



# Notice of Annual General Meeting

## Chairman's Letter

27 September 2023

Dear Shareholder

I am pleased to invite you to the FOS Capital Limited (FOS) 2023 Annual General Meeting (**Meeting** or **AGM**), which will be held at the offices of William Buck, Level 20, 181 William Street, Melbourne, VIC 3000, at 11.00am (AEDT) on Thursday the 2nd November 2023.

Registration for the AGM will commence from 10.45am (AEDT).

This notice contains details on the items of business to be considered at the Meeting, as well as explanatory notes on the resolutions being put forward for you to consider and vote upon. There is also some information on the voting procedures for this Meeting.

The business of the meeting includes a proposal for the re-election of non-executive Director Alexander Beard. At the meeting you will also have the opportunity to vote on the adoption of the Remuneration Report, to approve additional placement capacity as well as to ask questions to the FOS Capital board and the auditor.

If you are unable to attend the Meeting, you may either lodge a direct vote or appoint a proxy to vote on your behalf at the Meeting, by completing and lodging the enclosed Proxy Form in accordance with the instructions on the form.

Proxy Forms must be received by 11am (AEDT) on 31 October 2023, being no later than 48 hours before the commencement of the Meeting.

The FOS Capital 2023 Annual Report can be accessed online at [www.foscapital.com.au](http://www.foscapital.com.au)

I and my fellow Directors look forward to meeting you on 2 November 2023.

Yours sincerely

Alexander Beard  
Chairman

## NOTICE OF ANNUAL GENERAL MEETING

Notice is hereby given that the Annual General Meeting of the Shareholders of FOS Capital Limited (ACN 637 156 275) ("Company") will be held at 11.00am (AEDT) on Thursday, 2 November 2023.

An Explanatory Statement accompanies this Notice of Meeting to provide Shareholders with information to enable them to make an informed decision regarding the resolutions set out in this Notice of Meeting. The Explanatory Statement is to be read in conjunction with, and forms part of, this Notice of Meeting.

### Business of Meeting

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#### 1. Annual Financial Report and Director's and Auditor's Reports

To receive and consider the Annual Financial Report of the Company for the financial year ended 30 June 2023 together with a declaration of the directors, and accompanying reports of the director's and the auditor's.

*Note: there is no requirement for Shareholders to approve these reports and financial statements.*

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#### 2. Resolution 1 - Non Binding Resolution to adopt Remuneration Report

To consider and, if thought to pass, with or without amendment, the following resolution as an ordinary resolution:

"That, for the purposes of section 250R(2) of the Corporations Act and for all other purposes, approval is given for the adoption of the Remuneration Report as contained in the Company's Annual Financial Report for the financial year ended 30 June 2023."

*Note: the vote on this Resolution is advisory only and does not bind the Directors or the Company.*

The Board recommends shareholders to vote in favour of resolution 1.

#### Voting Exclusion Statement

The Company will disregard any votes cast on item 2:

- (a) a member of the Key Management Personnel, details of whose remuneration are included in the Remuneration Report; or
- (b) a Closely Related Party (as that term is defined in the Corporations Act) of such a member.

However, a person (the voter) described above may cast a vote on this Resolution as a proxy if the vote is not cast on behalf of a person described above and either:

- (c) the voter is appointed as a proxy by writing that specifies the way the proxy is to vote on this Resolution; or
- (d) the voter is the Chair and the appointment of the Chair as proxy:

does not specify the way the proxy is to vote on this Resolution; and expressly authorises the Chair to exercise the proxy even though this Resolution is connected directly or indirectly with the remuneration of a member of the Key Management Personnel.

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#### 3. Resolution 2 – Re- election of Mr Alexander Beard as a director

To consider, and if thought fit, to pass, with or without amendment, the following resolution as an ordinary resolution:

"That for the purposes of ASX Listing Rule 14.5 and for all other purposes Alexander Beard a director of the Company who retires by rotation and being eligible, is re-elected as a director"

The Board (with Alexander Beard abstaining from resolution 2) recommends shareholders to vote in favour of resolution 2.

