, the President or in his absence the Vice-President, shall take the Chair. If the President or Vice-President be absent, a member of the Board shall be elected for the purpose.
- ii. Every ordinary Member (or his proxy) present, shall be entitled to one vote upon each motion before the Meeting and each motion shall be decided by a show of hands and in case of an equality of votes the Chairman of the Meeting shall have a second or casting vote.
- iii. Each Ordinary member will be permitted to hold only a maximum of five (5) proxy votes during the Meeting.

20. FUNDS & FINANCE

- i. The Financial Year of the Association shall end on 31 December.

- ii. All funds of the Association shall be deposited in a bank or banks approved by the Board and the Bank account or accounts shall be in the name of the Association.
- iii. The Board shall have power to control all funds and the signatories authorized to operate the accounts shall be determined by the Board.
- iv. Proper accounts shall be kept by the Secretary/Treasurer (or Secretaries/Treasurers). An auditor or auditors, who should not be a Board Member shall be appointed at each Annual General Meeting. The auditors shall hold office for one year only and shall not be re-elected unless he or they are registered Public Accountants. In addition to the financial duties, the Secretary/Treasurer shall also take charge of administrative functions and shall keep a Membership Register.

21. TRUSTEES

Three trustees shall be appointed from amongst the Members at the Annual General Meeting and shall hold office during the pleasure of the Association. They shall have vested in them all immovable property whatsoever belonging to the Association and shall deal with them in such manner as the Board may direct. The Trustee shall not sell, withdraw or transfer any of the property of the Association without the consent and authority of the Board. A Trustee may be removed from office by the Board on the grounds that owing to ill-health, unsoundness of mind, absence from Malaysia or for any other reason he is unable to perform his duties or is unable to do so satisfactorily. In the event of the death, resignation or removal of a Trustee before the Annual General Meeting, the vacancy shall be filled by the Board until a new Trustee shall have been appointed at the Annual General Meeting.

Any Trustee removed from office under this rule shall have the right to appeal at the Annual General Meeting, and the decision arrived there at shall be final.

22. INDEMNIFICATION OF OFFICERS

The Board and any other representative of the Board or Sub-Committee which may be duly constituted and the Members thereof while acting as a body or individually in the performance of their duties as such, and the Secretary or Secretaries, shall at all times be indemnified out of the funds, property or assets of the Association against the consequence of the performance of any act, deed, matter or thing done or omitted to be done by the aforesaid Board or Committee or their Members while so acting and the

Secretary or Secretaries in respect of or in connection with the business of the Association.

23. PROHIBITIONS

- i. The funds of the Association shall not be used to pay the fines of Members who have been convicted Court.
- ii. The Association shall not hold any lottery, whether confined to its Members or not in the name of the Association or Office-bearers or Board Members.
- iii. The Association shall not indulge in any political activities or allow its fund and/or premises to be used for political purposes.
- iv. Gambling of any kind whether for stakes or not, is forbidden in the Association's premises. The introduction of materials for gambling or of dangerous drugs and of bad characters into the Association's premises is prohibited.

24. AMENDMENT OF RULES

Amendments to Rules and Constitution can only be made at a General Meeting with 2/3 majority vote and they shall not come into force without the approval of the Registrar of Societies, Malaysia.

25. INTERPRETATIONS OF RULES

Between general meetings, the Board should have power to interpret the Rules and to determine any point in which the Rules are silent. The decision of the Board shall be binding on all members until and unless countermanded by a general meeting.

26. DISSOLUTION

- i. The Association shall not be dissolved except by a resolution passed by a majority of three-fifths of the ordinary Members expressed either in person or by proxy at a General Meeting convened for a purpose, and in such event the Board shall thereupon, or at such future date as shall be specified in such resolution proceed to wind up the Association.
- ii. The assets of the Association after all liabilities shall have been paid shall be distributed to Members in a proportion to be determined by the majority of ordinary members at an Extra-ordinary General Meeting according to the duration and class of Membership. Notice of dissolution shall be given within fourteen days of the dissolution to the Registrar of Societies.

27. COMPETITION LAW GUIDELINES

(Guidelines for members which comply with the Competition Act 2010)

Introduction

All representatives and participants at inter-company meetings must be aware of, and comply with, the Competition Act 2010 (“the Act”). These Guidelines should be kept in mind when communicating or dealing with PhAMA members generally.

The Act imposes penalties on corporations and individual managers for anti-competitive behavior. The provisions of the Act apply to both formal and informal interactions, discussions and any arrangements or “common understandings” on competition sensitive topics reached between PhAMA and its members, or between members. This means that particular care needs to be taken at informal gatherings between competing companies, as an arrangement or an understanding may arise during the course of informal discussions and can be formed on a “nod and a wink”.

IMPORTANT: This is only a general guide and is not a substitute for legal advice. If in doubt, members should obtain prior legal advice about any of these issues.

