

CONSTITUTION

OF

GENERAL CAPITAL LIMITED

UNDER THE COMPANIES ACT 1993

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CONSTITUTION OF GENERAL CAPITAL LIMITED
UNDER THE COMPANIES ACT 1993

PART I: PRELIMINARY

I. DEFINITIONS AND INTERPRETATION

I.1 Definitions: In this Constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

"Act" means the Companies Act 1993;

"Alternate Director" means a Director appointed pursuant to clause 16.11;

"Amalgamation" means the completed act of the Company and one or more other companies amalgamating pursuant to Part XIII of the Act and continuing as one company, which may be one of the amalgamating companies or may be a new company;

"Annual Meeting" means a meeting of Shareholders held pursuant to clause 14.1;

"Balance Date" means the date adopted by the Company as the end of its financial year for the purpose of its annual financial statements;

"Board" means the Directors numbering not less than the required quorum acting as the Board of Directors of the Company, and where one Director is a quorum it means that Director so acting alone;

"Business Day" means a day on which NZX is open for trading;

"Call" means a resolution of the Board under clause 9.1 requiring Shareholders to pay all or part of the unpaid amount of the issue price of any Shares and, where the context requires, means the obligation of a Shareholder to meet the amount due pursuant to such a resolution;

"Class" and **"Class of Shares"** means a class of Financial Products having attached to them identical rights, privileges, limitations, and conditions and includes or excludes Financial Products which NZX in its discretion deems to be of or not of that Class;

"Chairperson" means the Chairperson of the Board, elected or appointed under clause 19.2;

"Company" means General Capital Limited;

"Constitution" means this Constitution of the Company and all amendments to it from time to time;

"Director" means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a Director of the Company;

"Distribution", in relation to Shares held by a Shareholder, means:

- (a) the direct or indirect transfer of money or property, other than Shares, by the Company to or for the benefit of the Shareholder; or

(b) the incurring of a debt by the Company to or for the benefit of the Shareholder,
whether by means of a purchase of property, the redemption or other acquisition of Shares,
a distribution of indebtedness, or by some other means;

"Dividend" means a Distribution by the Company other than a Distribution to which section 59 or section 76 of the Act applies;

"Equity Security" means an Equity Security, as defined in the Listing Rules, which has been issued, or is to be issued, by the Company, as the case may require;

"Financial Product" has the meaning given to that term in the Listing Rules;

"FMC Act" means the Financial Markets Conduct Act 2013;

"Interest Group", in relation to any action or proposal affecting rights attached to Shares, means a group of Shareholders:

- (a) whose affected rights are identical; and
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) who comprise the holders of one or more Classes of Shares.

For the purposes of this definition:

- (a) one or more Interest Groups may exist in relation to any action or proposal; and
- (b) if:
 - (i) action is taken in relation to some holders of Shares in a Class and not others;
or
 - (ii) a proposal expressly distinguishes between some holders of Shares in a Class and other holders of Shares of that Class,

holders of Shares in the same Class may fall into two or more Interest Groups;

"Interests Register" means a register kept by the Company at its registered office as required by section 189(1)(c) of the Act;

"Listed" has the meaning given to it in the Listing Rules;

"Listing Rules" means the NZX Listing Rules in force from time to time;

"Major Transaction", in relation to the Company, means:

- (a) the acquisition of, or an agreement to acquire (whether contingent or not), assets the value of which is more than half the value of the Company's assets before the acquisition; or
- (b) the disposition of, or an agreement to dispose of (whether contingent or not), assets of the Company, the value of which is more than half the value of the Company's assets before the disposition; or

- (c) a transaction which has or is likely to have the effect of the Company acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the Company's assets before the transaction;

but does not include:

- (d) any transaction entered into by a receiver appointed pursuant to an instrument creating a charge over all or substantially all of the property of the Company.

Nothing in paragraph (b) or paragraph (c) of this definition applies by reason only of the Company giving, or entering into an agreement to give, a charge secured over assets of the Company the value of which is more than half the value of the Company's assets for the purpose of securing the repayment of money or the performance of an obligation. In assessing the value of any contingent liability for the purpose of paragraph (c) of this definition, the Directors:

- (i) must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
- (ii) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
- (iii) may take account of:
 - (A) the likelihood of the contingency occurring; and
 - (B) any claim the Company is entitled to make and can reasonably expect to be met to reduce or extinguish the contingent liability;

"Managing Director" means a Director who is appointed under clause 21.1 as an employee of the Company, with the responsibility for the management of the Company (together with any other employee);

"Minimum Holding" has the meaning given in the Listing Rules;

"month" means calendar month;

"NZX" means NZX Limited, its successors and assigns and as the context permits includes any duly authorised delegate of NZX;

"Ordinary Resolution" means a resolution passed by a simple majority of Votes of Financial Product holders entitled to Vote and voting;

"Ordinary Share" means a Share which confers on the holder:

- (a) the right to vote at meetings of Shareholders and on a poll to cast one vote for each Share held;
- (b) subject to the rights of any other Class of Shares, the right to an equal share in Dividends and other Distributions made by the Company; and
- (c) the right to an equal share in the distribution of the surplus assets of the Company on its liquidation;

"PPSA" means the Personal Property Securities Act 1999;

"Quoted", **"Quote"** and **"Quotation"** have the meanings given to those terms in the Listing Rules;

"Register" means the register of Shares required by clause 6 and section 87 of the Act to be kept;

"Registrar" means the Registrar of Companies appointed under section 357(1) of the Act

"Ruling" has the meaning given to it in the Listing Rules;

"Share" means a share in the Company;

"Shareholder" means a person:

- (a) registered in the Register as the holder of one or more Shares; or
- (b) until the person's name is entered in the Register, a person who is entitled to have that person's name entered in the Register under a registered Amalgamation proposal as a Shareholder in an amalgamated company;

"Solvency Test" means an examination to be applied to the financial state of the Company, which will be satisfied if:

- (a) the Company is able to pay its debts as they become due in the normal course of business; and
- (b) the value of the Company's assets is greater than the value of its liabilities, including contingent liabilities and in respect of which regard has been had to the matters referred to in section 4(2) of the Act,

For the purpose of this definition **"debts"** and **"liabilities"** have the meanings given to those terms in sections 52(4) or 108(5) of the Act, as applicable;

"Special Meeting" means any meeting (other than an Annual Meeting) of Shareholders entitled to vote on an issue, called at any time by the Board or by any other person who is authorised by the Board to call meetings of Shareholders;

"Special Resolution" means a resolution of Shareholders approved by a majority of 75% of the Votes of Financial Product holders entitled to Vote and voting;

"Vote" has the meaning given to it in the Listing Rules;

"Working Day" means a day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with the 25th day of December in any year and ending with the 2nd day of January in the following year;
- (c) if the first day of January in any year falls on a Friday, the following Monday; and
- (d) if the first day of January in any year falls on a Saturday or Sunday, the following Monday and Tuesday.

- 1.2 **Interpretation:** In this Constitution unless the context otherwise requires:
- (a) headings are inserted for convenience only and shall be ignored in construing this Constitution;
 - (b) the singular includes the plural and vice versa;
 - (c) one gender includes the other genders;
 - (d) a reference to any statute, statutory regulation or other statutory instrument includes the statute, statutory regulation or instrument as from time to time amended or re-enacted or substituted;
 - (e) a reference to a person includes an individual, partnership, firm, company, corporation, association, trust, estate, state or agency of a state, government or government department or agency, municipal or local authority and any other entity, whether or not incorporated and whether or not having separate legal personality;
 - (f) **"written"** and **"in writing"** includes any means of presenting or reproducing words, figures or symbols:
 - (i) in a tangible and visible form in any medium; or
 - (ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read;
 - (g) **"signature"** includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory's approval of the information contained in the document;
 - (h) a reference to a clause is to that clause in this Constitution unless stated otherwise;
 - (i) a reference to a Listing Rule includes that Listing Rule as from time to time amended or substituted; and
 - (j) a reference to permitted by the Act or permitted by the Listing Rules means not prohibited by the Act or not prohibited by the Listing Rules.
- 1.3 **Other definitions have meaning set out in the Act:** Subject to clause 1.1, words or expressions defined in the Act or the Listing Rules have the same meaning in this Constitution except as otherwise expressly provided in this Constitution.
- 1.4 **Incorporation of Listing Rules:** While the Company is Listed, those provisions of the Listing Rules which are required by the Listing Rules to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification.
- 1.5 **Listing Rules Prevail:** While the Company is Listed, subject to clause 1.7, if a provision of this Constitution is inconsistent with the Listing Rules relevant to the Company, as they may be modified by any Ruling, the Listing Rules shall prevail.
- 1.6 **Compliance with Listing Rules:** Subject to:
- (a) the terms of any Ruling from time to time given by NZX; and

- (b) the requirements of the Act and any other applicable legislative or regulatory requirement,

the Company shall, for so long as it is Listed, comply with the Listing Rules.