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#### **4. Resolution 3 – Approval for Additional Placement Capacity**

To consider and, if thought fit, pass the following resolution, with or without amendment, as a special resolution:

“That, for the purposes of Listing Rule 7.1A and for all other purposes, approval is given for the issue and allotment of Equity Securities totalling up to 10% of the number of Ordinary Shares on issue (at the time of the issue) calculated in accordance with the formula prescribed in Listing Rule 7.1A.2; and otherwise on the terms and conditions set out in the Explanatory Statement.”

The Board recommends shareholders to vote in favour of Resolution 3.

#### **Voting Exclusion Statement**

The Company will disregard any votes cast in favour of this Resolution by or on behalf of any person who is expected to participate in, or who will obtain a material benefit as a result of the proposed issue (except to benefit solely by reason of being a holder of ordinary securities if the Resolution is passed and any associates of those persons. However, the Company will not disregard a vote if it is cast:

- a) by a person as proxy or attorney for a person who is entitled to vote on Resolution 3, in accordance with the directions given to the proxy or attorney to vote on Resolution 3 in that way on the proxy form; or
- b) by the Chairman of the Meeting as proxy for a person who is entitled to vote on Resolution 3, in accordance with a direction on the proxy form to vote as the Chairman of the Meeting proxy decides.
- c) by a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary, provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution 3; and
  - (ii) the holder votes on Resolution 3 in accordance with the directions given by the beneficiary to the holder to vote in that way.

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#### **Right to vote**

You will be eligible to attend and vote at the Meeting if you are registered as a holder of shares in the Company at 7:00pm (AEDT) on 30 October 2023.

A member can vote on the resolutions by:

- a. Attending the Meeting in person, by attorney or in the case of corporate Shareholders, by a corporate representative;
- b. Lodging the Proxy Form electronically or by post to appoint a proxy to attend and vote at the meeting on your behalf.

#### **Voting at the Meeting in person**

Members can participate in the Annual General Meeting, ask questions during the Meeting and vote during the meeting in person or by proxy.

#### **Proxy Form**

Enclosed with this Notice of Meeting is a personalised Proxy Form. The Proxy Form allows members who are not attending the meeting to appoint a proxy to vote on their behalf. Your completed Proxy Form must be received by no later than 11am (AEDT) on 31 October 2023 for it to be effective.

For the appointment of a proxy to be valid, or a direct vote to be effective, the following documents must be received either at the Company's registered office or at the Company's share registry, Boardroom Pty Limited, at least 48 hours prior to the Meeting or any adjournment of the Meeting:

- (a) the Proxy Form; and
- (b) if the Proxy Form is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.

The documents must be received by the Company at the address set out below by no later than 11.00 am (AEDT) on 31 October 2023. Forms received after that time will not be valid for the scheduled Meeting.

Online: <https://www.votingonline.com.au/fosagm2023>

By facsimile: +61 2 9290 9655

By mail: Boardroom Pty Limited, GPO Box 3993, SYDNEY NSW 2001

By delivery: Boardroom Pty Limited, Grosvenor Place, Level 12, 225 George Street, SYDNEY, NSW, 2000

Further directions for the proper completion of Proxy Form are printed on the Proxy Form.

### **Appointing a proxy**

A member entitled to attend and cast a vote at the Meeting is entitled to appoint a proxy to attend and vote for the member. The person appointed as a proxy may, but does not need to be a member of the Company.

A proxy does not need to be a shareholder of the Company. A proxy may be an individual or company. If you are a shareholder entitled to cast two or more votes you may appoint up to two proxies. If you appoint two proxies, you should complete two separate Proxy Forms and specify the percentage or number of votes each proxy is appointed to exercise.

If you complete and submit a Proxy Form and do not nominate a person to act as your proxy, the Chairman will be appointed as your proxy. The Chairman intends to vote undirected proxies on, and in favour of, all the proposed resolutions.

If you appoint a proxy, you may still participate in the meeting. However, your proxy's right to speak and vote will be suspended while you are participating

If you appoint the Chairman as your proxy and do not direct him how to vote, you are authorising the Chairman to cast your undirected vote on all proposed resolutions.