Legitimate subjects for discussion by competitor companies

It is generally legitimate for competitor companies to discuss the following matters:

i. General Industry Issues

- (a) industry reports and analysis;
- (b) new product and technology development not specific to one member;
- (c) regulatory issues;
- (d) government lobbying on industry issues for example on Privacy policy;
- (e) population issues, e.g. ageing, regional issues.

ii. Product/Services Specific issues

Members may also discuss issues regarding the products and services provided by its members generally “as an industry”, such as:

- (a) industry wide statistics;
- (b) regulatory issues;
- (c) industry advertising;

- (d) government lobbying;
- (e) new developments and innovations;
- (f) studies regarding different pharmaceuticals and advances in those pharmaceuticals.

iii. **Matters which competitor companies should NOT discuss**

1. Prohibited Topics: pricing, discounts, formulae

Competitor companies must not discuss any matter which relates to the pricing or discounting of:

- (a) specific pharmaceutical products and services supplied by competitor companies in competition with another member;
- (b) specific products or services purchased by any of competitor companies in competition with another company.

It is safest to avoid all discussions of individual pricing/formula for any specific product.

Competition Act Risk:

There is a high risk that any discussion between competing companies concerning individual product pricing could form the basis of an understanding between competitors which fixes, controls or maintains the price of goods or services acquired or supplied by them (**“price fixing understanding”**). Such an understanding automatically breaches the Act.

There are exceptions to the prohibitions on price fixing understandings under the Act, however they are complex. Accordingly, it is safest to avoid discussing pricing policies altogether so as to ensure compliance with the Act.

Further, there is a high risk that such discussions could form the basis of an anti-competitive agreement, which is expressly prohibited by the Act.

2. Prohibited Topic: Restrictions on Dealing

Competing companies must not discuss any restrictions or limitations on:

- (a) the persons to whom they may market their products and services;

- (b) the persons to whom they may supply or re-supply their services;
- (c) the types of services that members will supply or re-supply or provide to particular persons or classes of persons

“Persons” here includes identified persons and corporations (e.g. a particular pharmacy or wholesaler), and classes of persons or corporations (e.g. types of account, pharmacies located in specific regions).

Competition Act Risk:

There is a high risk that any such discussion will form the basis of an understanding between competing companies which restricts or limits the supply of goods or services to particular persons or classes of persons. Such an understanding is automatically prohibited by the Act.

As with the prohibitions on price fixing above, there are exceptions to the prohibition on restrictions on dealing, however they are complex. Accordingly, it is safest to avoid discussing any restrictions or limitations on dealing so as to ensure compliance with the Act.

3. Prohibited Topic: Commercially Confidential Information

Competitor companies must not disclose or discuss any commercially sensitive or competitively significant information such as their individual company plans or future projects with other competitor companies.

Competition Act Risk:

There is a risk that any such discussion can form a basis on which competing companies can misuse that information for their own advantage so as to damage other competitors. Such misuse of information is prohibited by the Act.

There is also a risk that such discussion can constitute price signaling.

It is safest to avoid discussing commercially confidential information so as to ensure compliance with the Act.

4. Prohibited Topic: Discussion about Non-Member Competitors

Competing companies must not discuss plans or strategies with an intention or in manner which may by implication show

a purpose to affect or be against the interests of other competitor organisations, which are not members of PhAMA.

Competition Act Risk:

The risks under the Act which are applicable to discussion of commercially confidential information above are applicable to discussion about non-member competitors.

In addition, such discussions may form the basis of anti-competitive agreements which automatically breach the Act.

5. Prohibited Topic: Procurement/Sourcing goods or services

Competing companies must not discuss any restrictions or limitation(s) on:

- (a) the persons or class of persons from whom its members
Will acquire any goods or services;
- (b) the types of goods or services its members will acquire
from a particular persons or classes of persons.

“Persons” here includes individual people and corporations.

Competition Act Risk:

There is a high risk that any such discussion will form a basis of an understanding between competitor companies which restricts or limits the acquisition of goods or services from particular persons or classes of person. Such an understanding is automatically prohibited by the Act.

6. Prohibited Topic: Collectively negotiate the acquisition of goods or services

PhAMA must not seek to collectively negotiate on behalf of its members for the acquisition of goods or services by them, or for the provision of services, unless prior approval has been obtained from the relevant regulatory body or legal advice obtained.

PhAMA and its members may hold discussions on these issues only insofar as they relate to proposals to prepare joint submissions to government bodies or relevant regulatory authorities seeking permission to engage in otherwise prohibited conduct and on the basis that the implementation of any agreement, arrangement or understanding to

engage in such conduct only occurs following the obtaining of such approval.

Competing companies must not discuss any restrictions or limitation on:

- (a) the persons from whom its members will acquire any goods or services;
- (b) the types of goods or services its members will acquire from a particular persons or classes of persons.

Competition Act Risk:

There is a high risk that any such discussion will form a basis of an understanding between competitor companies which restricts or limits the acquisition of goods or services from particular persons or classes of person.