

The Companies Act 1993

C o n s t i t u t i o n

of

Property For Industry Limited

Constitution of Property For Industry Limited
adopted on 21 May 2010

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1. **Effect of Constitution**

The Company, the Board, the Shareholders and each Director and Shareholder has the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

2. **Interpretation**

2.1 **Definitions**

In this Constitution, including the schedules, unless the context otherwise requires:

“**Act**” means the Companies Act 1993.

“**Auditors**” means the auditors of the Company.

“**Average Market Capitalisation**” means, in relation to any transaction, the volume weighted average market capitalisation of the Company’s Equity Securities carrying Votes calculated from trades on the NZSX over the 20 Business Days before the earlier of the day the transaction is entered into or is announced to the market.

“**Board**” means the Directors who number no less than the required quorum acting together as a board of directors.

“**Chairperson**” means the chairperson of Directors for the time being of the Company and includes any deputy chairperson or other person who is acting for the time being as chairperson of the Company.

“**Class**” means a class of Securities having identical rights, privileges, limitations, and conditions and includes or excludes Securities which the Exchange in its discretion deems to be of or not of that Class.

“**Company**” means Property For Industry Limited.

“**Constitution**” means this constitution as altered from time to time.

“**Directors**” means the directors for the time being of the Company appointed in accordance with this Constitution.

“**Disqualifying Relationship**” means any direct or indirect interest or relationship that could reasonably influence, in a material way, the Director’s decisions in relation to the Company. Without limiting the definition, a Director shall be deemed to have a Disqualifying Relationship in the following circumstances:

- (a) the Director is a Substantial Security Holder of the Company or an Associated Person of the Substantial Security Holder (other than solely as a consequence of being a Director of the Company); or
- (b) where:
 - (i) the Director has a relationship (other than in his or her capacity as a Director of the Company) with the Company or a Substantial Security Holder of the Company; or
 - (ii) an Associated Person of the Director has a relationship with the Company or a Substantial Security Holder of the Company; and
 - (iii) by virtue of the relationship in (b)(i) or (b)(ii) that Director or any Associated Person of that Director is likely to derive, in the current financial year of the Company, a substantial portion of his/her or its annual revenue from the Company during such financial year. For the purposes of this paragraph the annual revenue a Director or Associated Person of a Director derives from the Company does not include dividends or other distributions payable to all holders of a Class of Equity Securities.

“Distribution Rights” has the meaning given to it in the Listing Rules.

“Equity Security” has the meaning given to it in the Listing Rules. In this Constitution a reference to an Equity Security means an Equity Security of the Company, unless the context otherwise requires.

“Independent Director” means a Director who is not an executive officer of the Company and who has no Disqualifying Relationship.

“in writing” and **“written”** includes words type written, printed, lithographed, photocopied, telexed, copied by facsimile, or represented or reproduced in any other mode in a permanently visible form, or partly in one and partly another.

“issue” means an issue or allotment of Securities.

“Listing Rules” means the Listing Rules of New Zealand Exchange Limited (“NZX”) as amended from time to time. References to “permitted by the Rules” or “pursuant to the Rules” shall be read as permitted by or pursuant to the Listing Rules themselves or permitted or allowed by NZX pursuant to any waiver or authorisation.

“Quoted Equity Security” has the meaning given to it in the Listing Rules. In this Constitution a reference to a Quoted Equity Security means a Quoted Equity Security of the Company, unless the context otherwise requires.

“Ordinary Resolution” has the meaning given to it in the Listing Rules.

“Register” means the register of members of the Company required to be kept pursuant to the Act and includes any division of such register.

“Relevant Interest” has the meaning given to it in the Securities Markets Act 1988 except where provided otherwise in this Constitution.

“Representative” means a person authorised in accordance with paragraph 12.1 of the First Schedule to act as a representative at a meeting of Shareholders.

“Securities” has the meaning given to it in the Listing Rules. In this Constitution a reference to a Security means a Security of the Company, unless the context otherwise requires.

“Security Holder”, “Shareholder”, or “holder” means a person for the time being whose name is entered in the Register as being the holder of Securities.

“Shares” means Shares in the Company and includes Equity Securities and Convertible Securities.

“Subsidiary” has the meaning given to it in the Listing Rules.

“Substantial Security Holder” has the meaning given in section 2 of the Securities Markets Act 1988.

2.2 **No Definition**

Any expression not defined in this Constitution but defined in the Act shall bear the same meaning in this Constitution. Save as aforesaid, any words or expressions not defined in the Act but defined in the Listing Rules shall, unless inconsistent with the subject or content, have the same meaning in this Constitution whereby any reference to Issuer shall, where the context so requires, be read as a reference to the Company.

2.3 **Singular and Plural, Persons and Firms**

In this Constitution, if not inconsistent with the context:

- (a) words importing the singular number also include the plural, and vice versa;
- (b) words importing persons include firms and corporations and a firm includes a partnership;
- (c) words importing any gender include the other gender.

2.4 **Headings**

Headings and sub-headings shall not affect the interpretation of this Constitution.

2.5 Reference to Statutes

Unless the context otherwise requires, references to a statute means a statute of New Zealand and includes any term defined in a statute as well as:

- (a) amendments to that statute;
- (b) a statute passed in substitution for that statute; and
- (c) regulations passed under that statute or any substitute statute.

2.6 References to Clause, Paragraph or Schedule

- (a) A reference to a clause or subclause means a clause or subclause of this Constitution.
- (b) A reference to a paragraph means a paragraph within a clause of this Constitution or a paragraph of a schedule to this Constitution.
- (c) A reference to a schedule means a schedule to this Constitution.

3. Listing Rules

3.1 Compliance with Listing Rules

- (a) While the Company is listed it will comply with the Listing Rules.
- (b) A reference in this Constitution to a specific Listing Rule includes that Listing Rule as it may be amended from time to time and any Listing Rule which may be substituted for that Listing Rule.
- (c) If a provision in this Constitution is inconsistent with a provision or provisions of the Listing Rules, the Listing Rules shall prevail.

3.2 Rulings by Exchange

If the Exchange has granted a Ruling in relation to the Company authorising any act or omission which in the absence of that Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission shall be deemed to be authorised by the Listing Rules and this Constitution, notwithstanding such contravention or inconsistency.

3.3 Validity of Transactions

- (a) A failure to comply with the Listing Rules, or with a provision of this Constitution corresponding with a provision of the Listing Rules, shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any

meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules or those provisions of the Constitution shall not be entitled to enforce that transaction or contract.

- (b) This clause does not affect the rights of any holder of Securities against the Company or the Directors arising from failure to comply with the Listing Rules, or any of clauses 17 or 18, or paragraphs 7.12 to 7.19 of the First Schedule.

4. Shares

4.1 Types of Shares

Different Classes of Shares may be issued and, without limiting the foregoing, Shares may:

- (a) be redeemable;
- (b) confer preferential rights to distributions of capital or income;
- (c) confer special, limited or conditional voting rights; or
- (d) not confer voting rights.

4.2 Redeemable Shares

The Board may issue Shares that are redeemable:

- (a) at the option of the Company;
- (b) at the option of the holder of the Share; or
- (c) on a date determined by the Board;

for a consideration that is:

- (d) determined by the Board;
- (e) to be calculated in accordance with a formula; or
- (f) required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

4.3 Convertible Securities

- (a) The Board may issue Convertible Securities upon such terms and conditions as it thinks fit including the right for the holders of Convertible

Securities to participate, in the same manner and to the same extent as the holders of the Class into which the Convertible Securities are to be converted, in any issue of Securities offered to the holders of such Class.

- (b) No Convertible Securities will be issued by the Board with entitlement to vote other than at the meeting of the holders of such Convertible Securities.
- (c) Notwithstanding the provisions of clause 5, the Board shall be permitted to allot and issue Equity Securities to the holder of a Convertible Security upon the exercise of the rights in relation thereto by the holder and otherwise upon compliance by the holder with any terms and conditions attaching to such Convertible Security.
- (d) The Company shall maintain a register of all holders of Convertible Securities and every person whose name is entered in such register shall be entitled to a certificate specifying the Convertible Securities held by such person and stating on the reverse thereof the conditions attaching to such Convertible Securities.
- (e) Subject to the conditions thereof, Convertible Securities may be transferred in such usual or common form as the Board shall approve and the provisions of this Constitution relating to transfer of Shares and transmission of Shares shall apply mutatis mutandis to any Convertible Securities issued.

4.4 Consolidation or Subdivision of Shares

- (a) The Board may consolidate Shares so that each Shareholder holds, as near as it is mathematically possible, a proportionately fewer number of Shares.
- (b) The Board may subdivide Shares so that each Shareholder holds a proportionately greater number of Shares.

5. Issue of Equity Securities

5.1 Generally

- (a) Subject to the Act and this Constitution, the Board may issue Equity Securities at any time, to any person, and in any number it determines. The consideration for which Equity Securities are issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other Securities.
- (b) The issue of Equity Securities in the Company and Treasury Stock shall be under the control of the Board who may, subject always to the provisions of clause 5 and to the Act, issue, allot or otherwise dispose of

any Equity Security to such persons, on such terms and conditions, and at such times and in such manner as the Board think fit.

- (c) The Transfer, by the Company of Treasury Stock shall for the purposes of this clause 5 be deemed to constitute the issue of Equity Securities.

5.2 **Consent to Issue**

The issue of an Equity Security that:

- (a) increases the liability of a person to the Company; or
- (b) imposes a new liability on a person to the Company,

is void unless that person, or an agent of that person authorised in writing, consents in writing to becoming the holder before it is issued.

5.3 **Time of Issue**

An Equity Security is issued when the name of the holder is entered on the Register in respect of that Equity Security.

5.4 **Pre-emptive Rights**

The provisions of section 45 of the Act shall not apply.

5.5 **Prohibition on Issue**

- (a) The Company shall not issue Equity Securities unless:
 - (i) the precise terms and conditions of the specific proposal to issue those Equity Securities have been approved (subject to subclause (c) and in accordance with the requirements of the Listing Rules) by separate resolutions (passed by a simple majority of Votes) of holders of each Class of Quoted Equity Securities whose rights or entitlements could be affected by the issue, and the issue is completed within the time specified in subclause (b); or
 - (ii) the issue is made in accordance with any of clauses 5.6 to 5.11 (subject to clauses 5.12 and 18.3, if applicable).
- (b) An issue approved under subclause (a)(i) shall be completed:
 - (i) if that issue is made solely to Employees, within 36 months after approval; or
 - (ii) in all other circumstances, within 12 months after approval.

- (c) A resolution pursuant to subclause (a)(i) of the holders of a Class of Securities shall not be required if:
- (i) the terms of issue of those Securities expressly reserved the right to make the issue of new Equity Securities in question, and specified at least the maximum number and Class of new Equity Securities which could be issued and the time within which they could be issued; or
 - (ii) those Securities were issued before 1 September 1994 on terms that the holders of those Securities would not be entitled to vote on a resolution of the nature referred to in subclause (a)(i); or
 - (iii) those Securities were issued on terms that the holders of those Securities would vote together with the holders of another Class of Equity Securities on a resolution of the nature referred to in subclause (a)(i) and the issue is approved by a resolution (passed by a simple majority of Votes) of holders of all the relevant Classes voting together.
- (d) The Company shall in relation to an issue of Equity Securities comply with all the applicable requirements in the Listing Rules including as to the contents of any notices of meeting to be convened for the purposes of considering the proposals and the requirement to provide an Appraisal Report.