### **Voting by Attorney**

A shareholder entitled to attend and vote at the Annual General Meeting may appoint an attorney to vote at the Annual General Meeting. An original or certified copy of the power of attorney must be received at an address given above at least 48 hours before the commencement of the Annual General Meeting.

### **Corporate Representatives**

To vote at the Annual General Meeting, a corporation which is a shareholder, or which has been appointed as a proxy by a shareholder, may appoint a person to act as its representative. The appointment of a representative must comply with section 250D of the Corporations Act. Evidence of the appointment must be brought to the Annual General Meeting together with any authority under which it is signed. A pro forma 'Certificate of Appointment of Corporate Representative' may be obtained from the Company's Share Registry, Boardroom Pty Ltd.

### **By order of the Board:**

Con Scrinis

Managing Director

Dated: 27 September 2023

## EXPLANATORY STATEMENT

### 1 Important Notice

The purpose of this Explanatory Statement is to provide Shareholders with an explanation of the business of the meeting and the resolutions proposed to be considered at the Annual General Meeting to be held on Thursday 2 November 2023 at 11:00am (AEDT) and to assist Members in determining how they wish to vote on the resolutions.

### 2 Resolution 1 - Non Binding Resolution to adopt Remuneration Report

The Remuneration Report of the Company for the financial year ended 30 June 2023 is included in the Directors' Report in the Annual Report. The Remuneration Report sets out the Company's remuneration arrangements for the Directors and senior management of the Company.

Section 249L(2) of the Corporations Act requires a company to inform Shareholders that a resolution on the Remuneration Report will be put at the Annual General Meeting (AGM). Section 250R of the Corporations Act requires a resolution that the Remuneration Report be adopted be put to the vote. Resolution 1 seeks this approval.

In accordance with Section 250R(3) of the Corporation Act, Shareholders should note that Resolution 1 is "advisory only" and does not bind the Company. However, the Directors recognise the outcome of this Resolution as an indication of Shareholder sentiment in relation to the FY2023 Remuneration Report.

Shareholders have the ability to "spill" the Company's board if there are "two strikes" against the adoption of the Remuneration Report at two successive AGMs. Under Section 250SA of the Corporation Act, the Chairman will provide a reasonable opportunity for discussion of the Remuneration Report at the AGM.

Under the Corporations Act 2001, if 25% or more of votes that are cast at the Meeting are voted against the adoption of the Remuneration Report at two consecutive AGM's, Shareholders will be required to vote at the second of those AGMs on an additional resolution (a "**Spill Resolution**") that a future meeting be held within 90 days of the Spill Resolution. At that further meeting, all of the Company's Directors (other than any Managing Director) must go up for re-election.

There will be no requirement at this AGM for a Spill Resolution.

Noting that each Director has a personal interest in their own remuneration as set out in the Remuneration Report, the Board recommends that Shareholders vote in favour of this Resolution.

The Chairman of the Meeting intends to vote all available proxies in favour on this Resolution.

### 3 Resolution 2 – Re- election of Mr Alexander Beard as a director

Mr Alexander Beard retires by rotation at this meeting and offers himself for re-election to the Board.

Details in relation to Alexander Beard are set out in the Directors' Report section of the Annual Report. Mr Beard is not an independent director.

The Board (Mr Alexander Beard abstaining) unanimously recommend that Shareholders vote in favour of Resolution 2. The Chairman of the Meeting intends to vote all available proxies in favour on this Resolution.

## 4 Resolution 3 – Approval for Additional Placement Capacity

### 6.1 General

Broadly speaking, and subject to a number of exceptions, Listing Rule 7.1 limits the amount of equity securities that a listed company can issue without the approval of its shareholders over any 12-month period to 15% of the fully paid ordinary securities it had on issue at the start of that period.

Under Listing Rule 7.1A, however, an eligible entity can seek approval from its members, by way of a special resolution passed at its annual general meeting, to increase this 15% limit by an extra 10% to 25% (**10% Placement Capacity**).