- 1.7 **NZX Rulings:** If NZX has granted a Ruling in relation to the Company authorising any act or omission which in the absence of the Ruling would be in breach of this Constitution, that act or omission will, unless a contrary intention appears in this Constitution, be deemed to be authorised by the Listing Rules and this Constitution.
- 1.8 **Effect of Failure to Comply:** Failure to comply with the Listing Rules, or 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 entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the non-compliance is not entitled to enforce that transaction or contract. This provision does not limit the rights of any Equity Security holder against the Company or the Directors.
- 1.9 **Constitution subject to changes in the Act:** If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.
- 1.10 **Use of electronic means:** Where a legal requirement under the Act is reproduced in this Constitution, that legal requirement may be met, for the purposes of this Constitution, by using electronic means in accordance with the Contract and Commercial Law Act 2017 in the same manner as is required by the Contract and Commercial Law Act 2017 to meet that legal requirement under the Act. In this clause, the term "legal requirement" has the meaning given to it by the Contract and Commercial Law Act 2017.
- 1.11 **Receipt of electronic communications:** For the purposes of section 214 of the Contract and Commercial Law Act 2017, a document under this Constitution which is sent in electronic form and via an electronic communication is taken to be received:
 - (a) if sent by the Company, on the Working Day it is sent or the next Working Day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication;
 - (b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the Company may agree.

To avoid doubt, any document so sent may be in any widely used electronic form.

2. CAPACITY AND POWERS

- 2.1 **Rights, powers and duties:** The Company, the Board, each Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.

- 2.2 **Alteration of rights, powers and duties:** The rights, privileges, limitations and conditions attached to any Shares in the Company may, subject to compliance with sections 116 and 117 of the Act, be modified, abrogated or altered only with the sanction of a Special Resolution passed at a meeting of each Interest Group. Sections 116 and 117 shall be read as if the references to "shares" in those sections shall (subject to clause 2.3) be deemed to include references to all Shares and other Equity Securities of the Company and the references to shareholders shall be read accordingly. In respect of Equity Securities which are not Shares, in sections 116 and 117 the reference to a Special Resolution shall be read as a reference to a resolution approved by a majority of 75% of Votes of the holders of those Equity Securities entitled to vote and voting and the reference to the "constitution" as a reference to the document which governs the rights of those Equity Securities.
- 2.3 **Equity Securities not Quoted:** The Company shall be required by clause 2.2 to comply with sections 116 and 117 of the Act but shall not be required by the modifications deemed to be made thereto by clause 2.2 to comply with those sections in respect of actions that affect the rights attaching to Equity Securities that are not Quoted.
- 2.4 **Full capacity:** Subject to this Constitution, the Act, any other enactment and the general law, the Company has, both within and outside New Zealand, full capacity, rights, powers and privileges to carry on or undertake any business or activity, do any act, or enter into any transaction.

PART II: SHARES AND OTHER EQUITY SECURITIES AND DIVIDENDS

3. ISSUE OF SHARES AND OTHER EQUITY SECURITIES

- 3.1 **Numbers and classes of Shares and other Equity Securities:** As at the date of this Constitution the number of Shares and other Equity Securities and their Classes, are those specified in the Register.
- 3.2 **Board may issue Shares:** Subject to the Act, this Constitution and the terms of issue of any existing Shares, the Board may issue additional Shares or other Equity Securities (including Equity Securities that comprise rights or options to acquire Shares) of any Class (including redeemable Shares) at any time, on such terms as the Board may from time to time determine, to any person and in such numbers as the Board thinks fit provided that while the Company is Listed the issue is made in accordance with the Listing Rules.
- 3.3 **Power to issue Shares and other Equity Securities otherwise than to existing Shareholders:** Unless the terms of issue of any Class of Shares or other Equity Securities specifically otherwise provide, the Board may issue Shares or other Equity Securities that rank or would rank (as to voting or distribution rights or both) equally with or prior to existing Shares or other Equity Securities without any requirement that the Shares or other Equity Securities be first offered to existing Shareholders or holders of other Equity Securities and for the purposes of clause 2.2 such an issue is not an action affecting the rights attached to the existing Shares or other Equity Securities. Section 45 of the Act does not apply to the Company.
- 3.4 **Redeemable Shares:** If redeemable Shares are to be issued, the terms of issue of the redeemable Shares must make provision for the redemption of each redeemable Share by the Company:
- (a) at the option of the Company; or

- (b) at the option of the holder of redeemable Shares; or
- (c) on a specified date;

for a consideration that is:

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

3.5 Requirements for Board issuing Shares: Subject to clause 3.6, before the Board issues Shares pursuant to clause 3.2, it must:

- (a) decide the consideration for which the Shares will be issued and the terms on which they will be issued;
- (b) if the Shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue;
- (c) resolve that, in its opinion, the consideration for the Shares and their terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
- (d) if the Shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of that consideration is not less than the amount by which the Shares would be credited as paid up.

3.6 Exceptions to requirements in case of certain Share issues: Clauses 3.5, 3.8 and 3.9 do not apply to:

- (a) the issue of Shares that are fully paid up from the reserves of the Company to all Shareholders of the same Class in proportion to the number of Shares held by each such Shareholder; or
- (b) the consolidation or subdivision of Shares.

3.7 Consideration may take any form: The consideration for which Shares are issued, or for the payment of Shares already issued, may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the Company.

3.8 Directors' certificate on consideration for issue: The Directors who vote in favour of a resolution under clause 3.5 must sign a certificate:

- (a) stating the consideration for, and the terms of, the issue;
- (b) describing the consideration in sufficient detail to identify it;
- (c) where a present cash value has been determined in accordance with clause 3.5(b), stating that value and the basis for assessing it;
- (d) stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the Company and to all existing Shareholders; and

- (e) if the Shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value is not less than the amount to be credited as paid up for the issue of the Shares.
- 3.9 **Directors' certificate to be filed:** A copy of the Directors' certificate given under clause 3.8 must be filed with the Registrar within 10 Working Days after it is given.
- 3.10 **Payment for Shares already issued:** Before Shares that have already been issued are credited as fully or partly paid up other than for cash, the Board must:
 - (a) determine the reasonable present cash value of the consideration; and
 - (b) resolve that, in its opinion, the present cash value of the consideration is:
 - (i) fair and reasonable to the Company and all existing Shareholders; and
 - (ii) not less than the amount to be credited in respect of the Shares.
- 3.11 **Directors' certificate on payment for Shares already issued:** The Directors who vote in favour of a resolution under clause 3.10 must sign a certificate:
 - (a) describing the consideration in sufficient detail to identify it; and
 - (b) stating:
 - (i) the present cash value of the consideration and the basis for assessing it;
 - (ii) that the present cash value of the consideration is fair and reasonable to the Company and to all existing Shareholders; and
 - (iii) that the present cash value of the consideration is not less than the amount to be credited in respect of the Shares.
- 3.12 **Directors' certificate to be filed:** A copy of the Directors' certificate given under clause 3.11 must be filed with the Registrar within 10 Working Days after it is given.
- 3.13 **Deemed payment other than for cash:** For the purposes of clauses, 3.5, 3.6, 3.7, and 3.10, Shares that are (or are to be) credited as paid up (whether wholly or partly) as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments (whether simultaneously or not), must be treated as paid up other than in cash to the value of the property or services.
- 3.14 **Amount owing on issue of Shares:** Where money or other consideration is due at a fixed time to the Company on Shares in accordance with their terms of issue, that amount does not comprise a Call and no notice is required to be given to the Shareholder (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.
- 3.15 **Bonus Shares:** Subject to any applicable provision of the Listing Rules, the Board may authorise the allotment of Shares, other Equity Securities or other Financial Products of the Company:
 - (a) to all Shareholders who would be entitled thereto, issued as fully or partly paid up (from the assets of the Company) in proportion to the number of Shares held by each such Shareholder; and

- (b) if applicable, to the holders of any other Equity Securities or other Financial Products of the Company who are entitled by the terms of issue of those Financial Products to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some time later, in accordance with their respective entitlements.