5.6 **Rights Issue**

The Board may issue Equity Securities if those Equity Securities are offered to holders of existing Equity Securities on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to Votes and to Distribution Rights. Every person to whom Equity Securities are offered may decline or accept the offer or may transfer the Rights thereto to any person. The provisions of this Constitution relating to transfer of Equity Securities shall apply to the transfer of Rights with all necessary modifications.

5.7 **Bonus Issue**

The Board may issue Equity Securities if those Equity Securities are issued to holders of existing Equity Securities as fully paid Securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to Votes and to Distribution Rights.

5.7A **Issue Not Exceeding \$5,000**

The Board may issue Equity Securities if those Equity Securities are offered to all holders of existing Equity Securities of the Company carrying Votes for

consideration not exceeding \$5,000 per existing Equity Security Holder (being the registered holder or, in the case of Securities held through a custodian, the beneficial owners of the Securities), and the number of Equity Securities to be issued is not greater than 30% of the number of fully paid Equity Securities carrying Votes that are already on issue.

5.8 Provisions Relating to Rights and Bonus Issues

Notwithstanding clauses 5.6, 5.7 and 5.7A, the Board shall be entitled:

- (a) to issue any Equity Securities in respect of which an offer is not accepted or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such Equity Securities are not materially more favourable to the persons to whom they are issued than the terms of the original offer and the issue is completed within 3 months after the close of the original offer;
- (b) to offer and issue Equity Securities to the holders of existing Securities in accordance with specific rights attached to those existing Securities to participate in issues of Equity Securities, notwithstanding that the effect may be that existing proportionate rights to Votes and Distribution Rights are not maintained;
- (c) to authorise a disproportionate offer to the extent necessary to round up holdings of Equity Securities to a Minimum Holding, or to avoid the creation of holdings which are not Minimum Holdings;
- (d) to not offer or issue Equity Securities to holders of existing Equity Securities (including Convertible Securities) the terms of which expressly exclude the right to participate in the relevant offer or issue; and
- (e) to not offer or issue Equity Securities to holders of existing Securities in a jurisdiction outside New Zealand if the legal requirements of that jurisdiction are such that it is unduly onerous for the Company to make the offer in that jurisdiction provided that in the case of Renounceable Rights, the Company shall arrange the sale of any Renounceable Rights to the relevant Equity Securities and to account to holders in that jurisdiction for the proceeds.

Any offers of Equity Securities pursuant to clause 5.6 to 5.8 shall be made by notice to each eligible person specifying the number of Equity Securities which that person is entitled to take up and fixing a time after which the offer, if not accepted, or in respect of the number of Equity Securities not accepted, will be deemed to be declined.

Every person to whom unissued Equity Securities are offered pursuant to this clause may decline or accept the offer or transfer their Rights thereunder (if Renounceable) to any person or persons to whom the Equity Securities, when issued, could be transferred provided that the Board shall have the same right to decline to accept any such transfer as they could have if the transfer were a transfer of Equity Securities, and the provisions of this Constitution as to the transfer of Equity Securities shall, with all necessary modifications, apply to transfers of Rights to unissued Equity Securities.

5.9 Issues Within 20 Percent Limit

- (a) The Board may issue Equity Securities if:
- (i) the total number of Equity Securities issued, and all other Equity Securities of the same Class issued pursuant to this clause during the period of 12 months preceding the date of the issue, will not exceed the aggregate of:
 - A. 20 % of the total number of Equity Securities of that Class on issue at the commencement of that period; and
 - B. 20 % of the number of the Equity Securities of that Class issued during that period pursuant to any of clauses 5.5(a)(i), 5.6, 5.7, 5.7A, 5.8, 5.10 and 5.11; and
 - C. any Equity Securities of that Class issued pursuant to this clause 5.9 during that period, the issue of which has been ratified by an Ordinary Resolution;
- less:
- D. 20 % of the number of Equity Securities of that Class which have been acquired or redeemed by the Company during that period (other than Equity Securities held as Treasury Stock).

- (b) Equity Securities offered under this clause 5.9 may be issued to Directors, Associated Persons of a Director or Employees if:
- (i) all Directors voting in favour of the resolution to issue the Securities sign a certificate that the participation of Directors and/or Associated Persons of a Director or Employee, as the case may be, in the issue is in the best interests of the issuer and fair to holders of Equity Securities who are not receiving, or associated with those parties receiving, Securities under the issue;
 - (ii) the terms of the issue to all persons in an offer under this clause 5.9 are the same; and
 - (iii) the level of participation of any Director, Associated Person of a Director or Employee is determined according to criteria applying to all persons participating in the offer,

Provided that for the purposes of this clause 5.9:

- (c) Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert; and
- (d) where the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, the market price, unless otherwise specified in the terms of the issue, shall be the volume weighted average market price over the 20 Business Days before the earlier of the day the issue is made or announced to the market.

5.10 **Employee and Director Share Issues**

- (a) The Board may issue Equity Securities if:
- (i) the issue is made to Employees;
 - (ii) the issue is of a Class of Securities already on issue;
 - (iii) the total number of Equity Securities Issued, and all other Equity Securities of the same Class Issued to Employees pursuant to this clause during the period of 12 months preceding the date of the issue, does not exceed three per cent. of the aggregate of:
 - A. the total number of Equity Securities of that Class on issue at the commencement of that period; and

- B. the total number of Equity Securities of that Class issued during that period pursuant to any of clauses 5.5(a)(i), 5.6, 5.7, 5.7A, 5.8, 5.9 and 5.11,

Provided that for the purposes of this clause 5.10:

- (iv) Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may Convert.
 - (v) where the conversion ratio is fixed by reference to the market price of the underlying Equity Securities, the market price, unless otherwise specified in the terms of the issue, shall be the volume weighted average market price over the 20 Business Days before the earlier of the day the issue is made or announced to the market.
- (b) An Issuer may issue Equity Securities to a Director if:
- (i) the issue is made in accordance with a resolution passed under clause 23.1; and
 - (ii) the issue is of a Class of Equity Securities already on issue; and
 - (iii) the issue of Equity Securities is made after the end of the period (or halt period) to which that remuneration relates; and
 - (iv) the issue price of the Equity Securities is equal to the volume weighted average market price of Equity Securities of that class over the 20 business days before the issue occurs.
- (c) Directors and Associated Persons of Directors may participate in an issue under this clause 5.10 if their participation is determined by criteria applying to employees generally.
- (d) In this clause 5.10, "Employee" in relation to the Company includes an employee or officer of the Company or any of its Subsidiaries, a labour only contractor, consultant, or consultant company who or which contracts with the Company or any of its Subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of or in respect of any pension, superannuation or like fund established for the benefit of any of the above employees or officers.
- (e) For the purposes of this clause, an issue to a Director, or an Associated Person of a Director, solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest,

shall be deemed not to be an issue to a Director or Associated Person of a Director, or an issue in which Directors or Associated Persons participate.

- (f) Except as expressly provided in this Constitution or the Listing Rules, the Company may not reprice or amend the terms of any Securities issued with the shareholders' approval to or for the benefit of Employees or Directors under this clause 5, in their capacity as such, without either the approval of NZX or a further Ordinary Resolution of the shareholders resolving to approve the repricing or amendment.
- (g) The foregoing provisions of this clause are subject to applicable Listing Rules.

5.11 Other Issues

The Board may issue Equity Securities in any of the following circumstances:

- (a) The issue is made as consideration in an offer made by the Company or any wholly owned Subsidiary of the Company in accordance with:
 - (i) any takeovers code approved under the Takeovers Act 1993;
 - (ii) the provisions of the constitution of another Listed New Zealand Issuer which comply with section 4 of the Listing Rules; or
 - (iii) any takeover law regime of a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of the Exchange is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in subclauses (i) or (ii),

and that offer is made to all holders (other than the Company and its Related Companies) of Equity Securities in any company or other entity listed on the Exchange or on a Recognised Stock Exchange, which is not a company or other entity that is an Associated Person of the Company or of any Director of that Company; or

- (b) The issue is made upon Conversion of:
 - (i) an Equity Security; or
 - (ii) any other Security, which on issue was approved in the manner set out in Rule 7.3.1(a), as if Rule 7.3.1(a) applied to that Security,

from time to time issued by the Company if the terms of issue of those Securities provided for Conversion to that kind of Security issued; or

- (c) The issue is made to an existing holder of Equity Securities in order to bring that holder's holding up to a Minimum Holding; or
- (d) The issue is made pursuant to an arrangement, amalgamation or compromise effected pursuant to Part XIII or Part XV of the Act; or
- (e) The issue is made pursuant to a plan for the issue of Securities in lieu of dividends or as part of a dividend reinvestment plan that entitles an existing Security Holder to subscribe for Securities by applying all or any specified part of any dividend declared by the Company and payable to that person, and which issue or dividend reinvestment plan would, except to the extent that the plan excludes existing holders in a jurisdiction outside New Zealand if the legal requirements of that jurisdiction are such that it is unduly onerous for the Company to extend the plan to that jurisdiction, maintain the existing proportionate right of each existing holder relative to other holders of Equity Securities to Votes and Distribution Rights, if the offer were accepted by all such holders.

5.12 **Issue Changing Control Requires Resolution**

Notwithstanding clauses 5.5 to 5.11, no issue of Securities shall be made by the Company if:

- (a) there is a significant likelihood that the issue will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and
- (b) that person or group of Associated Persons is entitled before the issue to exercise, or direct the exercise of, not less than one per cent. of the total Votes attaching to Securities of the Company,

unless the precise terms and conditions of the issue have been approved by an Ordinary Resolution.

5.13 **Entitlements to third party Securities**

Entitlements conferred by the holding of Equity Securities of the Company, to Securities of a third party (whether or not that third party is a company), shall not be created or conferred other than in compliance with this clause 5, as if such Securities comprised an issue of Equity Securities of the Company.

6. Alteration of Shareholder Rights

6.1 Definitions

The Company shall comply with the provisions of sections 116 and 117 of the Act. For the purposes of this clause, those sections shall be deemed to be modified as follows:

- (a) References in those sections to “shares” shall (subject to clause 6.6) be deemed to be references to all Equity Securities, and references to “shareholders” shall be read accordingly.
- (b) In respect of Equity Securities which are not Shares:
 - (i) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of Votes of the holders of those Securities entitled to vote and voting; and
 - (ii) references to the constitution shall be deemed to be references to the document which governs the rights attached to those Equity Securities.

6.2 Special Resolution Required

Any action by the Company that affects rights attached to Equity Securities must first be approved by a special resolution of each Interest Group as defined in the sections referred to as notified.

6.3 Interpretation

For the purposes of clause 6.2, the rights attached to an Equity Security include:

- (a) the rights, privileges, limitations, and conditions attached to the Equity Security by the Act or this Constitution, or, in the case of Equity Securities which are not Shares in the Company, by the document which governs the rights of those Equity Securities, including voting rights and Distribution Rights;
- (b) the right to have the procedure set out in this clause 6 and any further procedure required by this Constitution for the amendment or alteration of rights, observed by the Company;
- (c) the right that any procedure required by this Constitution for the amendment or alteration of rights not be amended or altered.