An 'eligible entity' means an entity which is not included in the S&P/ASX 300 Index and which has a market capitalisation of \$300 million or less. The Company is an eligible entity for these purposes.

Resolution 3 seeks shareholder approval by way of special resolution for the Company to have the additional 10% capacity provided for in Listing Rule 7.1A to issue equity securities without shareholder approval.

If Resolution 3 is passed, the Company will be able to issue equity securities up to the combined 25% limit in Listing Rules 7.1 and 7.1A without any further shareholder approval.

If Resolution 3 is not passed, the Company will not be able to access the additional 10% capacity to issue equity securities without shareholder approval provided for in Listing Rule 7.1A and will remain subject to the 15% limit on issuing equity securities without shareholder approval set out in Listing Rule 7.1.

The exact number of Equity Securities to be issued under the 10% Placement Capacity will be determined in accordance with the formula prescribed in Listing Rule 7.1A.2, (refer to section 6.2 below).

The Directors believes that Resolution 3 is in the best interests of the Company and unanimously recommends that Shareholders vote in favour of this Resolution.

### 6.2 Listing Rule 7.1A

The ability to issue equity securities under Listing Rule 7.1A is subject to Shareholder approval by way of special resolution at the Annual General Meeting.

Approval cannot be sought at any other Shareholder's meeting and equity securities issued under the approval (if obtained) must be issued within 12 months after the date of the Annual General Meeting. No equity securities can be issued under Listing Rule 7.1A before the special resolution is passed.

The issue of securities under this rule cannot be subsequently approved by security holders and then be treated as if the issue had received prior approval.

Any Equity Securities issued under the 10% Placement Capacity must be in the same class as an existing class of quoted Equity Securities. The Company currently has only one class of quoted Equity Securities on issue, being Ordinary Shares.

The exact number of Equity Securities that the Company may issue under an approval pursuant to Listing Rule 7.1A will be calculated according to the following formula:

$$(A \times D) - E$$

Where:

A number of fully paid Ordinary Shares on issue at the commencement of the relevant period:

- plus, the number of fully paid Ordinary Shares issued in the relevant period under an exception in rule 7.2 other than exception 9, 16 or 17,
- plus, the number of fully paid Ordinary Shares issued in the relevant period on the conversion of convertible securities within rule 7.2 exception 9 where;

- the convertible securities were issued or agreed to be issued before the commencement of relevant period; or
- the issue of, or agreement to issue, the convertible securities was approved, or taken under these rules to have been approved, under rule 7.1 or rule 7.4.
- plus, the number of fully paid Ordinary Shares issued in the relevant period under an agreement to issue securities within rule 7.2 exception 16 where:
  - the agreement was entered into before the commencement of the relevant period; or
  - the agreement or issue was approved, or taken under these rules to have been approved, under rule 7.1 or rule 7.4,
  - plus, the number of fully paid Ordinary Shares issued in the relevant period with approval under rule 7.1 or rule 7.4,
  - plus, the number of partly paid Ordinary Shares that became fully paid in the relevant period,
  - less the number of fully paid Ordinary Shares cancelled in the relevant period.

Note that A has the same meaning in Listing Rule 7.1 when calculating the Company's 15% placement capacity.

**D** means 10%.

**E** means the number of Equity Securities issued or agreed to be issued under Listing Rule 7.1A.2 in the 12 months before the date of issue or agreement to issue that are not issued with the approval of Shareholders under Listing Rule 7.1 or 7.4.

The ability of an entity to issue Equity Securities under Listing Rule 7.1A is in addition to the entity's 15% placement capacity under Listing Rule 7.1.

The Company has on issue 53,806,139 Ordinary Shares and therefore has a capacity to issue (assuming Resolution 3 is passed):

- (i) 8,070,921 Equity Securities under Listing Rule 7.1; and
- (ii) 5,380,614 Shares under Listing Rule 7.1A.

The actual number of Shares that the Company will have capacity to issue under Listing Rule 7.1A will be calculated at the date of issue of the Shares in accordance with the formula prescribed in Listing Rule 7.1A.2 (refer to the formula above).