3.16 Consolidation and subdivision of Shares: Subject to any applicable provision of the Listing Rules, the Board may authorise:

- (a) the consolidation and division of Shares, other Equity Securities or other Financial Products or any Class of Shares or Class of other Equity Securities or other Financial Products in proportion to those Shares, other Equity Securities or other Financial Products or the Shares or other Equity Securities or other Financial Products in that Class; and
- (b) the subdivision of Shares, other Equity Securities or other Financial Products or any Class of Shares or Class of other Equity Securities or other Financial Products in proportion to those Shares, other Equity Securities or other Financial Products or the Shares or other Equity Securities or other Financial Products in that Class.

3.17 Company paying up partly paid Shares: Subject to the Solvency Test being satisfied after the Distribution is made, and to clause 3.10, the Board may authorise the payment (from the assets of the Company) of any amount unpaid on Shares other Equity Securities or other Financial Products already issued by the Company.

3.18 Issue of Shares by unanimous assent: If all entitled persons have agreed or concurred in writing and have not withdrawn that agreement or concurrence as permitted by section 107(6) of the Act, Shares may be issued otherwise than in accordance with clauses 3.2 to 3.9.

4. PURCHASE OF OWN SHARES

4.1 Purchase by Company of its Shares: The Company may purchase or otherwise acquire its Shares or other Equity Securities in accordance with, and subject to, sections 58 to 65, 107, 108 and 110 to 112 of the Act and the Listing Rules, and may hold the acquired Shares or other Equity Securities in accordance with sections 67A to 67C of the Act and the Listing Rules.

5. TRANSFER OF SHARES

5.1 Entry in Register: Subject to clause 5.2, Shares may be transferred by entry of the name of the transferee on the Register.

5.2 Signed transfer: For the purpose of transferring Shares, a form of transfer signed by the present holder of the Shares or the holder's personal representative must be delivered to the Company or to the agent of the Company who maintains the Register.

5.3 Form of transfer: The form of transfer:

- (a) must comply with the provisions of the FMC Act or be in any usual or common form, or any other form approved by the Board;
- (b) must be signed by the transferee if registration as holder of the Shares would impose a liability to the Company on the transferee.

- 5.4 **Board's right to refuse or delay registration of transfer:** Subject to the Listing Rules (for so long as the Company is Listed), the Board may, within 30 Working Days of the receipt of a form of transfer of Shares, refuse or delay the registration of the transfer if:
- (a) the holder of the Shares has failed to pay an amount due to the Company in respect of those Shares; or
 - (b) the Board considers that to effect the transfer would result in a breach of the law; or
 - (c) the Board considers that it is not in the best interests of the Company to register the transfer; or
 - (d) the Board does not approve of the transferee, in respect of which matter the Board shall have absolute discretion in its decision; or
 - (e) clause 7.3 has not been complied with or the form of transfer has not been properly executed or does not comply with clause 5.3; or
 - (f) the Company has a lien on the Shares; or
 - (g) the registration of the transfer, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee or a transferor holding Shares of less than the Minimum Holding; or
 - (h) the refusal or delay is permitted by the Listing Rules.
- 5.5 **Board resolutions refusing or delaying Share transfers:** A resolution of the Board to refuse or delay a transfer of Shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five Working Days of the date of the resolution being passed.
- 5.6 **Registration of transfer:** Subject to clauses 5.2 and 5.3, on receipt of a duly completed form of transfer, the Company must enter the name of the transferee on the Register as holder of the Shares, unless the Board has resolved in accordance with clause 5.4 to refuse or delay the registration of the transfer of the Shares.
- 5.7 **Transfer of Financial Products other than Shares:** This clause 5 shall apply to transfers of Financial Products of the Company other than Shares with any necessary modifications.
6. **SHARE REGISTER**
- 6.1 **Maintain Register:** The Company must maintain a Register which records all Shares issued by the Company and which states:
- (a) whether, under this Constitution or the terms of issue of any Shares, there are any restrictions or limitations on their transfer; and
 - (b) where any document that contains the restrictions or limitations may be inspected.
- 6.2 **Agent may maintain:** The Company may appoint an agent to maintain the Register.
- 6.3 **Contents of Register:** The Register must state, with respect to each Class of Shares:

- (a) the names (alphabetically arranged) and the latest known address of each person who is, and each person who has been within the last 10 years, a Shareholder;
- (b) the number of Shares held by each Shareholder within the last 10 years; and
- (c) the date of any:
 - (i) issue of Shares to; or
 - (ii) repurchase or redemption of Shares from; or
 - (iii) transfer of Shares by or to,

each Shareholder within the last 10 years; and in relation to the transfer, the name of the person to or from whom the Shares were transferred.

- 6.4 **Directors' duty to supervise Register:** It is the duty of each Director to take reasonable steps to ensure that the Register is properly kept and that the transferees' names are promptly entered on it in accordance with clause 5.6.
- 6.5 **Register prima facie evidence:** Subject to section 91 of the Act, the entry of the name of a person in the Register as holder of a Share is prima facie evidence that the legal title to the Share is vested in that person.
- 6.6 **Register evidence of rights:** The Company may treat the registered holder of a Share as the only person entitled to:
- (a) exercise the right to vote attaching to the Share;
 - (b) receive notices in respect of the Share;
 - (c) receive a Distribution in respect of the Share; and
 - (d) exercise the other rights and powers attaching to the Share.
- 6.7 **Trust not to be registered:** No notice of a trust, whether express, implied, or constructive, may be entered on the Register.
- 6.8 **Trust not to be recognised:** Except as required by law, no person will be recognised by the Company as holding any Share upon trust or holding any interest in a Share (whether equitable, contingent, future or partial) except the absolute legal right to the entirety of the Share vested in the registered holder.
- 6.9 **Personal representative may be registered:** A personal representative of a deceased holder of Shares is entitled to be entered in the Register as the holder of such Shares as a personal representative.
- 6.10 **Personal representative not to constitute notice:** The registration of a trustee, executor or administrator as a personal representative of a deceased Shareholder does not constitute notice of a trust.
- 6.11 **Power to divide Register:** The Register may be divided into two or more registers kept in different places.

7. SHARE CERTIFICATES

- 7.1 **Application for Share certificate:** A Shareholder may apply to the Company for a certificate relating to some or all of the Shareholder's Shares.
- 7.2 **Issue of Share certificate:** The Company must, within 20 Working Days after receiving an application for a Share certificate under clause 7.1, send to the Shareholder a certificate stating the name of the Company, and the Class and number of Shares to which the certificate relates. If the application relates to some but not all of the applicant's Shares, the Company must separate the Shares shown in the Register as owned by the applicant into separate parcels; one parcel being the Shares to which the Share certificate relates, and the other parcel being any remaining Shares.
- 7.3 **Transfer to be accompanied by Share certificate:** Notwithstanding clause 5 and section 84 of the Act, where a Share certificate has been issued, a transfer of the Shares to which it relates must not be registered by the Company unless the form of transfer is accompanied by the Share certificate relating to the Shares (or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the Board).
- 7.4 **Surrendered Share certificate:** Where Shares to which a Share certificate relates are transferred, and the Share certificate has been sent to the Company to enable registration of the transfer, the Share certificate will be cancelled and no further Share certificate will be issued except at the request of the transferee.