6.4 **Relation of Further Issues to Existing Equity Securities**

Subject to clause 5, the Board may Issue further Equity Securities ranking equally with, or in priority to, existing Equity Securities, whether as to voting rights or dividends and such issue shall be deemed not to be an action affecting the rights attached to existing Equity Securities.

6.5 **Section 118**

This clause 6 shall not render applicable section 118 of the Act to any Equity Securities other than shares of the Company as that term is used in the Act.

6.6 **Exception**

This clause 6 shall not apply to actions affecting the rights attached to:

- (a) Equity Securities which are not Quoted; or
- (b) Equity Securities which are not shares of the Company if:
 - (i) those Equity Securities were issued before 30 April 1995; or
 - (ii) those Equity Securities were issued on terms which expressly permitted the action to be taken without the approval of holders of those Equity Securities, and those terms were clearly disclosed in any Offering Document pursuant to which those Equity Securities were offered.

6.7 **Provisions in Documents**

If the rights attaching to Equity Securities of the Company issued after 30 April 1995 are not governed by this Constitution, the document governing the rights attaching to those Equity Securities shall contain provisions consistent with, and having the same effect as, clauses 6.1, 6.2, 6.3 and 6.6.

6.8 **Action not Invalid**

The taking of action by the Company affecting the rights attached to Equity Securities is not invalid by reason only that the action was not approved in accordance with this clause 6.

7. **Call on Shares**

7.1 **Power to Call**

- (a) The Board may from time to time make calls in respect of all moneys unpaid on Shares and which are not payable at fixed times. A call may be made payable by instalments. A call shall be deemed to have been

made at the time when the resolution of the Board making the call was passed.

- (b) At least 14 days notice specifying the time and place for payment and the person to whom such call shall be paid shall be given of each call and each Shareholder shall pay the amount of every call so made to the persons and at the times and places appointed by the Board. A call may be made payable by instalment.

7.2 **Term of Issue**

Any sum which by the terms of issue of a Share becomes payable on a particular day shall be deemed to be a call duly made and payable on that day of which due notice has been given and all the provisions contained in this Constitution in respect of calls, liens and forfeiture shall relate to such amount or instalment accordingly.

7.3 **Differentiation**

The Board may on the issue of Shares differentiate as to the amount of calls to be paid and the time of payment.

7.4 **Revocation or Postponement of Calls**

Subject to the Listing Rules, a call may be revoked, reduced or postponed as the Board determines.

7.5 **Joint Holders**

Joint Shareholders shall be jointly and severally liable to pay calls in respect of Shares held by them.

7.6 **Interest**

Interest on a call shall be payable from the day appointed for payment to the day of actual payment at such rate as may be applicable under the terms of issue or as the Board determines. The Board may waive payment of that interest wholly or in part.

7.7 **Calls may be Paid in Advance and Interest may be Paid Thereon**

The Board may receive from any Shareholder advances of all or part of the money uncalled and unpaid upon any Shares held by the Shareholder. The Board may pay interest on the money so advanced at such rate as the Board determines.

7.8 Evidence

On the trial or hearing of any action for the recovery of any money due in respect of any call it shall be sufficient to prove that the name of the Shareholder sued is entered in the Register as the holder or one of the holders of the Shares in respect of which such debt arose and either that the resolution making the call is duly recorded in the minute book of meetings of the Board and that notice of such call was duly given to the Shareholder sued pursuant to this Constitution or, in respect of any instalment payable by the terms and conditions of any issue of Shares, such terms and conditions. It shall not be necessary to prove the appointment or qualifications of the Directors who made such call nor any other matter whatsoever and proof of the matters aforesaid shall be conclusive evidence of debt.

7.9 Cancellation of Unpaid Amounts

No obligation to pay any amount which is unpaid on any Shares may be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

8. Lien On and Forfeiture of Share

8.1 Lien on Share

- (a) The Company shall have a first lien upon every Share and on the Dividends authorised on such Share for:
 - (i) unpaid calls and instalments and any interest payable on such amounts in respect of that Share; and
 - (ii) such amounts as the Company may be called upon by law to pay in respect of that Share, including withholding and other taxes.
- (b) No equitable interest in any Share shall be created except upon the footing and condition that this clause 8 is to have full effect. The registration of a transfer of Shares on which the Company has any lien shall, unless notice to the contrary is first given to the transferee, operate as a waiver of such lien.

8.2 Sale of Share

- (a) The Company may sell any Share on which it has a lien if:
 - (i) a sum in respect of which the lien exists is presently payable; and
 - (ii) 14 days notice in writing demanding payment of such sum has been given to the holder.

- (b) To give effect to any such sale a Director may execute a transfer of the Share to the transferee and may receive the consideration and cause the transferee's name to be entered in the Register in respect of the Shares sold.
- (c) Upon registration the transferee shall be the holder of the Share discharged from any outstanding liability owed by the previous holder.
- (d) The transferee shall not be bound to see to the application of the consideration nor shall the transferee's title to the Share be affected by any irregularity or invalidity on the sale.
- (e) The remedy of the former holder, and of any person claiming under or through the former holder, shall be against the Company exclusively and in damages only.
- (f) The proceeds of sale shall first be applied in payment of all costs and expenses of such sale and any attempted sale and then in satisfaction of the amounts in respect of which the lien existed and interest on any such amounts. Any residue shall be paid to the former holder.
- (g) The registration of a transfer shall operate as a waiver of the lien by the Company but not as a release of any outstanding liability owed by the previous holder.

8.3 **Notice of Forfeiture**

- (a) If a holder fails to pay any call (which shall include an instalment of a call) or any other sum which by the terms of issue of a Share became payable at a fixed time, the Board may serve a notice on the holder requiring payment together with any interest which may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.
- (b) The notice shall specify the relevant Share and a date (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made. It shall also name the place where payment is to be made (the place so named being either the Registered Office or some other place at which calls of the Company are made payable). The notice shall also state that in the event that payment is not made by the specified date the Share will be liable to be forfeited.

8.4 **Forfeiture**

If the notice is not complied with the Share may at any time thereafter before payment of all amounts due in respect of the Share be forfeited if the Board so determines. Such forfeiture shall include any Dividend authorised in respect of

the Share and not paid before forfeiture. On forfeiture the Share shall be cancelled.

8.5 Shares Forfeited Belong to Company

Any Share forfeited in accordance with this Constitution shall be deemed to be the property of the Company and may be sold, re-allotted or otherwise disposed of in such manner as the Board shall think fit, or the Board may at such time before such Share is disposed of with the consent of the former holder annul the forfeiture upon such conditions as they think fit. If Shares are forfeited and sold, any residue after satisfaction of unpaid calls, instalments, premiums or other amounts and interest thereon at such rate or rates from the date of forfeiture as the Board determines, and expenses, shall be paid to the previous owner, or to the executors, administrators or assigns of the previous owner.

8.6 Notice of Forfeiture to be Given and Entered in Register

On the forfeiture of any Share the Board shall cause a note of such forfeiture and the date thereof to be entered in the Register and shall cause notice of such forfeiture and the date thereof to be given to the Shareholder in whose name it stood immediately prior to the forfeiture and shall upon the disposal of any forfeited Share cause a note of the manner and date of such disposal to be similarly entered.

9. Dividends

9.1 Board May Form a Reserve Fund

The Board may, before authorising any Dividend, set aside out of the profits of the Company such sums as it thinks proper as a reserve or reserves to meet contingencies, or for equalising Dividends, or for special Dividends or for repairing, improving and maintaining any of the property of the Company, and for such other purposes as the Board shall in its absolute discretion think conducive to the interests of the Company; and may invest the several sums so set aside upon such investments as it may think fit, and from time to time deal with and vary such investments and dispose of all or any part thereof for the benefit of the Company. The Board may divide the reserves into such special funds it thinks fit and may consolidate into one fund any special funds or any part of any special funds into which the reserves may have been divided. The Board may also, without placing the same to reserve, carry forward any profits.

9.2 Board May Authorise a Dividend

The Board, if it is satisfied on reasonable grounds that the Company will immediately after the Dividend satisfy the Solvency Test, may (subject to clause 9.3) authorise a Dividend at a time, and of an amount, and to any Shareholder or other person entitled thereto as it determines and otherwise in accordance with the terms of issue.

9.3 **Restriction on Certain Dividends**

- (a) The Board must not authorise a Dividend:
- (i) in respect of some but not all the Shares of a Class; or
 - (ii) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class,
- except as provided in subclause (b).
- (b) All Dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid, other than in advance of calls, on Shares during any period in respect of which the Dividend is authorised. If a Share is issued on terms providing that it shall rank for Dividend as from a particular date, that Share shall rank for Dividend accordingly.

9.4 **Person to whom Dividend Payable**

A Dividend shall be payable to the person who is, on the Record Date, the registered holder of the Share in respect of which the Dividend is authorised (except as determined under clause 9.2).

9.5 **Method of Payment of Dividend**

A Dividend may be paid by automatic payment to any bank nominated in writing by the payee or by cheque sent through the post directed to the registered address of the payee or, in the case of joint payees, to the bank nominated by or registered address of that one of the joint payees who is first named on the Register, or to such person or to such bank account or address as the payee may in writing direct. The Company shall not be responsible for any loss arising from any mode of transmission referred to in this clause.

9.6 **Currency of Payment**

- (a) The Board may determine the currency of a Dividend by reference to the division of the Register on which a Share is registered.
- (b) The Board shall determine the applicable exchange rate for the purpose of calculating any Dividend to be paid other than in New Zealand currency.

9.7 **Deductions from Dividend**

The Board may deduct from a Dividend:

- (a) unpaid calls and instalments and any interest payable on such amounts, in respect of the Share for which the Dividend is authorised; and

- (b) such amounts as the Company may be called upon by law to pay in respect of the Share, including withholding and other taxes.

9.8 **No Interest on Dividend**

No Dividend shall bear interest against the Company.

9.9 **Payment of Small Dividend Amounts**

Where the net Dividend payable to a Shareholder is less than the minimum amount determined by the Board, the Board may with the prior approval of the Shareholder defer payment until:

- (a) such time as the Shareholder has an aggregate entitlement to net Dividends of not less than the minimum amount determined by the Board, or
- (b) a transfer of all the Shareholder's Shares is registered.

9.10 **Unclaimed Dividend**

- (a) A Dividend unclaimed for one year after having become payable may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Board shall be entitled to mingle the Dividend with other money of the Company and shall not be required to hold it or regard it as being impressed with any trust.
- (b) A Dividend unclaimed for five years after having become payable may at the expiry of such period be forfeited by the Board for the benefit of the Company, provided always that the Board may at any time after such forfeiture annul the same and pay such Dividend to the person producing evidence of entitlement.

9.11 **Shares in Lieu of Dividend**

The Board may establish, operate, vary, suspend and terminate a plan whereby Shareholders may elect to receive Shares in lieu of a Dividend on such terms and conditions as the Board determines.

10. Company may acquire its own Shares

10.1 **Company May Acquire its own Shares**

- (a) Subject to clause 10.2, the Company is permitted to purchase or otherwise acquire its own Equity Securities in accordance with the Act.