### **6.3 Technical Information required by Listing Rule 7.1A**

Pursuant to and in accordance with Listing Rule 7.3A, the information below is provided in relation to this Resolution 3:

#### *(a) Minimum Price*

The minimum price at which the Equity Securities may be issued is 75% of the volume weighted average price of the Company's Equity Securities, calculated over the 15 Trading Days immediately before:

- (i) the date on which the price at which the Equity Securities are to be issued is agreed; or
- (ii) if the Equity Securities are not issued within 10 Trading Days of the date in paragraph (i), the date on which the Equity Securities are issued.

#### *(b) Date of Issue (Additional Placement Period)*



The Equity Securities may be issued under the 10% Placement Capacity commencing on the date of the Annual General Meeting and expiring on the first to occur of the following:

- (i) the date that is 12 months after the date of the Annual General Meeting;
- (ii) the time and date of the entity's next annual general meeting and
- (iii) the date of the approval by Shareholders of a transaction under Listing Rules 11.1.2 (a significant change to the nature or scale of the Company's activities) or 11.2 (disposal of the Company's main undertaking),

or such longer period if allowed by ASX.

*(c) Risk of voting dilution*

Any issue of Equity Securities under the 10% Placement Capacity will dilute the interests of Shareholders who do not receive any Ordinary Shares under the issue.

If Resolution 3 is approved by Shareholders and the Company issues the maximum number of Equity Securities available under the 10% Placement Capacity, the economic and voting dilution of existing Ordinary Shares would be as shown in the table below. There is a risk that:

- (i) the market price for the Equity Securities may be significantly lower on the date of the issue of the Equity Securities than on the date of the AGM; and
- (ii) the Equity Securities may be issued at a price that is at a discount to the market price for the Company's Equity Securities on the issue date,

which may have an effect on the amount of funds raised by the issue of equity securities under Listing Rule 7.1A.

The table below shows the dilution of existing Shareholders calculated in accordance with the formula outlined in Listing Rule 7.1A.2, on the basis of the current market price of Ordinary Shares as at 20 October 2022 and the current number of Equity Securities on issue for variable "A" of the formula in Listing Rule 7.1A.2 as at the date of this Notice.

The table also shows:

- (iii) an example where variable "A" has increased by 50% and 100%. Variable "A" is based on the number of Ordinary Shares the Company has on issue. The number of Ordinary Shares on issue may increase as a result of issues of Ordinary Shares that do not require Shareholder approval (for example, a pro rata entitlements issue or scrip issued under a takeover offer) or future specific placements under Listing Rule 7.1 that are approved at a future Shareholders' meeting; and

- (iv) an example of the result of the issue price of ordinary securities decreasing by 50% and increasing by 50% as against the current market price.

Variable "A" in Listing Rule 7.1A.2		Dilution		
		\$0.08 50% decrease in issue price	\$0.16 Issue Price	\$0.24 50% increase in issue price
Current Variable A 53,806,139 Shares	10% Voting Dilution	5,380,614 Shares	5,380,614 Shares	5,380,614 Shares
	Funds Raised	\$430,449	\$860,898	\$1,291,347
50% increase in Variable A 80,709,209 Shares	10% Voting Dilution	8,070,921 Shares	8,070,921 Shares	8,070,921 Shares
	Funds Raised	\$645,674	\$1,291,347	\$1,937,021
100% increase in Variable A 107,612,278 Shares	10% Voting Dilution	10,761,228 Shares	10,761,228 Shares	10,761,228 Shares
	Funds Raised	\$860,898	\$1,721,796	\$2,582,695

- (v) The table above uses the following assumptions:

- The current shares on issue are the Ordinary Shares on issue as at the date of this notice.
- The issue price set out above is the closing price of the Ordinary Shares on the ASX on 15 September 2023.
- The Company issues the maximum possible number of Equity Securities under the 10% Placement Capacity.
- The Company has not issued any Equity Securities in the 12 months prior to the Annual General Meeting that were not issued under an exception in Listing Rule 7.2 or with approval under Listing Rule 7.1.
- The calculations above do not show the dilution that any one particular Shareholder will be subject to. All Shareholders should consider the dilution caused to their own shareholding depending on their specific circumstances.
- This table shows only the effect of issues of equity securities under Listing Rule 7.1A, not under the 15% placement capacity under Listing Rule 7.1 or under any of the exceptions to Listing Rule 7.1 and assumes Resolution 3 is approved.