8. TRANSMISSION OF SHARES

- 8.1 **On death of Shareholder:** In the case of the death of a Shareholder, the survivor (where the deceased was a joint holder) or the legal personal representative of the deceased (where the deceased was the sole holder), will be the only persons recognised by the Company as having any title to the deceased's interest in the Shares. Nothing contained in this clause 8.1 will release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by the deceased with other persons or constitute a release of any lien which the Company may have in respect of any Share.
- 8.2 **On bankruptcy of Shareholder:** Notwithstanding clauses 6.7 to 6.10, the assignee of the property of a bankrupt Shareholder is entitled to be registered as the holder of the Shares held by the bankrupt.

9. CALL ON SHARES

- 9.1 **Board may make Calls:** Subject to the terms of issue of any Shares, the Board may resolve to require the holders of unpaid or partly paid Shares to pay all or part of the amount unpaid on the Shares. The terms of the resolution will constitute the terms of the obligation to pay the Call (including payment by instalments). The Call may be revoked or postponed at any time by the Board.
- 9.2 **Calls to apply equally:** Subject to the terms of issue of any Class of Shares and to clause 9.9, unless all the holders of a Class of Shares subject to a Call unanimously agree, a Call (or the postponement or revocation of a Call) will apply to all the holders of Shares of the Class equally.

- 9.3 **Notice of Calls:** Notice of the Call must be given to the Shareholder at the time of the Call or to a subsequent holder of the Shares. Failure to give notice to a Shareholder will not invalidate a Call but it will not be payable by that Shareholder until the notice has been served on the Shareholder. The notice must specify the day by which and the place at which the Call must be paid.
- 9.4 **Deemed receipt of notice:** Subject to section 392(1)(b) of the Act, notice of a Call sent by post to a Shareholder to the address recorded in the Register as the address of the Shareholder will be deemed to have been received by the Shareholder the day after it was posted. To avoid doubt, the notice may be sent via an electronic communication in accordance with clause 1.11 if the Shareholder has provided the Company with an address for the receipt of electronic communications.
- 9.5 **Joint Shareholder liability:** The joint holders of Shares are jointly and severally liable to pay all Calls in respect of the Shares.
- 9.6 **Unpaid Calls to accrue interest:** If a Call is not paid before or on the day appointed for payment, the person from whom the sum is due will be liable to pay interest on the sum (from the day appointed for payment until the time of actual payment) at such rate as the Board determines either at the time of the Call or subsequently.
- 9.7 **Current Shareholder liable:** The liability for a Call which has become due and payable attaches to the current Shareholder and not a prior Shareholder, notwithstanding that at the date of the Call (or the date the Call fell due for payment) another person was the holder of the Shares or that the notice of the Call was served on the then Shareholder and not the current Shareholder.
- 9.8 **No notice to new Shareholder required:** Following the registration in the Register of a change of ownership of Shares in respect of which a Call has been made, a notice of the Call is not required to be served on the new Shareholder.
- 9.9 **Agreement to differentiate between Calls:** The Board may, on the issue of Shares, by agreement with the Shareholders concerned, differentiate between the holders of the same Class as to the amount to be paid on the Shares and the times for payment.
10. **SUSPENSION OF RIGHT TO DIVIDENDS, FORFEITURE, LIEN AND MINIMUM HOLDINGS**
- 10.1 **Board may withhold distributions for non-payment of Calls:** If a Shareholder fails to pay any Call (or instalment of a Call) on the day appointed for payment, the Board may at any time after that date, while any part of the Call or instalment payable by the Shareholder remains unpaid, suspend payment of any Dividends or other Distributions payable to the Shareholder.
- 10.2 **Amount owing under Call may include interest:** The amount owing under the Call for the purposes of clauses 10.1, 10.3 and 10.4 may include any interest which may have accrued and all expenses which may have been incurred by the Company by reason of non-payment by the Shareholder of the amount owing under the Call.
- 10.3 **Application of suspended Dividends:** All Dividends and other Distributions suspended pursuant to clause 10.1 may be applied by the Company to reduce the amount owing under the Call. Dividends so applied will be deemed to have been paid in full. The Company is not required to give a notice to a Shareholder where Dividends or other Distributions have been applied to reduce the amount owing under the Call.

- 10.4 **Lifting suspension of right to Dividends:** When the total Dividends and Distributions withheld and applied under clause 10.3 equal the total amount owing under the Call, including amounts owing under clause 10.2, the suspension of the right to Dividends and Distributions will be lifted, and all rights to be paid Dividends and Distributions on the Shares will resume.
- 10.5 **Notice of non-payment of Call:** If a Shareholder fails to pay any Call or instalment of a Call on the day appointed for payment of it the Board may, while any part of the Call or instalment remains unpaid, serve a notice on him or her requiring payment of so much of the Call or instalment as is unpaid together with any interest, which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.
- 10.6 **Notice to specify date of potential forfeiture:** The notice shall name a further day (not earlier than the expiration of 10 Working Days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Shares in respect of which the Call was made will be liable to be forfeited.
- 10.7 **Forfeiture by Board resolution:** If the requirements of the notice are not complied with, any Share in respect of which the notice has been given may, at any time after the notice is given and before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all Dividends and any other Distribution in respect of the forfeited Shares and not actually paid before the forfeiture.
- 10.8 **Effect of forfeiture:** When any Share has been forfeited:
- (a) notice of the resolution shall be given to the Shareholder in whose name the Share was registered immediately before the forfeiture;
 - (b) an entry of the forfeiture, with the date of the forfeiture, shall be made in the Register; and
 - (c) the Share certificate of any Shares forfeited shall be immediately cancelled by the Company and the Shareholder shall return the Share certificate for the forfeited Share to the Company within 10 Working Days of receiving notice of the resolution.
- 10.9 **Shareholder liability remains on forfeited Shares:** A person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall, notwithstanding, remain liable to pay to the Company all money which at the date of the forfeiture was payable by him or her to the Company in respect of the Shares but his or her liability shall cease if and when the Company receives payment in full of all such money in respect of the Shares.
- 10.10 **Forfeiture for non-payment of other sums:** The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Share becomes payable at a fixed time as if the same had been payable by virtue of a Call duly made and notified.
- 10.11 **No invalidation of forfeiture:** Any failure to give the notice, or to make the entry, required under clause 10.8 does not invalidate the forfeiture.
- 10.12 **Lien:** The Company has a first and paramount lien upon every Share registered in the name of a Shareholder (whether solely or jointly with others) and upon the proceeds of sale of those Shares. This lien is for:

- (a) all money payable (whether presently or not) in respect of Shares held by the Shareholder;
 - (b) all other money presently payable by the Shareholder to the Company on any account whatever; and
 - (c) any amount the Company may be called upon to pay under any statute or regulation in respect of Shares of a deceased Shareholder or other Shareholder (whether or not the period for the payment, fulfilment or discharge has actually arrived).
- 10.13 **Lien extends to Dividends:** The lien extends to all Dividends from time to time declared in respect of the Shares.
- 10.14 **Disposal of forfeited Shares:** Subject to clauses 10.15 to 10.18 a forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Board thinks fit.
- 10.15 **Power to sell Shares subject to lien:** Subject to clauses 10.16 to 10.18, the Company may sell in such a manner as the Board thinks fit any Shares on which the Company has a lien. No sale may be made until:
- (a) a sum in respect of which the lien exists is due and payable;
 - (b) a notice in writing stating, and demanding payment of, the amount due and payable (in respect of which the lien exists) has been given to the current registered holder of the Share (or the person entitled to that Share by reason of the registered holder's death or bankruptcy); and
 - (c) 10 Working Days have expired since the giving of that notice.
- 10.16 **Proceeds of sale:** The net proceeds of the sale of any forfeited Share or any Shares sold for the purpose of enforcing a lien are to be applied in or towards satisfaction of any unpaid Calls, instalments or, in the case of a lien, any other money in respect of which the lien existed. The residue, if any, shall be paid to the former holder of the Shares.
- 10.17 **Certificate evidence of forfeiture:** A certificate signed by a Director stating that the power of sale provided in clause 10.14 or 10.15 has arisen, and is exercisable by the Company under this Constitution, or that a Share in the Company has been duly forfeited on the date stated, will be conclusive evidence of the facts stated in the certificate.
- 10.18 **Transfer of Shares after forfeiture:** For giving effect to any sale after forfeiture or for enforcing a lien in purported exercise of the powers given in this Constitution, the Board may authorise some person to transfer the Shares sold to the purchaser. The purchaser will be registered as the holder of the Shares comprised in the transfer and will not be bound to see to the application of the purchase money, nor will the purchaser's title to the Shares be affected by an irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only, and against the Company exclusively. If the Share certificate for the forfeited Shares is not delivered up to the Company, the Board may issue a new certificate distinguishing it as the Board thinks fit from the Share certificate not delivered up.
- 10.19 **PPSA:** Sections 108, 109, 116, 120(2), 132 and 133 of the PPSA will not apply to the extent they are inconsistent with this clause 10.

10.20 **Power to sell where less than Minimum Holdings:**

- (a) Where the Quoted Financial Products of any Class registered in the name of a holder are less than a Minimum Holding the Board may at any time give written notice of that fact and of the provisions of Clause 10.20(b) to the holder.
- (b) Where notice has been given under clause 10.20(a) the Company may, at any time after the expiration of three months from the date of the notice if the Quoted Financial Products of such Class then registered in the name of the holder are less than a Minimum Holding, sell such Quoted Financial Products .
- (c) To give effect to any sale under clause 10.20(b) the Board may authorise some person to transfer the Quoted Financial Products sold to the purchaser thereof. The purchaser shall not be bound to see to the application of the purchase money, nor shall his or her title to the Quoted Financial Products be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.
- (d) The proceeds of sale of any Quoted Financial Products sold under this clause 10.20 shall be applied as follows:
 - (i) first, in payment of any reasonable expenses incurred in regard to the sale;
 - (ii) secondly, in satisfaction of any unpaid calls, instalments or premiums, interest thereon, expenses, and any other money in respect of which a lien existed;
 - (iii) the residue (if any) shall be paid to, or in accordance with a direction of, the person who was the holder of the Quoted Financial Products immediately before the sale or the executors or administrators or assigns of that person.

11. **DISTRIBUTIONS**

- 11.1 **Distributions must satisfy Solvency Test:** Subject to clause 11.3, the Board may, if it is satisfied on reasonable grounds that the Company will satisfy the Solvency Test immediately after the Distribution, authorise a Distribution by the Company to Shareholders of any amount and to any Shareholders as it thinks fit.
- 11.2 **Board to sign certificate:** The Directors who vote in favour of a Distribution must sign a certificate stating that, in their opinion, the Company will satisfy the Solvency Test immediately after the Distribution. The grounds for that opinion must also be stated in that certificate.
- 11.3 **Dividends payable pari passu:** Subject to clause 11.4, the Board may not authorise a Dividend:
 - (a) in respect of some but not all the Shares in a Class; or
 - (b) that is of a greater value per Share in respect of some Shares of a Class than in respect of other Shares of that Class,

unless the amount of the Dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the Shareholder's liability under this Constitution or under the terms of issue of the Share.

- 11.4 **Shareholder may waive rights to Dividend:** A Shareholder may waive his or her entitlement to receive a Dividend by giving a notice in writing, signed by or on behalf of the Shareholder, to the Company.
- 11.5 **Dividends payable other than pari passu:** If all the Shareholders of the same Class concur in writing in respect of each proposed Dividend, the Company may pay a Dividend which is distributed other than in accordance with clause 11.3.
- 11.6 **Investment of unclaimed Distributions:** Any Distribution that has not been claimed after one year from the date of the Distribution may be invested or otherwise made use of by the Board for the benefit of the Company until it is claimed. The Company shall not be regarded as holding any such amount used on trust for the claimant.
- 11.7 **Forfeiture of unclaimed Distributions:** Any Distribution remaining unclaimed for a period of five years from the date of the Distribution may be forfeited by the Board for the benefit of the Company, provided that the Board may in its discretion cancel the forfeiture and pay the Distribution to any person producing evidence satisfactory to the Board that he or she is entitled to the amount claimed.
- 11.8 **Bonus Shares in lieu of Dividend:** The Board may issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of a proposed Dividend or proposed future Dividends if:
- (a) the right to receive Shares, wholly or partly, in lieu of the proposed Dividend or proposed future Dividends, has been offered to all Shareholders of the same Class on the same terms;
 - (b) relative voting or distribution rights, or both, would be maintained if all Shareholders elected to receive the Shares in lieu of the proposed Dividend;
 - (c) the Shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it;
 - (d) the Shares issued to each Shareholder are issued on the same terms and subject to the same rights as the Shares issued to all Shareholders in that Class who agree to receive the Shares; and
 - (e) the provisions of section 47 of the Act are complied with by the Board.
- 11.9 **Shareholder discounts:** The Board may, pursuant to a discount scheme, resolve that the Company offer Shareholders discounts in respect of some or all of the goods sold or services provided by the Company.
- 11.10 **Discount scheme requirements:** Subject to clause 11.2, the discount scheme must be one where the Board has previously resolved that the proposed discounts:
- (a) are fair and reasonable to the Company and all Shareholders; and
 - (b) will be available to all Shareholders or to all Shareholders of the same Class on the same terms.
- 11.11 **Discount scheme to satisfy Solvency Test:** The discount scheme may not be approved or continued by the Board unless the Board is satisfied on reasonable grounds that the Company will satisfy, or is satisfying, the Solvency Test.

- 11.12 **Other discount schemes:** If all Shareholders of the Class of Shares to which a proposed discount scheme would apply, agree in writing, the scheme may be put into effect notwithstanding that it does not comply with clause 11.10.
- 11.13 **Financial assistance on acquisition of Shares:** The Company may, subject to and in accordance with sections 76 to 80, 107 and 108 of the Act and the Listing Rules, give financial assistance (whether directly or indirectly) to a person for the purpose of, or in connection with, the purchase of Shares or other Equity Securities issued (or to be issued) by the Company, or by its holding company.

PART III: SHAREHOLDERS' RIGHTS AND OBLIGATIONS

12. SHAREHOLDERS' RIGHTS

- 12.1 **Issue of statement of Shareholder's rights on request:** The Company must issue to any Shareholder, on request, a statement that sets out:
- (a) the Class of Shares held by the Shareholder, the total number of Shares of that Class issued by the Company, and the number of Shares of that Class held by the Shareholder;
 - (b) the rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the Shares held by the Shareholder; and
 - (c) the relationship of the Shares held by the Shareholder to other Classes of Shares.
- 12.2 **Power to refuse:** The Company is not obliged to provide a Shareholder with a statement under clause 12.1, if:
- (a) a statement that complies with clauses 12.1(a) to 12.1(c) has been provided within the previous six months;
 - (b) the Shareholder has not acquired or disposed of Shares since the previous statement was provided;
 - (c) the rights attached to the Shares have not been altered since the previous statement was provided; and
 - (d) there are special circumstances that make it reasonable for the Company to refuse the request.
- 12.3 **Not evidence of title:** A statement issued pursuant to clause 12.1 must state in a prominent place that it is not evidence of title to the Shares or of the matters set out in it.
- 12.4 **Rights attached to a Share:** For the purposes of clause 12.1 the rights attached to a Share include:
- (a) the rights, privileges, limitations, and conditions attached to the Share by the Act or this Constitution, including voting rights and rights to Distributions;
 - (b) the right to have the procedure set out in clauses 12.2 and 12.4 to 12.6, and any further procedure required by this Constitution for the amendment or alteration of rights, observed by the Company; and

- (c) the right that a procedure required by this Constitution for the amendment or alteration of rights not be amended or altered.