- (b) Subject to clause 10.2, the Company is permitted to purchase or otherwise acquire its own Equity Securities from one or more holders in any way allowed by the Act.

10.2 Restriction on Acquisition

The Company shall not acquire Equity Securities other than by way of:

- (a) an acquisition effected by offers made by the Company through the Exchange's order matching market, or through the order matching market of a Recognised Stock Exchange, and the Company complies with clause 10.3;
- (b) an acquisition effected in compliance with section 60(1)(a) of the Act (read together with section 60(2) of the Act), and the Company complies with clause 10.3;
- (c) an acquisition of the nature referred to in section 61(7) of the Act;
- (d) an acquisition approved in accordance with clause 10.4;
- (e) an acquisition required by a Shareholder pursuant to sections 110 or 118 of the Act; or
- (f) an acquisition effected in compliance with section 60(1)(b)(ii) (read together with section 61) of the Act and:
 - (i) is made from any person who is not a Director, or an Associated Person of a Director of the Company; and
 - (ii) the total number of Equity Securities of the same Class acquired pursuant to this clause 10.2(f) during the shorter of the period of 12 months preceding the date of the acquisition and the period from the date on which the Company was listed to the date of the acquisition, will not exceed 15% of the total number of Equity Securities of that Class on issue at the commencement of that period,
- (g) a redemption from a holder who holds less than a Minimum Holding; or
- (h) provided that for the purposes of this clause 10.2(f):
 - (i) Securities which will, or may, convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, Securities into which they will, or may, convert; and
 - (ii) where in respect of such Securities the Conversion ratio is fixed by reference to the market price of the underlying Securities, the

market price shall be the volume weighted average market price as quoted on the Exchange over the 20 Business Days before the earlier of the day the acquisition is entered into or announced to the market.

10.3 **Prior Notice of Acquisition**

- (a) Before the Company acquires Equity Securities pursuant to clauses 10.2(a) and 10.2(b) other than an acquisition from a holder who holds less than a Minimum Holding, the Company shall give at least 3 Business Days notice to the Exchange.
- (b) The notice shall specify:
 - (i) a period of time not exceeding 12 months from the date of the notice within which the Company will acquire Equity Securities; and
 - (ii) the Class and maximum number of Equity Securities to be acquired in that period.
- (c) The Company may at any time by 3 Business Days notice to the Exchange vary any notice so given and may cancel such notice at any time.

10.4 **Acquisition with Approval of Holders of Equity Securities**

The Company may acquire Equity Securities pursuant to clause 10.2(d) if:

- (a) the precise terms and conditions of the specific proposal to acquire those Equity Securities have been approved by separate resolutions (passed by a simple majority of Votes) of holders of each separate group of each Class of Quoted Equity Securities whose rights or entitlements are materially affected in a similar way by the acquisition; and
- (b) the acquisition is completed:
 - (i) if the acquisition is transacted solely with Employees, within 36 months after the passing of the resolutions; or
 - (ii) in all other circumstances, within 12 months after the passing of the resolutions.

10.5 **Buybacks of Securities Affecting Control**

Notwithstanding the provisions of this clause 10, no acquisition of Securities shall be made by the Company if:

- (a) there is a significant likelihood that the acquisition will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time), effective control of the Company; and
- (b) that person or group of Associated Persons is entitled before the acquisition to exercise, or direct the exercise of, not less than one per cent. of the total Votes attaching to Securities of the Company,

unless the precise terms and conditions of the acquisition have been approved by an Ordinary Resolution.

10.6 Application of clause 10.2

Equity Securities may be acquired under clauses 10.2(b) or 10.2(f) if the Company complies with the sections of the Act referred to, on the basis that references in those sections of the Act to:

- (a) “shares” shall be deemed to be references to all Equity Securities of the Class of Equity Securities which is the subject of the acquisition and references to “shareholders” shall be read accordingly;
- (b) “constitution” shall be deemed to be references to the document which governs the Rights of those Equity Securities.

11. Treasury Stock

11.1 Company Can Hold its Own Shares

The Company is permitted to hold its own Shares.

12. Redemption of Equity Securities

12.1 Power to Redeem

Subject to the Act and this Constitution, the Company may, pursuant to its terms of issue, redeem any Equity Security which is issued as redeemable.

12.2 Restriction on Redemption

The Company shall not redeem Equity Securities other than by way of:

- (a) A redemption from a holder who holds less than a Minimum Holding; or
- (b) a redemption of Equity Securities issued in compliance with clauses 5.5(a)(i), 5.6, 5.7 or 5.8, and the Company is bound or entitled to redeem those Equity Securities pursuant to the terms of their issue; or

- (c) a redemption in compliance with section 69(1)(a) of the Act; or
- (d) a redemption of Equity Securities that are Debt Securities (as defined in the Listing Rules) which may be Converted into Shares and, before that Conversion, they are redeemed in cash; or
- (e) a redemption approved in accordance with clause 12.3;

Subject to the Listing Rules and the terms of any issue, where redeemable Securities may be redeemed at the option of the Company the Company need not exercise the option for all holders of such Securities but may exercise such option in relation to one or more of such holders.

12.3 **Redemption with Approval**

The Company may redeem Equity Securities pursuant to clause 12.2(e) if:

- (a) the precise terms and conditions of the specific proposal to redeem those Equity Securities have been approved by separate resolutions (passed by a simple majority of Votes) of holders of each separate group of each Class of Quoted Equity Securities whose rights or entitlements are materially affected in a similar way by the redemption; and
- (b) the redemption is completed:
 - (i) if the acquisition is transacted solely with Employees, within 36 months after the passing of the resolutions; or
 - (ii) in all other circumstances, within 12 months after the passing of the resolutions.

12.4 **Cancellation of Shares Redeemed**

Shares that are redeemed by the Company are deemed to be cancelled immediately on redemption.

12.5 **Redemption of Securities Affecting Control**

Notwithstanding the provisions of this clause 12, no redemption of Securities shall be made by the Company if:

- (a) there is a significant likelihood that the redemption will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time), effective control of the Company; and

- (b) that person or group of Associated Persons is entitled before the redemption to exercise, or direct the exercise of, not less than one per cent. of the total Votes attaching to Securities of the Company,

unless the precise terms and conditions of the redemption have been approved by an Ordinary Resolution, except where the Company is legally required to redeem the Security.

12.6 **Application of clause 12.2**

Equity Securities may be redeemed under clause 12.2(c) if the Company complies with section 69(1)(a) of the Act on the basis that references in that section to:

- (a) “shares” shall be deemed to be references to all Equity Securities of the Class of Equity Securities which is the subject of the redemption and references to “shareholders” shall be read accordingly;
- (b) “constitution” shall be deemed to be references to the document which governs the Rights of those Equity Securities.

13. **Assistance by the Company in the Purchase of its own Shares**

13.1 **Financial Assistance**

Subject to the Act and clause 13.2, the Company may give financial assistance, which includes a loan, a guarantee and the provision of a security, to a person for the purpose of, or in connection with, the purchase of a Share issued or to be issued by the Company.

13.2 **Restriction on Financial Assistance**

The Company may only give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Company if the giving of that assistance is in accordance with the Act and:

- (a) complies with clause 13.3; or
- (b) is approved in accordance with clause 13.4.

13.3 **Permitted Financial Assistance**

The Company may give financial assistance of the nature referred to in clause 13.2 in any of the following circumstances:

- (a) The financial assistance is not given in whole or in part to any Director, Associated Person of a Director or Employee and the amount of the financial assistance, together with the amount of all other financial

assistance given under this subclause by the Company during the period of 12 months preceding the date of giving of the financial assistance, does not exceed 10 per cent. of the Average Market Capitalisation of the Company.

- (b) The financial assistance is given to Employees (as defined in clause 10.2(f)) and:
 - (i) the amount of the financial assistance, together with the amount of all other financial assistance given under this subclause during the period of 12 months preceding the date of giving of the financial assistance, does not exceed five per cent. of the Average Market Capitalisation of the Company;
 - (ii) the amount of the financial assistance, together with the amount of all other financial assistance given under this subclause during the period of five years preceding the date of giving of the financial assistance, does not exceed ten per cent. of the Average Market Capitalisation of the Company; and
 - (iii) the financial assistance is not given to any Director or Associated Person of a Director, provided that financial assistance given to a Director or an Associated Person or a Director solely in that person's capacity as a trustee of a bona fide employee Share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be financial assistance given to a Director or Associated Person of a Director.
- (c) The financial assistance is offered or given so that all holders of Equity Securities are treated, or given the opportunity to be treated, on the same basis.

13.4 **Financial Assistance with Approval**

The Company may give financial assistance of the nature referred to in clause 13.2(b), if:

- (a) the precise terms and conditions of the giving of that financial assistance have been approved by separate resolutions (passed by a simple majority of Votes) of holders of each separate group of each Class of Quoted Equity Securities of the Company whose rights or entitlements are materially affected in a similar way by the financial assistance; and
- (b) the financial assistance is given:
 - (i) if the acquisition is transacted solely with Employees, within 36 months after the passing of the resolutions; or

- (ii) in all other circumstances, within 12 months after the passing of the resolutions.

14. Transfer of Shares and other Securities

14.1 Power to Divide Register

The Register may be divided into two or more registers kept in different places.

14.2 Shareholder may Transfer Shares

A Shareholder may transfer Shares by a form of transfer complying with clause 14.3 or under a system of transfer approved under section 7 of the Securities Transfer Act 1991.

14.3 Form of Transfer

- (a) Every form of transfer to which the provisions of the Securities Transfer Act 1991 applies must comply with the requirements of that Act. Where an instrument of transfer would have complied with that Act had it been executed in New Zealand, it may nevertheless be registered if it is executed to the satisfaction of the Board. No fee shall be payable to the Company upon any transfer of Shares.
- (b) Every form of transfer not falling within the provisions of subclause (a) shall be in any usual or common form or other form which the Board may approve and shall be executed to the satisfaction of the Board.

14.4 Transferor Holder until Transferee Registered

The transferor shall remain the holder of the Share until the name of the transferee is entered on the Register.

14.5 Power to Refuse or Delay

The Board may refuse or delay the registration of a transfer:

- (a) if the Company has a lien over the Shares;
- (b) if the Instrument of Transfer is not accompanied by the Certificate of the Shares (if any) and/or other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;
- (c) if the instrument of transfer is not properly completed;
- (d) if registration, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would

result in the proposed transferee holding Shares of less than a Minimum Holding; or

- (e) such action is expressly permitted by any legislation or the Listing Rules.

14.6 **Return of Unregistered Transfers**

Any instrument of transfer of any Share the registration of which has been declined shall be promptly returned to the person submitting it for completion, and (subject to clauses 14.5(a) and 14.5(b)) shall be registered when any errors or omissions have been rectified.

14.7 **No Trust Recognised**

Except as required by law or as expressly authorised by this Constitution, the Company shall be entitled to treat the holder of any Share as the absolute owner thereof and shall not, unless ordered by a court of competent jurisdiction, be liable or under any obligation to recognise any trust or equity or equitable or other claim to or interest in such Share on the part of any other person whether or not it shall have actual or other notice thereof and any such notice, if given, shall be absolutely inoperative as against the Company for any purpose.