(d) *Purpose of issue under 10% Placement Capacity*

- (e) *Any equity securities issued under Listing Rule 7.1A.2 must be issued for cash consideration. Accordingly, every issue of Equity Securities under Listing Rule 7.1A.2 will have an accompanying proposed use of funds at the time of issue. As at the date of this Notice, the Company has not formed an intention to offer any equity securities under Listing Rule 7.1A during the Listing Rule 7.1A Additional Placement Period. However, if Shareholders approve this Resolution and the Company did raise funds from the issue of equity securities under Listing Rule 7.1A, based on the Company's existing plans, the Company considers that the funds may be used for general working capital purposes.*

(f) *Allocation under the 10% Placement Capacity*

As at the date of the Notice the Company has not formed an intention to issue securities under a placement pursuant to Listing Rule 7.1A, and accordingly the allottees of the Equity Securities to be issued under the 10% Placement Capacity have not yet been determined. However, the allottees of Equity Securities could consist of current Shareholders or new investors (or both), none of whom will be related parties of the Company.

The Company will determine the allottees at the time of the issue under the 10% Placement Capacity, having regard to the following factors:

- (i) the purpose of the issue;
- (ii) alternative methods for raising funds available to the Company at that time, including, but not limited to, an entitlement issue or other offer where existing Shareholders may participate;
- (iii) the effect of the issue of the Equity Securities on the control of the Company;
- (iv) the Company's circumstances, including, but not limited to, its financial position and solvency;
- (v) prevailing market conditions; and
- (vi) advice from corporate, financial, and broking advisers (if applicable).

The Company will comply with the disclosure obligations under Listing Rules 7.1A(4) and 2.7 upon issue of any Equity Securities

*(g) Previous Approval under Listing Rule 7.1A*

The Company has not previously obtained approval under Listing Rule 7.1A.

*(h) Previous issues of Equity Securities*

For the purposes of Listing Rule 7.3A.6 the Company confirms that no securities were issued or agreed to be issued under LR 7.1A.2 in the 12 months prior to 28 October 2022.

*(i) Voting Exclusion*

A voting exclusion statement is included in the Notice of Meeting. As at the date of this Explanatory Statement, the Company has not invited any existing Shareholder to participate in an issue of Equity Securities under Listing Rule 7.1A. Therefore, no existing Shareholders will be excluded from voting on Resolution 3.

### **Directors Recommendation**

The Directors believe that Resolution 3 is in the best interests of the Company and unanimously recommend that Shareholders **vote in favour** of this Resolution 3.

The Chairman of the Meeting intends to vote all available proxies in favour on this Resolution

## **7. GLOSSARY**

The following words and expressions used in the Notice of Meeting and Explanatory Statement have the following meanings unless the context requires otherwise:

Annual General Meeting means the annual general meeting of the Company to be held on am (AEST).

ASIC means the Australian Securities & Investments Commission.

ASX means ASX Limited ACN 008 624 691.

Board means the board of directors of the Company.

Business Day means a day (not being a Saturday, Sunday, or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in Melbourne, Victoria.

Company means FOS Capital Limited ACN 637 156 275.

Corporations Act means the Corporations Act 2001(Cth).

Director means a director of the Company.

Equity Security has the meaning given to that term in the Listing Rules.

Explanatory Statement means the explanatory statement accompanying the Notice.

Listing Rules means the Listing Rules of the ASX.

Notice of Meeting means the notice of meeting for the Annual General Meeting.

Ordinary Share means a fully paid ordinary share in the capital of the Company.

Resolution means a resolution proposed in the Notice of Meeting.

Shareholder means a holder of Ordinary Shares.

Trading Day has the meaning given to that term in the Listing Rules.