12.5 Shareholder may require Company to purchase Shares: Where:

- (a) an Interest Group has, under clause 2.2, approved, by Special Resolution, the taking of action that affects the rights attached to Shares; and
- (b) the Company becomes entitled to take the action; and
- (c) a Shareholder who was a member of the Interest Group cast all the votes attached to the Shares registered in the Shareholder's name and having the same beneficial owner against approving the action; or
- (d) where the resolution approving the taking of the action was passed under clause 14.5, a Shareholder who was a member of the Interest Group did not sign the resolution,

that Shareholder is entitled to require the Company to purchase those Shares in accordance with section 111 of the Act.

12.6 Actions not invalid: The taking of action by the Company affecting the rights attached to Shares is not invalid by reason only that the action was not approved in accordance with clause 2.2.

12.7 Shareholders entitled to exercise certain rights: The Shareholders who are:

- (a) entitled to receive Distributions; or
- (b) entitled to exercise any other right or receive any other benefit under the Act, this Constitution or pursuant to the terms of issue of Shares,

are those Shareholders of the relevant Class:

- (a) if the Board has fixed a date for the purpose, whose names are registered in the Register on that date; or
- (b) if the Board does not fix a date for the purpose, whose names are registered in the Register on the day on which the Board or the Shareholders, as the case may be, pass the resolution concerned.

12.8 Fixing of a date: A date must not be fixed under clause 12.7 that precedes by more than 20 Working Days the date on which the proposed action will be taken.

13. EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

13.1 Powers reserved to Shareholders: Powers reserved to Shareholders by the Act or by this Constitution may be exercised:

- (a) at an Annual Meeting or a Special Meeting; or
- (b) by a resolution in lieu of a meeting pursuant to clause 14.5.

13.2 How powers may be exercised: Unless otherwise specified in the Act or this Constitution, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

13.3 Powers exercised by Special Resolution: When Shareholders exercise a power to approve any of the following, that power may only be exercised by a Special Resolution:

- (a) an alteration to or revocation of this Constitution or the adoption of a new Constitution;
- (b) a Major Transaction;
- (c) an Amalgamation;
- (d) the liquidation of the Company.

Any decision made by Special Resolution pursuant to this clause may be rescinded only by a Special Resolution, provided that a resolution to put the Company into liquidation cannot be rescinded.

13.4 Unanimous assent to certain types of action: Notwithstanding clauses 11.1 and 11.2 and subject to the restrictions of the Listing Rules, if all entitled persons have agreed or concurred in writing and have not withdrawn that agreement or concurrence as permitted by section 107(6) of the Act:

- (a) a Dividend may be authorised otherwise than in accordance with clause 11.3;
- (b) a discount scheme may be approved otherwise than in accordance with clauses 11.9 to 11.12;
- (c) Shares that have been issued as redeemable at the option of the Company may be redeemed otherwise than in accordance with sections 69 to 72 of the Act; and
- (d) any of the matters referred to in clause 20.1 may be authorised otherwise than in accordance with that clause.

13.5 Duty to satisfy Solvency Test: A power referred to in clause 13.4 must not be exercised unless the Board is satisfied on reasonable grounds that the Company will, immediately after the exercise of the power, satisfy the Solvency Test.

13.6 Directors must sign Certificate: The Directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, the Company will, after the exercise of the power, satisfy the Solvency Test.

13.7 Management review by Shareholders: A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders. A meeting of Shareholders may pass a resolution relating to the management of the Company. The proceedings of any meeting of Shareholders at which a resolution under this clause 13.7 is passed shall be in accordance with clauses 14 and 15. Notwithstanding section 128 of the Act or any other clause of this Constitution, a resolution relating to the management of the Company passed at a meeting of Shareholders (in accordance with this clause 13.7) is not binding on the Board.

13.8 Dissenting Shareholder may require Company to purchase Shares: Where:

- (a) a Shareholder is entitled to vote on the exercise of one or more of the powers set out in:

- (i) clause 13.3(a) and the proposed alteration imposes or removes a restriction on the activities of the Company; or
- (ii) clause 13.3(b) or 13.3(c); and
- (b) the Shareholders resolved, pursuant to clause 13.3, to exercise the power; and
- (c) the Shareholder casts all the votes attached to Shares registered in the Shareholder's name and having the same beneficial owner against the exercise of the power; or
- (d) where the resolution to exercise the power was passed under clause 14.5, the Shareholder did not sign the resolution,

that Shareholder is entitled to require the Company to purchase those Shares in accordance with section 111 of the Act.

13.9 Shareholder proposals: 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 of Shareholders at which the Shareholder is entitled to vote.

13.10 Board to give notice of Shareholder proposals: If the notice is received by the Board:

- (a) not less than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders 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; or
- (b) not less than five Working Days and not more than 20 Working Days before the last day on which notice of the relevant meeting of Shareholders 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; or
- (c) less than five Working Days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, if practicable and (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.

13.11 Statement in support of proposal: If the Directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they 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. The Board is not required to include in or with the notice given by the Board:

- (a) any part of a statement prepared by a Shareholder which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or

- (b) any part of a proposal or resolution prepared by a Shareholder which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992),

13.12 **Costs of notice to be met by Shareholder:** 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.

14. MEETINGS OF SHAREHOLDERS

14.1 **Annual Meeting:** The Board must, in accordance with section 120 of the Act, call an Annual Meeting of Shareholders to be held:

- (a) not later than six months after the Balance Date of the Company; and
- (b) not later than 15 months after the previous Annual Meeting.

14.2 **Date of meeting:** The Company must hold the Annual Meeting on the date on which it is called to be held.

14.3 **Resolution instead of Annual Meeting:** It shall not be necessary for the Company to hold an Annual Meeting if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with sections 122(2) and 122(3) of the Act.

14.4 **Special Meetings:** A Special Meeting:

- (a) may be called at any time by the Board or a person who is authorised by the Board to call the meeting; and
- (b) must be called by the Board on the written request of Shareholders holding not less than 5% of the Votes entitled to be cast on the issue.

14.5 **Resolution in lieu of meeting:** Subject to clause 14.7, a resolution in writing signed by not less than 75% (or where it is greater, the percentage required for the passing of a Special Resolution) of the Shareholders who would be entitled to vote on that resolution at a meeting of Shareholders, who together hold not less than 75% (or where it is greater, the percentage required for the passing of a Special Resolution) of the Votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those Shareholders.

14.6 **More than one document:** Any resolution in writing under clause 14.5, may consist of one or more documents in similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of one or more of the Shareholders entitled to vote on the resolution.

14.7 **Resolution relating to opt out or opt in provisions:** Subject to the Act, the Listing Rules and any other applicable law, a resolution pursuant to any of the opt out or opt in provisions of the Act relating to sections 201 or 202 (Preparation of Financial Statements or Group Financial Statements), 207 (Audit Requirement) or 208 (Obligation to Prepare Annual Report) may be passed as provided in clause 14.5, provided that the resolution must also comply with the relevant opt out or opt in provisions.