14.8 **Transmission**

- (a) The legal personal representatives of a deceased holder of a Share shall be the only persons recognised by the Company as having any title to the Share. In the case of a Share registered in the names of two or more holders the survivors or survivor, or the legal representatives of the deceased, shall be the only person recognised by the Company as having any title to such a Share but nothing in this Constitution shall release the estate of a deceased joint holder from any liability which had been jointly held by the holder with other persons.
- (b) Any person becoming entitled to a Share in consequence of the death or bankruptcy of a holder of a Share shall, upon such evidence being produced as may from time to time be properly required by the Board, have the right either to be registered as the holder of the Share or, instead of being so registered, to make such transfer of the Share as the deceased or bankrupt person could have made, but the Board shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by the deceased or bankrupt person before the death or bankruptcy.
- (c) Where a holder of a Share dies or becomes bankrupt the personal representatives or the assignee of such person's estate, as the case may be, shall, upon the production of such evidence as may from time to time be properly required by the Board be entitled to the same Dividends and other advantages, and to the same rights (whether in relation to meetings

of the Company, or to voting, or otherwise) as the holder of a Share would have been entitled to if that person had not died or become bankrupt. Where two or more persons are jointly entitled to any Share in consequence of the death of the holder of the Share they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

- (d) Any such transmission shall not affect or prejudice any lien held over the Shares by the Company or the Board's right to refuse or delay registration of any further transfer of Shares.

14.9 Registration of Shareholdings in Parcels

- (a) The share registrar of the Company, on request by a Shareholder or proposed transferee, may register a Shareholding in a separate parcel of Shares identified by a distinguishing word, number or other parcel differentiator. Where a Shareholder's Shareholding is so registered, the Company may communicate separately with the Shareholder in respect of the parcel, pay a Dividend and otherwise act, so far as the Board considers convenient, as if the separate parcel belonged to a different Shareholder.
- (b) If the administrative costs to the Company of dealing with a Shareholder's holding as provided in this clause exceed the average cost of registering, communicating with, and otherwise servicing a Shareholder, the Company may, as a condition of agreement to a request made for the benefit of this clause, require that person to meet any additional costs thereby incurred by the Company.
- (c) Nothing in this clause 14.9 shall limit the operation of clause 14.7.

14.10 Securities other than Shares

The provisions of this clause 14 shall also apply to Securities, other than Shares, with any necessary modifications except to the extent (if any) provided otherwise by the terms of issue of such Securities, by the Listing Rules, or by law.

15. Notices for Shareholders

15.1 Manner of Notice

A notice may be given by the Company to any Shareholder either personally or by sending it by post (which, in the case of a registered address outside New Zealand, shall be airmail post) or by sending by any form of electronic communication permitted by the Electronic Transactions Act 2002 with the consent of the person to that Shareholder or to that Shareholder's registered address.

15.2 **Service of Notice**

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, pre-paying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the day of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post. In proving the giving of any notice by mail it shall be sufficient to prove that the letter, post card, envelope or wrapper containing the notice was properly addressed, stamped and posted and a certificate in writing signed by any Director or other officer of Employee of the Company that the letter, post card, envelope or wrapper containing the notice was so addressed, stamped and posted shall be conclusive proof thereof. If a holder of a Security quoted on the Exchange has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that Security holder at such address and shall be deemed to have been received by that Security holder 24 hours after the time of the posting.

15.3 **Notice Where Shareholder has no Registered Address**

If a Shareholder has no registered address he or she shall not be entitled to have any notice sent to him or her from the Company and all proceedings taken without notice to any such Shareholder shall be as valid as if he or she had due notice thereof. If a Shareholder has no registered address, a notice may (but need not) be given by the Company to any such Shareholder by advertisement in a newspaper circulating in the neighbourhood of the Registered Office addressed to the Shareholders of the Company generally and any notice so given shall be deemed to have been duly given at noon on the day on which the advertisement appears.

15.4 **Notice to Joint Holders**

A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder first named in the Register in respect of the Share.

15.5 **Notice to Representatives or Manager**

A notice may be given by the Company to the person entitled to a Share in consequence of the mental disorder, death or bankruptcy of a Shareholder, by sending it through the post in a prepaid letter addressed to him or her by name, or by the title of the manager of the mentally disordered person, or the legal personal representatives of the deceased, or the assignee of the bankrupt, or by any like description, as the case may be, at the address, if any, supplied for the purpose by the person claimed to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the mental disorder, death or bankruptcy had not occurred.

15.6 **Signature of Notice**

The signature on any notice to be given by the Company may be written in accordance with the definition of “written” in the Listing Rules.

15.7 **Registered Address**

The address entered in the Register shall be the registered address of each Shareholder. It shall be the duty of each Shareholder upon changing his, her or its address to notify the Company of such change. If notices or communications posted to a Shareholder’s registered address are returned to the Company marked by the postal authorities or otherwise to the effect that the Shareholder is not known at that address or that delivery cannot be effected at that address, then the Company may send a registered letter to the Shareholder’s registered address and if such registered letter is returned not having been delivered, then the Shareholder shall be deemed to have no registered address.

15.8 **Notices to Equity Security Holders**

Equity Security holders of all Classes shall be entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying Votes.

16. **Meetings of Shareholders**

16.1 **Proceedings at Meetings**

- (a) The provisions of the first schedule hereto govern proceedings at meetings of Shareholders.
- (b) The provisions of the first schedule hereto govern proceedings at meetings of Interest Groups (with any necessary modifications).

17. **Disposal or Acquisition of Assets**

17.1 **Ordinary Resolution Required**

The Company shall not enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Company or assets to be held by the Company:

- (a) which would change the essential nature of the business of the Company;
or
- (b) in respect of the gross value, is in excess of 50% of the Average Market Capitalisation of the Company,

except with the prior approval of an Ordinary Resolution of the Company or a special resolution if section 129 of the Act applies.

17.2 **Exception**

Clause 17.1 shall not apply to:

- (a) a takeover offer made by the Company:
 - (i) in respect of a Code Company in accordance with any takeovers code approved under the Takeovers Act 1993; or
 - (ii) in respect of an Issuer that is not a Code Company, but to whom section 4 of the Listing Rules applies, in accordance with the Constitution or Trust Deed of that Issuer, which complies with section 4 where that Issuer is not a Code Company; or
 - (iii) in relation to any other person, in accordance with any takeover law regime of a jurisdiction other than New Zealand which is applicable to that person and provides for prior notice, publicity and disclosure which in the opinion of the NZX is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in subclauses (i) or (ii) above;
- (b) Any transaction entered into by the Company with a Bank as principal, on arm's length terms and in the ordinary course of its banking business.

17.3 **Conditional Transactions**

Clause 17.1 shall not prevent the Company or a Subsidiary from entering into transactions of the kind referred to in subclauses (a) and (b) of that clause subject to a condition or conditions that the agreement shall not take effect without the approval of an Ordinary Resolution or special resolution, as the case may be, or a Ruling.

18. **Transactions with Related Parties**

18.1 **Definitions**

The expressions "Material Transaction" and "Related Party" shall have the respective meanings given to them in the Listing Rules.

18.2 **Ordinary Resolution Required**

The Company shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of "Material Transaction", a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by Ordinary Resolution of the Company.

18.3 Exception

Clause 18.2 shall not apply to:

- (a) any transaction entered into by the Company with a Bank as principal, which is a Related Party of the Company, on arms-length terms and in the normal course of its banking business;
- (b) the issue, acquisition or redemption by the Company of Securities, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder, except to the extent that an issue excludes holdings outside New Zealand in accordance with clause 5.8(e). For the purposes of this paragraph, the transfer by the Company of Shares held by the Company in itself, shall be deemed to constitute an issue of Securities;
- (ba) the issue of Equity Securities by the Company under clause 5.7A or clause 5.11(e); or
- (c) an employment contract or contract for personal services with the Company which is a Material Transaction under Listing Rule 9.2.2, where:
 - (i) the terms of the contract are set on an arm's length, commercial basis and have been approved by the Independent Directors of the Company; and
 - (ii) the Independent Directors approving the contract sign and deliver to the NZX a certificate stating that the requirements of the applicable Listing Rules have been complied with; and
 - (iii) material particulars of the contract (including the Company's use of this exception) are disclosed in the next annual report of the Company; or

- (d) any transaction indemnifying any Director or Employee (as defined in clause 5.10(d) of the Company or any Related Company which would be a Material Transaction under Listing Rule 9.2.2, where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or Employee under the proposed indemnity; or
- (e) arrangements, amalgamations or compromises pursuant to Part XV of the Act; or
- (f) a Material Transaction with a total value that (or, in the case of a Material Transaction referred to in Listing Rule 9.2.2(e) the actual gross cost to the Company in any financial year that) does not exceed \$250,000; or
- (g) a Material Transaction that is an employment agreement with a natural person who is not a Director within the meaning of section 126 of the Act of the Company or any of its Subsidiaries.

18.4 **Conditional Transactions**

Clause 18.3 shall not prevent the Company from entering into transactions of the kind referred to in that clause subject to a condition that the transaction shall not take effect without the approval of an Ordinary Resolution or a Ruling.

19. **Appointment and Removal of Directors**

19.1 **Number of Directors**

- (a) The number of Directors shall be not less than three or more than eight. At least two Directors shall be ordinarily resident in New Zealand. The Directors in office at the date of this Constitution coming into force shall continue to hold office under the provisions hereinafter contained.
- (b) The Directors may act notwithstanding any vacancy in their body, but if and for so long as the number of Directors is reduced below three, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of Shareholders, but for no other purpose.

19.2 **Minimum Number of Independent Directors**

- (a) The minimum number of Independent Directors of the Company shall be two or one-third of the total number of Directors, whichever is the greater. However if the Company ever has:
 - (i) eight Directors, it must have at least three Independent Directors; or

- (ii) less than eight or more than nine Directors it may round down to the nearest one-third.
- (b) The Board must identify which Directors it has determined, in its view, to be Independent Directors.
- (c) The Board must make a determination under clause 19.2(b):
 - (i) No later than 10 Business Days following the Company's annual meeting and immediately after such determination, the Company shall release to the market the names of those Directors determined by the Board to be Independent Directors; and
 - (ii) No later than 10 Business Days following appointment by the Board in respect of any Director appointed by the Board and immediately after the making of such determination, the Company shall release to the market whether the Board has determined that such Director is an Independent Director; and
 - (iii) Prior to the publication of its annual report to enable it to comply with rule 10.5.5(j) of the Listing Rules.
- (d) It is the responsibility of the Company to make necessary arrangements to require its Directors to provide sufficient information to the Board in order for the Board to make a determination under rule 19.2(b).

19.3 **Appointment by Ordinary Resolution**

- (a) A Director may be appointed by Ordinary Resolution.
- (b) No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Security Holders of the Company unless that person has been nominated by a Security Holder entitled to attend and Vote at the meeting. There shall be no restriction on the persons who may be nominated as directors (other than the holding of qualification shares, if the Constitution so requires), nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this clause. The closing date for nominations shall not be more than two months before the date of the annual meeting at which the election is to take place. The Company shall make an announcement to the market of the closing date for Director nominations and contact details for making nominations no less than 10 Business Days prior to the closing date for Director nominations.
- (c) Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the

meeting, and the Company shall specify in such notice the Board's view on whether or not the nominee would qualify as an Independent Director.

- (d) No resolution to appoint a Director shall be put to Shareholders unless:
 - (i) the resolution is for the appointment of one Director; or
 - (ii) the resolution is a single resolution for the appointment of two or more Directors and a separate resolution that it be so voted on has first been passed without a Vote being cast against it.
- (e) Nothing in subclause (d) prevents the appointment of two or more Directors by ballot or a poll.

19.4 **Appointment by the Board**

- (a) A Director may be appointed by the Board.
- (b) A person who is appointed as a Director by the Board shall retire from office at the next annual meeting of Shareholders but shall be eligible for re-election by Ordinary Resolution at that meeting.

19.5 **Rotation**

- (a) Subject to the provisions of this clause at least one third of the Directors, or if their number is not a multiple of three then the number nearest to one third, shall retire from office at each annual meeting of Shareholders. The Directors to retire shall be those who have been longest in office since they were last elected or deemed elected. As between persons who were appointed, elected or deemed elected, as Directors on the same day, those to retire (unless they agree otherwise among themselves) shall be determined by lot. A retiring Director shall be eligible for re-election and shall act as a Director throughout the meeting at which that person retires.
- (b) The following Directors shall be exempt from the obligation to retire pursuant to subclause (a):
 - (i) any Director appointed by the Board pursuant to clause 19.4(a) who is subject to re-election; and
 - (ii) one executive Director unless the Board otherwise determines.
- (c) The respective Director referred to in subclause (b)(i) shall be excluded from the number of Directors upon which the calculation under subclause (a) is made as to how many Directors shall retire at an annual meeting.

- (d) The Director referred to in subclause (b)(ii) shall be included in the number of Directors upon which the calculation under subclause (a) is made as to how many Directors shall retire at an annual meeting.
- (e) A Director retiring by rotation at a meeting shall, if standing for re-election, be deemed to have been re-elected unless:
 - (i) some other person is elected to fill the vacated office;
 - (ii) it is resolved not to fill the vacated office; or
 - (iii) a resolution for the re-election of that Director is put to the meeting and lost.

19.6 **Removal of Director**

- (a) A Director may be removed from office by Ordinary Resolution notwithstanding any agreement between the Company and that Director.
- (b) A Director may be removed from office by the Board if the Director is absent from meetings of the Board for more than six months without the Board's permission.

19.7 **Retirement of Director**

The office of a Director shall be vacated if the Director:

- (a) becomes disqualified from being a Director by reason of section 151(2) of the Act;
- (b) becomes of unsound mind;
- (c) resigns that person's office by notice in writing to the Company; or
- (d) is removed from office by a resolution passed under the provisions of clause 19.5 or section 156 of the Act.

20. **Alternate Directors**

20.1 **Appointment**

- (a) Any Director may by notice to the Company appoint a person not being a Director to be the alternate of that Director.
- (b) No Director may appoint another person to act as alternate Director for him or her, except with the consent of a majority of the other Directors.

- (c) No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate.

20.2 Powers

Each alternate shall:

- (a) be entitled to receive notice of meetings of Directors;
- (b) during the absence of the appointing Director, be entitled to attend and vote at meetings of Directors and be counted in the quorum at such meetings; and
- (c) have all the rights, powers, duties and authorities of the appointing Director, except that the alternate shall not be entitled to appoint an alternate and the alternate shall not be entitled to be remunerated otherwise than out of the remuneration of the appointing Director.

20.3 No Agency

An alternate shall not be deemed to be the agent of the appointing Director.

20.4 Cessation of Appointment

- (a) A Director may at any time by notice to the Company revoke the appointment of his or her alternate.
- (b) If a Director shall cease to be a Director, the appointment of that Director's alternate shall thereupon cease.
- (c) The appointment of an alternate may be revoked by a majority of the Directors other than the appointing Director.

All appointments and removals of alternate Directors shall be effected by notice in writing to the Company, such notice to be left at the Registered Office.

20.5 Director's Interest and Share dealings

Subject to the specific provisions of the Act in relation thereto, a Director shall forthwith disclose to the Board and otherwise comply with the requirements of the Act if and to the extent the Director is or becomes interested in a transaction to which the Company is a party as defined in section 139 of the Act, or has, acquires or disposes of, a relevant interest in any Shares issued by the Company as defined in section 146 of the Act.

21. Managing Director

21.1 Appointment of Managing Director

- (a) The Board may from time to time appoint one or more Directors to the office of Managing Director for such period, not exceeding five years, and on such remuneration and terms as the Board determines.
- (b) The Board may enter into any agreement on behalf of the Company with any person who is, or is about to become, a Managing Director, with regard to the terms and conditions of such person's employment, but so that the remedy of any such person for any breach of the agreement shall be in damages only, and such person shall have no right to claim to continue in such office contrary to the will of the Board. Any Managing Director shall immediately cease to be a Managing Director if he or she ceases to hold office as a Director for any reason.
- (c) The Board may entrust to and confer upon a Managing Director any of the powers exercisable by it upon such conditions and with such restrictions as it may determine, either collaterally with or to the exclusion of its own powers, and may from time to time revoke, withdraw, alter or vary all or any of those powers.

21.2 Termination of Appointment

- (a) A Managing Director's appointment shall terminate if he or she ceases to be a Director.
- (b) A Managing Director's appointment may be terminated by the Board.

21.3 No Claim to Office by Managing Director

A Managing Director whose appointment is terminated shall have no right or claim to continue in that office and the only remedy, if any, against the Company shall be damages.

22. Proceedings and Powers of the Board

22.1 Proceedings at Meetings

The provisions of the second schedule govern proceedings at meetings of the Board. The Third Schedule to the Act shall not apply to the Company.

22.2 Sale of Less than a Minimum Holding

- (a) The Board may at any time give three months notice to a Shareholder whose Shares are less than a Minimum Holding of the Board's intention to arrange a sale of those Shares.

- (b) The notice shall advise the Shareholder that the Shareholders' Shares may be sold unless within a period of three months the Shareholder acquires sufficient Shares so that the Shareholder's total holding is at least a Minimum Holding.
- (c) The Board may arrange for the sale of all the Shareholder's Shares if by the end of the three month period the Shareholder has not lodged with the Company for registration a transfer of Shares which, together with Shares already held by the Shareholder, will result in at least a Minimum Holding.
- (d) For the purpose of such sale a Director may execute a transfer of the Shares to the transferee and may receive the consideration for such transfer.
- (e) The transferee shall not be bound to see to the application of the purchase money nor shall the transferee's title to the Shares be affected by any irregularity or invalidity on the sale.
- (f) The Company may deduct reasonable sale expenses from the proceeds of sale. The net proceeds of sale will be paid to the Shareholder.
- (g) This clause shall also apply to Securities, other than Shares, with any necessary modifications.

22.3 Company Name

A Director may, with the approval of the Board, apply to change the name of the Company.

22.4 Appointment of Attorney

The Company may appoint a person as its attorney, either generally or in relation to a specified matter, with such powers, conditions and protection as the Board may determine.

23. Remuneration of Directors

23.1 Fixing Remuneration

- (a) No remuneration shall be paid to a Director in his or her capacity as a Director of the Company or a Subsidiary, other than a Subsidiary which is Listed (including any remuneration paid to a Director by a Subsidiary, other than a Subsidiary which is also Listed) unless that remuneration has been authorised by an Ordinary Resolution.

- (b) Each such Resolution shall express Directors' remuneration as either:
 - (i) a monetary sum per annum payable to all Directors taken together (which shall be distributed as the Board determines); or
 - (ii) a monetary sum per annum payable to any person who from time to time holds office as a Director.
- (c) Such a resolution may expressly provide that remuneration may be payable either in part or in whole by way of an issue of Equity Securities, provided that issue occurs in compliance with clause 5.10(b).
- (d) If remuneration is expressed in accordance with paragraph (i) of subclause (b), then in the event of an increase in the total number of Directors holding office the Board may, without the authorisation of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors, remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).
- (e) No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a meeting of Shareholders unless notice of the amount of increase has been given in the notice of meeting.
- (f) Nothing in this clause shall affect the remuneration of Managing Directors in their capacity as executives.
- (g) Directors' remuneration for work not in the capacity of a Director of the Company or a Subsidiary may be approved by the Directors without Shareholder approval, subject to clause 18, if applicable.

23.2 Expenses and Special Remuneration

- (a) The Directors shall be entitled to be paid reasonable travelling, accommodation and other expenses incurred in relation to the management of the Company.
- (b) The Board may authorise the payment of special remuneration to a Director undertaking work additional to that expected of the other Directors.
- (c) Alternate Directors may be repaid expenses and shall be entitled to be indemnified by the Company to the same extent mutatis mutandis as if they were Directors, but they shall not be entitled to receive from the Company in respect of their appointment as alternate Directors remuneration except only such proportion (if any) of the remuneration

otherwise payable to their appointors as such appointor may by notice in writing to the Company from time to time direct.

23.3 Payment Upon Cessation of Office

- (a) The Company may make a payment to a Director or former Director of the Company, or to his or her dependants, by way of a lump sum or pension, or upon or in connection with the retirement or cessation of office of that Director, only if the amount of the payment, or the method of calculation of the amount of that payment is authorised by an Ordinary Resolution of the Company, provided that the Company may make a payment to a Director or former Director that was in office on or before 1 May 2004, and has continued to hold office since that date, or to his or her dependants, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, without an Ordinary Resolution of the Company, provided that the total amount of that payment (or the base for the pension) does not exceed the total remuneration of that Director in his or her capacity as a Director in any three years chosen by the Company.
- (b) Nothing in this clause shall affect any amount payable to an Executive Director upon or in connection with the termination of his or her employment with the Company or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

24. Indemnity and Insurance

24.1 Indemnity

- (a) The Company may indemnify any Director or employee of the Company or a Related Company in respect of any costs or liability described in sections 162(3) and (4) of the Act.
- (b) Subject to any restrictions imposed in the Act, the Company may execute or cause to be executed security over any of the assets of the Company by way of indemnity against any loss damage or liability on the part of any Director, officer, agent or employee of the Company or a Related Company or any other person who shall become personally liable, either absolutely or contingently, for the payment of any sum primarily due from the Company or a Related Company.

24.2 Insurance Against Liability

The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a Related Company in respect of all or any liability or costs as described in section 162(5) of the Act, provided that the Directors who vote in favour of authorising the effect of insurance under this

clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company and that the Board ensures that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or a Related Company are entered in the Interests Register and included in the report by the Directors under section 211 of the Act.

24.3 Definitions

For the purpose of this clause the words “Director”, “effect insurance”, “employee”, “indemnify” and “indemnity” shall have the meaning given to them in section 162(9) of the Act.