- 14.8 **Copy of resolution to non-signing Shareholder:** Within five Working Days of a resolution being passed under this clause, the Company must send a copy of the resolution to every Shareholder who did not sign the resolution or on whose behalf the resolution was not signed.
- 14.9 **Chairperson of meetings of Shareholders:** If the Directors have elected a Chairperson, and that Chairperson is present at a meeting of Shareholders, he or she must chair the meeting. If no Chairperson has been elected or if, at any meeting of Shareholders, the Chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.
- 14.10 **Shareholders entitled to notice of meeting:** The Shareholders and other Equity Security holders entitled to receive notice of a meeting of Shareholders are those Shareholders of the relevant Class and those holders of other Equity Securities:
- (a) if the Board has fixed a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register or other applicable register on that date; or
 - (b) if the Board does not fix a date for the purpose of establishing an entitlement to receive notice of the meeting, whose names are registered in the Register or other applicable register at the close of business on the day immediately preceding the day on which the notice is given.
- 14.11 **Date on which entitlement decided:** A date fixed by the Board under clause 14.10(a) must not precede by more than 30 Working Days nor less than 10 Working Days the date on which the meeting is to be held.
- 14.12 **Notice of meeting:** Written notice of the time and place of a meeting of Shareholders must be sent to every other Shareholder and every Equity Security holder entitled to receive notice of the meeting, and to every Director and the auditor of the Company, not less than 10 Working Days before the meeting.
- 14.13 **Content of notice:** The notice referred to in clause 14.12 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;
 - (b) the text of any Special Resolution to be submitted to the meeting;
 - (c) the postal address to which postal votes may be sent and the name or office of the person to whom they may be sent;
 - (d) that the postal vote must be received by the person referred to in paragraph (c) at least 48 hours prior to the start of the meeting; and
 - (e) be accompanied by an appraisal report if required by the Listing Rules.
- 14.14 **Irregularities in notice:** 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.
- 14.15 **Accidental omission not to invalidate proceedings:** The accidental omission to give notice of a meeting to, or a failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at that meeting.

- 14.16 **Method of holding meeting:** A meeting of Shareholders 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; or
 - (c) by a combination of both the methods described in clauses 14.16(a) and (b) above.
- 14.17 **Adjournments:** The chairperson of a meeting of Shareholders may, at the request of those Shareholders present in person or by proxy who are between them able to exercise a majority of the votes able to be cast at the meeting, adjourn the meeting. No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 14.18 **Notice of the adjourned meeting:** If a meeting of Shareholders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clauses 14.12 and 14.13.
- 14.19 **Minutes:** The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Shareholders. Minutes which have been signed as correct by the chairperson of the meeting are prima facie evidence of the proceedings.
- 14.20 **Meetings of other groups:** A meeting of holders of Financial Products other than Shares, or any meeting of an Interest Group shall be held in the same manner as a meeting of Shareholders, with all necessary modifications.

15. VOTING AT MEETINGS

- 15.1 **Quorum:** A quorum for a meeting of Shareholders is present if five Shareholders have cast postal votes or are present (including by representative appointed pursuant to clause 15.13, in the case of a Shareholder which is a body corporate), or their proxies are present. Subject to clause 15.2, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 15.2 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called pursuant to a requisition of Shareholders under clause 14.4(b), the meeting is dissolved;
 - (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 date, time and place 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 present or their proxies are a quorum.
- 15.3 **Voting by poll:** Voting at a meeting of shareholders will be conducted by poll in accordance with clauses 15.5 to 15.7 below.

- 15.4 **Voting by electronic means** To the extent permitted by the Act and the Listing Rules, the Board may allow Shareholders to vote by signifying their assent or dissent by electronic means (including, for the avoidance of doubt, voting on a personal computer, with such vote being transmitted to the meeting), instead of the Shareholder voting by another method permitted by the Act or this constitution.
- 15.5 **Time at which polls to be taken:** A poll on the election of a Chairperson of a meeting or on a question of adjournment must be taken immediately. A poll on any other question is to be taken at such time as the Chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.
- 15.6 **Counting of votes on a poll:** Votes must be counted according to the votes attached to the Shares of each Shareholder present (in person or by proxy) and voting.
- 15.7 **Declaration of poll result:** The Chairperson of the meeting may declare the result of a poll either at or after the meeting, and when the outcome of the poll is known, may do so regardless of whether all votes have been counted. The result of a poll declared by the Chairperson of the meeting will be treated as the resolution of the meeting on the issue for which the poll was taken.
- 15.8 **Chairperson not entitled to casting vote:** The Chairperson of a Shareholders' meeting is not entitled to a casting vote.
- 15.9 **Restrictions in Listing Rules on voting:** No Shareholder shall be entitled to vote at any meeting in favour of a resolution when that person is disqualified from doing so by virtue of any applicable voting restriction in the Listing Rules.
- 15.10 **Proxies:** A Shareholder may exercise the right to vote either by being present or by proxy.
- 15.11 **Rights of proxy:** A proxy for a Shareholder is entitled to attend, be heard, and vote at a meeting of Shareholders as if the proxy were the Shareholder.
- 15.12 **Appointment of proxy:** 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. No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting. For so long as the Company is Listed a proxy must comply with the Listing Rules.
- 15.13 **Representatives:** A body corporate which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.
- 15.14 **Postal votes:** A Shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of clauses 15.15 to 15.19.
- 15.15 **Person authorised to receive and count postal votes:** The notice of a meeting at which Shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting. If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every Director is deemed to be so authorised.

- 15.16 **Shareholder may cast postal vote:** A Shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting, by sending a notice of the manner in which his or her Shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 15.17 **Counting of postal votes:** It is the duty of the person authorised to receive and count postal votes at a meeting:
- (a) to collect together all postal votes received by him or her, or by any other authorised person, or by the Company;
 - (b) in relation to each resolution to be voted on at the meeting, to count:
 - (i) the number of Shareholders voting in favour of the resolution and the number of votes cast by each Shareholder in favour of the resolution; and
 - (ii) the number of Shareholders voting against the resolution, and the number of votes cast by each Shareholder against the resolution;
 - (c) to sign a certificate stating that he or she has carried out the duties set out in paragraphs (a) and (b) of this clause and which sets out the results of the counts required by paragraph (b) of this clause; and
 - (d) to ensure that the certificate required by paragraph (c) of this clause is presented to the Chairperson of the meeting.
- 15.18 **Postal votes to be included in vote on resolution:** If a vote is taken at a meeting on a resolution on which postal votes have been cast, the Chairperson of the meeting must count the votes cast by each Shareholder who has submitted a postal vote for or against the resolution.
- 15.19 **Certificate of postal votes:** The Chairperson of a meeting must ensure that a certificate of postal votes held by the Chairperson is annexed to the minutes of the meeting.
- 15.20 **Votes of joint holders:** Where two or more persons are recorded in the Register as the holder of a Share, the vote of the person named first in the Register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders.
- 15.21 **Unpaid sums:** If a sum due to the Company in respect of a Share has not been paid, that Share may not be voted at a Shareholders' meeting other than at a meeting of an Interest Group.
- 15.22 **Meetings of Interest Groups:** The provisions of clauses 14 and 15 shall, with such consequential amendments as may be necessary, govern the proceedings of any meeting of an Interest Group.
- 15.23 **Other proceedings:** Except as provided in this Constitution the Shareholders may regulate their own procedure.

PART IV: THE BOARD

16. APPOINTMENT AND REMOVAL

- 16.1 **Number of Directors:** Subject to clause 19.20, the number of Directors may not be fewer than 3. Without limiting this clause, the Company shall comply with the minimum board composition requirements of the Listing Rules.
- 16.2 **Directors continue in office:** The Directors in office at the date of adoption of this Constitution shall continue in office subject to the provisions of this Constitution.
- 16.3 **Appointment:** A person may be appointed as a Director of the Company by:
- (a) appointment by the Board in accordance with clause 19.19; or
 - (b) nomination and appointment at an annual or special meeting of the Equity Security holders in compliance with the Listing Rules.
- 16.4 **Period of office:** A Director holds office until his or her resignation, disqualification or removal in accordance with this Constitution,
- 16.5 **Appointment and removal by Ordinary Resolution:** Subject to the Listing Rules, a Director may be appointed by Ordinary Resolution. All Directors shall be subject to removal from office as director by Ordinary Resolution.
- 16.6 **Rotation of Directors:** Each Director must retire from office when required to do so by the Listing Rules but, subject to the Listing Rules, is eligible for re-election (including at any meeting at which the Director retires).
- 16.7 **Notice of removal:** A notice of meeting at which the removal of a Director will be considered must state that a purpose of the meeting is the removal of the Director.
- 16.8 **Disqualification and removal:** A Director shall cease to hold office as a Director if the Director:
- (a) is removed from office pursuant to this Constitution or the Act; or
 - (b) resigns in writing under clause 16.9 and is not reappointed in accordance with this Constitution; or
 - (c) becomes disqualified from being a director pursuant to section 151 of the Act; or
 - (d) is prohibited from being a director or promoter of or being concerned with or taking part in the management of a company under sections 382, 383 or 385 of the Act; or
 - (e) dies or becomes of unsound mind; or
 - (f) becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
 - (g) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
 - (h) has for more than six months been absent without approval of the Board from all meetings of the Board held during that period.