25. Disclosure Notices

25.1 Overseas Investment

If, under any legislation or regulation providing for any restrictions on the freedom of a company where a number or a proportion of its Equity Securities are held by overseas persons and/or persons not ordinarily resident in New Zealand as defined in such legislation or regulation, the Board has reasonable cause to believe that the Equity Securities of the Company are held or beneficially owned by overseas persons and/or persons not ordinarily resident in New Zealand as so defined to the extent of eighty per cent. (80%) or more of the number or proportion which is required to render such restrictions applicable to the Company, then the Board may subject to compliance with the Listing Rules by notice in writing require any or all of the holders of Equity Securities of the Company to lodge with the Company within forty-two (42) days of the date such notice is served or deemed to be served a declaration or other disclosure as to the country of ordinary residence of the holder or holders or the beneficial owner or owners of any Equity Securities in the Company held by such holders, the identity of such beneficial owners, the total number of Equity Securities held or beneficially owned by such holder or the beneficial owner of the Equity Securities so held and such other matters as may be relevant in relation to such restrictions or the avoidance of their application to the Company.

25.2 Substantial Securityholders

The Board may by notice in writing require any transferee to lodge with the Company within forty-two (42) days of the posting of such notice:

- (a) when transfers to the same transferee are lodged for registration within any one period of twelve (12) months and relate to an aggregate of one per cent. (1%) or more of the issued Equity Securities transferred by the latest transfer, a declaration setting out the total number of Equity Securities held or beneficially owned by such transferee or by the beneficial owner of the Equity Securities dealt with in such transfer;

- (b) when a declaration made under paragraph (a) discloses a holding (whether by the transferee or otherwise) of Equity Securities representing an aggregate five per cent. (5%) or more of the issued Equity Securities, a declaration setting out the identity of the beneficial owner of such Equity Securities.

26. Liquidation

26.1 Liquidation of the Company

If the Company is put into liquidation the liquidator may, with the sanction of a special resolution of the Company and any other sanction required by the Act, divide amongst Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as such liquidator deems fair upon any property to be divided as aforesaid and may determine how the divisions shall be carried out as between the Shareholders or different Classes of Shareholders. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of Shareholders as the liquidator thinks fit, but so that no Shareholder shall be compelled to accept any Shares or other Securities on which there is any liability.

26.2 Assets may be Distributed

Subject to the terms and conditions upon which any Class of Shares may have been issued, upon the liquidation of the Company the surplus assets of the Company shall be distributed among Shareholders in proportion to the number of Shares held by them respectively less any amounts of the issue price for such Shares which remains outstanding.

26.3 Definitions

In this clause "surplus assets" means the assets in the hands of the liquidator after the payment of all the debts and liabilities of the Company including all the costs of the liquidation.

26.4 Commissions to be Ratified by Shareholders

Any commission or remuneration proposed to be paid on the sale of the Company's undertaking or any part thereof or on the liquidation of the Company to a Director or liquidator shall be subject to ratification by the Shareholders. Prior notification of the amount of such proposed payments shall be given to all Shareholders at least seven days before the meeting at which such payments are to be considered and if no quorum is present within fifteen minutes from the time appointed for the meeting the proposed payments shall be deemed to be ratified.

First Schedule

Proceedings at Meetings of Shareholders (clause 16)

1. Chairperson

- 1.1 If the Directors have elected a Chairperson of the Board, and the Chairperson of the Board is present at the meeting, he or she must chair the meeting.
- 1.2 If no Chairperson of the Board has been elected, or if at any meeting the Chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting, or is unwilling to act, the Directors present may choose one of their number to be Chairperson of the meeting.
- 1.3 If no Director is present within 15 minutes of the time appointed for commencement of the meeting, or no Director is willing to act as Chairperson, the Shareholders present may choose one of their number to be Chairperson of the meeting.

2. Entitlements

- 2.1 The Shareholders entitled to receive notice of a meeting of Shareholders are those Shareholders of the relevant Class:
 - (a) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of meeting, whose names are registered in the Register of that date; or
 - (b) if the Board does not fix a date for the purpose of establishing an entitlement to receive the notice of meeting, whose names are registered in the Register at the close of business on the day immediately preceding the day on which the notice is given.

3. Notice of Meeting

- 3.1 Written notice of the time and place of a meeting must be sent to every Shareholder entitled to receive notice of the meeting, to Equity Security holders of all Classes (not being Shareholders), and to every Director and the Auditor not less than ten working days before the meeting.
- 3.2 The notice must state:
 - (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it including any other matter which is required to be contained in the notice by the Act, any other law or the Rules; and

(b) the text of any special resolution to be submitted to the meeting.

3.3 An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and Vote at the meeting attend the meeting without protest as to the irregularity or if all such Shareholders agree to the waiver.

3.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at a meeting.

4. **Method of Holding Meeting**

4.1 A meeting may be held either:

(a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or

(b) by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum can simultaneously hear each other throughout the meeting.

5. **Quorum**

5.1 Subject to paragraph 5.3, no business may be transacted at a meeting if a quorum is not present when the meeting proceeds to business.

5.2 A quorum for a meeting is three Shareholders present in person, by proxy, or by Representative.

5.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:

(a) in the case of a meeting called under section 121(b) of the Act, the meeting shall be dissolved; and

(b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other place, date and time as the Directors may appoint and, if at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their proxies or Representatives present are a quorum.

6. **Adjournment**

6.1 A meeting or any business being considered or remaining to be considered may be adjourned if:

- (a) the Chairperson of the meeting (with the consent of the meeting) so determines; or
 - (b) the Chairperson of the meeting is directed by the meeting (in which case the meeting shall be adjourned).
- 6.2 No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. If a meeting is adjourned for less than 30 days, it shall not be necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.
- 6.3 Without limiting paragraph 6.1, a meeting or any business being considered or remaining to be considered may be adjourned indefinitely or dissolved if the meeting becomes so disorderly or protracted that in the opinion of the Chairperson of the meeting, in his or her sole discretion, the business of the meeting cannot be conducted in a proper and orderly manner.
- 6.4 If a meeting is to be adjourned or dissolved pursuant to paragraph 6.3, then with respect to any unfinished business of such meeting:
 - (a) the Chairperson may direct that any other item of business uncompleted at the meeting (of which notice was given in the notice convening the meeting) be put to the vote on a poll without further discussion; and
 - (b) a resolution not voted upon concerning the remuneration of the Auditors will be deemed to have been withdrawn and a resolution authorising the Board to fix the remuneration of the Auditors will be deemed to have been passed.
- 7. **Voting**
- 7.1 In the case of a meeting held under paragraph 4.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the Chairperson of the meeting:
 - (a) voting by voice; or
 - (b) voting by show of hands.
- 7.2 In the case of a meeting of Shareholders held under paragraph 4.1(b), unless a poll is demanded, voting at the meeting shall be by the Shareholders, or their proxy, or Representative signifying individually their assent or dissent by voice.
- 7.3 Subject to the terms of issue of any Share and to paragraphs 7.12 to 7.19, each Shareholder present in person or by proxy or Representative shall have one Vote on a vote by voice or by show of hands.

- 7.4 Subject to the terms of issue of any Share and to paragraphs 7.12 to 7.19, a Share confers the right to one Vote on a poll.
- 7.5 A declaration by the Chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with paragraph 7.6.
- 7.6 At a meeting a poll may be demanded by:
- (a) not less than five Shareholders having the right to vote at the meeting and present in person or by proxy;
 - (b) a Shareholder or Shareholders present in person or by proxy and representing not less than ten per cent. of the total voting rights of all Shareholders having the right to vote at the meeting;
 - (c) a Shareholder or Shareholders present in person or by proxy and holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than ten per cent. of the total amount paid up on all Shares that confer that right; or
 - (d) the Chairperson of the meeting.
- 7.7 A proxy notice confers authority to demand or join in demanding a poll. A demand by a proxy has the same effect as a demand by the Shareholder appointing the proxy.
- 7.8 A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 7.9 A poll shall be taken at the time and in the manner determined by the Chairperson of the meeting. Any other business may be proceeded with pending the taking of the poll.
- 7.10 If a poll is taken:
- (a) the Auditors shall be scrutineers of the poll, unless the Auditors are unable or unwilling to act in which case the scrutineers shall be those persons appointed by the Chairperson of the meeting;
 - (b) Votes must be counted according to the Votes attached to the Shares of each Shareholder present in person, or by proxy, or Representative. A Shareholder, proxy or representative entitled to more than one Vote need not on a poll use all the Votes the member is entitled to use or cast in the same way;
 - (c) the Chairperson shall finally determine, in good faith, the admission or rejection of any Vote;

- (d) the Chairperson may declare the result of a poll when its outcome is known, regardless of whether all Votes have been counted; and
- (e) the Chairperson may declare the result of the poll at or after the meeting.

7.11 The Chairperson of the meeting is entitled to a casting Vote.

7.12 Voting Restrictions

Notwithstanding anything to the contrary in the Act or this Constitution, a person is not entitled to cast a Vote on a resolution where that person is disqualified from voting by the Listing Rules or any other listing rules binding on the Company, and, subject to Listing Rule 9.3 and notwithstanding anything to the contrary in the other provisions of the Listing Rules or this Constitution, on any resolution of the nature listed in column 1 of the table below, no Vote in favour of any such resolution shall be cast on any Securities held by a person of the nature listed in respect of that resolution in column 2 of the table below, or by any Associated Person of such a person.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolution under clauses 23.1 and 23.3	The Director intended to receive a payment.
Resolution under clause 5.5(a)	Subject to paragraph 7.13 (a) Any person to whom it is proposed to issue the new Securities referred to in the resolution; or (b) If the resolution does not specify the persons to whom it is proposed to issue Securities, any Director of the Company who is not excluded by the terms of the resolution from participation in the issue.
Resolution under clause 5.5(a) to approve a Rights issue of Equity Securities which is not Renounceable	Any Director of the Company.
Resolution under clause 5.9(a)(i) (C)	Any person who has been issued, or has acquired, Securities the subject of ratification by that resolution.
Resolution under clause 5.10(c)	Any Director intended or likely to benefit from the issue referred to in the resolution.

Column 1 RESOLUTION	Column 2 DISQUALIFIED PERSON
Resolution under clauses 5.12, 10.5 and 12.5	Any person whose effective control of the Company would be materially increased.
Resolution to cancel, reduce or defer an obligation to pay any amount which is unpaid on any Equity Security of the Company (as prescribed under Listing Rule 8.4)	Any person who is intended to benefit from the reduction, deferral, or cancellation, unless the reduction, deferral, or cancellation benefits all holders of Equity Securities of the Company on the same basis.
Resolution under clause 18.2	Any person referred to in Listing Rule 9.2.3 who is a party or beneficiary (in terms of clause 18.2 (a) or (b)) of the transactions the subject of the resolution.

- 7.13 On a resolution under clause 5.5(a), a person to whom it is proposed to issue the new Securities referred to in that resolution is not disqualified from voting if the new Securities are to be offered on the same basis to all holders of Securities of the same Class as the Securities held by that person.
- 7.14 The Company shall ensure that its obligations and the obligations of its Subsidiaries under every contract or arrangement involving a transaction which requires a resolution referred to in clause 18 and paragraph 7.12 shall be conditional on passage of such a resolution in accordance with those requirements and a condition that if such obligations are performed, in whole or in part, without such sanction, at the election of the Company they shall be voidable and the parties returned to their positions as if the contract or arrangement had not been made so far as that can be achieved, provided that the Company shall make reasonable endeavours to ascertain, no later than 5 Business Days before any meeting to consider a resolution of the type referred to in paragraph 7.12 the identity of any person whose voting rights are restricted pursuant to paragraph 7.12 or Listing Rule 9.3.1 in respect of that resolution and on request shall supply a list of such persons to the Exchange and any holder of Equity Securities.
- 7.15 Paragraph 7.12 shall not prevent a person who is disqualified from voting (under paragraph 7.12) and who has been appointed as a proxy, or Representative, by another person (who is not disqualified from voting) from voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.
- 7.16 Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a Vote at a meeting in breach of paragraph 7.12, no resolution of, or proceeding at, a meeting shall be impugned on the basis of a breach of paragraph 7.12. Any objection by a holder of Securities to the accuracy or completeness of a list of holders of Securities who are disqualified from voting on a resolution pursuant to paragraph 7.12 shall be disregarded by the Company

and the Chairperson of the meeting, if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.

- 7.17 If a sum due and payable to the Company in respect of a Share has not been paid, that Share may not be voted at a meeting, other than at a meeting of an Interest Group.
- 7.18 Where there are Shares, some of which are fully paid and some of which are not fully paid, each Share which is not fully paid shall carry only a fraction of the Vote which would be exercisable if the Share were fully paid, equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call) provided that for the purposes of this paragraph, a Share which is not fully paid is not of the same Class as a fully paid Share.
- 7.19 (a) **Shareholders of Unsound Mind** - A Shareholder who is subject to the Mental Health (Compulsory Assessment and Treatment) Act 1992 and is a mentally defective person within the meaning of that Act may vote by such Shareholders' committee or other person having authority to administer such Shareholder's estate. Subject to the provisions of the protection order made under the Protection of Personal and Property Rights Act 1988 a Shareholder may vote in respect of any Shares that are subject to such protection order by the manager appointed in that protection order. Any such committee, manager or other person as aforesaid may vote either on a show of hands or on a poll, and, on a poll, by vote by proxy.
- (b) **Shareholders Outside New Zealand** - A Shareholder not living in New Zealand and therefore not being subject to the statutes referred to in subclause (a) who is of unsound mind or in respect of whom an order has been made by any court having jurisdiction in lunacy may vote whether on a vote on a show of hands or on a poll by such Shareholder's committee, curator bonis or other person in the nature of a committee or curator bonis appointed by that court.
- (a) **Votes of Representatives of Deceased or Bankrupt Shareholder** - Any person entitled under clause 14.8 to a transfer of any Shares may vote at any general meeting in the same manner as if such person were the registered holder of those Shares provided that 48 hours at least before the time of holding the meeting or adjourned meeting, as the case may be, at which such person proposes to vote such person shall satisfy the Board of such person's right to a transfer of those Shares, unless the Board shall have previously admitted such person's right to vote at such meeting in respect thereof.

8. Proxies

- 8.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.
- 8.2 A proxy is entitled to attend and be heard at the meeting of Shareholders for which he or she is appointed as if the proxy were the Shareholder and may vote on all procedural matters including any resolution to amend any of the resolutions and to adjourn the meeting and vote on any resolution as amended.
- 8.3 A proxy must be appointed by notice in writing signed by the Shareholder and the notice must state whether the appointment is for a particular meeting, or a specified term.
- 8.4 So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates two way voting.
- 8.5 A proxy notice shall be sent with every notice of a meeting of Shareholders and:
- (a) as a minimum, shall (so far as the subject matter and form of the resolution reasonably permits) provide for two-way voting (for or against) on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the Vote; and
 - (b) shall not be sent with any name or office filled in as proxy (though the proxy notice may include a footnote to the effect that certain officers of the Company or other persons are willing to act as proxy, if the Shareholder wishes to appoint them); and
 - (c) may provide for the Shareholder to abstain from voting on each resolution and/or for the proxy to exercise a discretion to vote for or against each resolution, and should state clearly the consequences if no proxy instruction is provided.
- 8.6 No proxy is effective in relation to a meeting unless the proxy notice is received at one of the places nominated in the notice of meeting for the purpose by the time stated in the notice, provided that time is not earlier than 48 hours before the start of the meeting. A proxy notice may be sent by fax to one of the places so nominated.
- 8.7 A proxy is effective in relation to a meeting notwithstanding the previous:
- (a) death of the principal;
 - (b) insanity of the principal;
 - (c) revocation of the proxy; or

(d) transfer of the Shares in respect of which the proxy is given,

unless notice in writing of any such matter has been produced to the satisfaction of the Chairperson before the start of the meeting at which the proxy is to be used.

9. No Postal Voting

9.1 No Shareholder shall be entitled to exercise the right to vote at a meeting by casting a postal vote.

10. Minutes

10.1 The Board must ensure that minutes are kept of all proceedings at meetings.

10.2 Minutes which have been signed correct by the Chairperson of a meeting are prima facie evidence of the proceedings at that meeting.

11. Shareholder Proposal

11.1 A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting at which the Shareholder is entitled to vote.

11.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

11.3 If the notice is received by the Board not less than five working days and not more than 20 working days before the last day on which notice of the relevant meeting is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

11.4 If the notice is received by the Board less than five working days before the last day on which notice of the relevant meeting is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to Shareholders entitled to receive notice of the meeting.

11.5 The Board must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

11.6 The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Board considers to be defamatory, frivolous or vexatious.

11.7 Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

12. **Corporation may Act by Representative**

12.1 A body corporate which is a Shareholder may appoint a Representative to attend a meeting or meetings on its behalf in the same manner as that in which it could appoint a proxy and shall give notice of such appointment to the Company in the same manner as if it were appointing a proxy pursuant to paragraph 8 of this schedule, provided that the Chairperson of a meeting, the Board, or the persons checking the entitlement of people to attend a meeting, shall waive any time limit for prior notice in respect of a corporation in favour of a person who at a meeting can produce reasonable evidence of their authority to represent the corporation. Until notice of revocation of such authority shall have been given to the Company any person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual Shareholder of the Company.

12.2 A Representative shall have the same powers that a Shareholder would have if personally present at a meeting and shall be entitled to attend and be heard at the meeting and may exercise that Shareholder's right to vote.

13. **Vote of Joint Holders**

13.1 Where two or more persons are registered as the holder of a Share, the Vote of the person named first in the Register and voting on a matter must be accepted to the exclusion of the Votes of the other joint holders.

14. **Other Proceedings**

14.1 Except as provided in this schedule, the Chairperson of a meeting may regulate the procedure at the meeting.

Second Schedule

Proceedings of the Board (clause 22)

1. Chairperson

- 1.1 The Directors may elect one of their number as Chairperson of the Board.
- 1.2 The Director elected as Chairperson holds that office until he or she dies or resigns or the Directors elect a Chairperson in his or her place.
- 1.3 If no Chairperson is elected, or if at a meeting the Chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be Chairperson of the meeting.

2. Notice of Meeting

- 2.1 A Director or the secretary of the Company on behalf of the Board may convene a meeting.
- 2.2 Notice of a meeting must be given to every Director who is in New Zealand. The notice must include the date, time, and place of the meeting and the matters to be discussed. The notice need not be in writing.
- 2.3 An irregularity in the giving of notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting (in person or by their alternate) without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree (which may be retrospective) to the waiver.

3. Method of Holding Meeting

- 3.1 A meeting may be held either:
 - (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
 - (b) by means of audio, or audio and visual instantaneous, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.
- 3.2 If a meeting is held in accordance with paragraph 3.1(b) a Director may not leave the meeting by disconnecting such person's instantaneous communication device and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously

obtained the express consent of the Chairperson of the meeting to him or her leaving the meeting.

4. **Quorum**

- 4.1 A quorum for a meeting is two of the Directors.
- 4.2 No business may be transacted at a meeting if a quorum is not present.
- 4.3 A Director shall not be counted in the quorum for the purpose of consideration of a matter in which the Director is interested (as defined in the Act), unless the matter is one in respect of which Directors are expressly required by the Act to sign a certificate or which relates to the grant of an indemnity pursuant to section 162 of the Act.

5. **Voting**

- 5.1 Subject to paragraph 5.2, every Director has one vote.
- 5.2
 - (a) Subject to paragraph 5.2(b), a Director shall not vote on a Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term “interested” bears the meaning assigned to that term in section 139 of the Act.
 - (b) Notwithstanding paragraph 5.2(a), a Director may vote in respect of and be counted in the quorum for the Board for the purposes of a matter in which that Director is interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate, or one which relates to the grant of an indemnity pursuant to section 162 of the Act.
- 5.3 A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on the resolution are in favour of it.
- 5.4 In the case of an equality of votes the Chairperson shall have a casting vote unless only two Directors are present in which case the Chairperson shall not have a casting vote.
- 5.5 Any Director who abstains from voting shall be deemed not to have voted for or against the proposal or issue being voted on.

6. **Minutes**

- 6.1 The Board shall ensure that minutes are kept of all proceedings at meetings.

6.2 Minutes that have been signed correct by the Chairperson of the meeting, or by the Chairperson of the next meeting, are prima facie evidence of the proceedings of the meeting.

6.3 A copy of a resolution in writing under paragraph 7 shall be entered in the minute book of Board proceedings.

7. **Written Resolution**

7.1 A resolution in writing, signed or assented to by a majority of the Directors then entitled to receive notice of a meeting, is as valid and effective as if it had been passed at a meeting duly convened and held.

7.2 A resolution in writing may consist of one or more documents in like form, each signed by one or more Directors and a copy, facsimile transmission or other electronic reproduction of any such document signed or assented to by one or more Directors shall be conclusive evidence of the execution of the original document by those Directors.

8. **Committees**

8.1 Subject to the Act, the Board may delegate any of its powers to committees consisting of such person or persons (whether or not Directors) as they think fit and may from time to time revoke such delegation. Any committee so formed shall, in the exercise of the powers so delegated, conform to any terms that may from time to time be imposed upon it by the Board.

8.2 All acts done at any meeting of the Board, or of a committee of the Board, or by any person acting as a Director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Director or person acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

8.3 The proceedings of a committee of the Board shall be governed by this schedule with all necessary modifications.

9. **Audit Committee**

9.1 Without limiting clause 8, the Board shall establish an Audit Committee.

9.2 The Audit Committee shall:

(a) be comprised solely of Directors of the Company;

(b) have a minimum of three members;

- (c) have a majority of members that are Independent Directors; and
- (d) have at least one member with an accounting or financial background.

9.3 The responsibilities of the Audit Committee shall include:

- (a) ensuring that processes are in place and monitoring those processes so that the Board is properly and regularly informed and updated on corporate financial matters;
- (b) recommending the appointment and removal of the independent auditor;
- (c) meeting regularly to monitor and review the independent and internal auditing practices;
- (d) ensuring that the Company maintains accurate financial and accounting records;
- (e) having direct communication with and unrestricted access to the independent and any internal auditors or accountants;
- (f) reviewing the financial reports and advising all Directors whether they comply with the appropriate laws and regulations;

ensuring that the external auditor or lead audit partner is changed every five years.

9.4 Except to the extent inconsistent with the matters specified above, the Board may from time to time impose such other regulations on the Audit Committee as it sees fit.

10. **Other Proceedings**

10.1 Except as provided in this schedule, the Board may regulate its own procedure.