- 16.9 **Resignation:** A Director may resign office by signing a written notice of resignation and delivering it to the Company. The notice takes effect upon the later of the receipt of it at the registered office of the Company (including receipt of a facsimile or electronic copy) and any later time specified in the notice.
- 16.10 **Shareholding qualification:** A Director is not required to hold Shares.
- 16.11 **Appointment and removal of Alternate Directors:** Every Director may, with the written consent of a majority of his or her co-Directors, by notice given in writing to the Company, appoint any person who is not already a Director to act as an Alternate Director in the Director's place, either generally, or in respect of a specified meeting or meetings during the Director's absence from a meeting. The appointment of an Alternate Director may be revoked, by notice in writing to the Company, by the appointing Director or by a majority of the Board. A Director may not act as an alternate for another Director. No Director may appoint a deputy or agent otherwise than as an Alternate Director.
- 16.12 **Powers of Alternate Director:** An Alternate Director may, while acting in the place of the appointing Director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as Chairperson and signing Board resolutions) of the appointing Director. The Alternate Director is subject in all respects to the same terms and provisions as the appointing Director, except as regards remuneration and except as regards the power to appoint an Alternate Director under this Constitution. An Alternate Director is not entitled to receive remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointer as the appointer may direct by notice in writing to the Company.
- 16.13 **Alternate Director counted in quorum:** For the purpose of establishing a quorum of the Board, an Alternate Director is deemed to be the Director appointing him or her.
- 16.14 **No right to attend meetings if appointed Director present:** An Alternate Director does not have a right to attend, speak or vote at a meeting of the Board while his or her appointing Director is present.
- 16.15 **Lapse of appointment:** An Alternate Director's appointment lapses upon his or her appointing Director ceasing to be a Director or if an event occurs which would cause him or her to vacate office if he or she were a Director.
- 16.16 **Address of Alternate Director required:** The notice of appointment of an Alternate Director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the Alternate Director until an address is provided to the Company.
- 16.17 **Duties independent:** An Alternate Director shall not be the agent of his or her appointor, and shall exercise his or her duties as a Director independently of his or her appointor,
17. **INDEMNITY AND INSURANCE**
- 17.1 **Types of proceedings that may be indemnified against:** The Board shall cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by him or her in any proceeding:
- (a) that relates to liability for any act or omission in his or her capacity as a Director or employee; and

- (b) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.

17.2 **Types of liability that may be indemnified against:** The Board shall cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:

- (a) liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee; or
- (b) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;

not being;

- (c) criminal liability; or
- (d) liability for the breach of section 131 of the Act; or
- (e) liability for breach of any fiduciary duty owed to the Company or related company.

17.3 **Insurance of Directors and employees:** The Board may, subject to section 162 of the Act, cause the Company to effect insurance for Directors and employees of the Company or a related company in respect of:

- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or
- (b) costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by a Director or employee in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

17.4 **Directors to sign certificate:** The Directors who vote in favour of authorising the effecting of insurance under clause 17.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company,

17.5 **Entry in the Interests Register:** The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or related company are forthwith entered in the Interests Register.

17.6 **Definitions:** For the purpose of this clause 17, "**Director**" includes a former Director and "**employee**" includes a former employee.

18. **POWERS AND DUTIES OF THE BOARD**

18.1 **Management by Board:** Subject to clause 18.2 and any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.

- 18.2 **Powers of Board:** The Board has, and may exercise, all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the Company except to the extent that this Constitution or the Act expressly requires those powers to be exercised by the Shareholders or any other person.
- 18.3 **Delegation by Board:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or any other person any one or more of its powers, other than the powers referred to in the following sections of the Act:
- (a) section 23(1)(c) (change of company name);
 - (b) section 42 (issue of other shares);
 - (c) section 44 (shareholder approval for the issue of shares);
 - (d) section 47 (consideration for the issue of shares);
 - (e) section 49 (consideration for the issue of options and convertible securities);
 - (f) section 52 (distributions);
 - (g) section 54 (shares in lieu of dividends);
 - (h) section 55 (shareholder discounts);
 - (i) section 60 (offers to acquire shares);
 - (j) section 61 (special offers to acquire shares);
 - (k) section 63 (stock exchange acquisitions subject to prior notice to shareholders);
 - (l) section 65 (stock exchange acquisitions not subject to prior notice to shareholders);
 - (m) section 69 (redemption of shares at the option of the company);
 - (n) section 71 (special redemptions of shares);
 - (o) section 76 (provision of financial assistance);
 - (p) section 78 (special financial assistance);
 - (q) section 80 (financial assistance not exceeding 5% of shareholders' funds);
 - (r) section 84(4) (transfer of shares);
 - (s) section 187 (change of registered office);
 - (t) section 193 (change of address for service);
 - (u) section 221 (manner of approving an amalgamation proposal); and
 - (v) section 222 (short form amalgamations).

- 18.4 **Board's responsibility for delegation:** The Board is responsible for the exercise of a power by any delegate (where that power is delegated under clause 18.3) as if the power had been exercised by the Board, unless the Board:
- (a) believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the Directors by the Act and this Constitution; and
 - (b) has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.
- 18.5 **Proceedings of committees:** The proceedings of meetings of any committee formed pursuant to clause 18.3 shall be in accordance with the provisions of clause 19, with such consequential amendments as may be necessary, and any other rules that may be imposed on it by the Board.
- 18.6 **Directors to act in good faith:** A Director, when exercising powers or performing duties, must act in good faith and in what the Director believes to be the best interests of the Company.
- 18.7 **Exercise of powers in relation to employees:** Nothing in clause 18.6 limits the power of a Director to make provision for the benefit of employees of the Company in connection with the Company ceasing to carry on the whole or part of its business.
- 18.8 **Major Transactions:** The Board may not procure or permit the Company to enter into a Major Transaction unless the transaction is:
- (a) approved by a Special Resolution; or
 - (b) made contingent on approval by a Special Resolution.
19. **PROCEEDINGS OF THE BOARD**
- 19.1 **Third Schedule:** The provisions of the third schedule to the Act are deleted and replaced by this clause 19.
- 19.2 **Chairperson:** The Directors may elect one of their number as Chairperson of the Board. The Director elected as Chairperson holds that office until he or she ceases to be a Director or the Directors elect a Chairperson in his or her place. If no Chairperson is elected, or if at a meeting of the Board 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.
- 19.3 **Convening a meeting:** A Director or, if requested by a Director to do so, an employee of the Company, may convene a meeting of the Board by giving notice in accordance with clauses 19.4 and 19.5.
- 19.4 **Notice of meeting:** Not less than two Working Days' notice of a meeting of the Board must be given to every Director who is in New Zealand. Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted. The notice must include the date, time and place of the meeting and the matters to be discussed. To avoid doubt, the notice may be sent via an electronic communication in accordance with clause 1.11 if the Director has provided the Company with an address for the receipt of electronic communications.

- 19.5 **Notice not required to absent Director:** It is not necessary to give notice of a meeting of the Board to any Director for the time being absent from New Zealand but if a Director is resident outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand, and the Director has appointed an Alternate Director under the provisions of this Constitution, notice must (subject to clause 16.16) be given to the Alternate Director.
- 19.6 **Irregularity in notice:** The giving of a notice of a meeting or an irregularity in the notice is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.
- 19.7 **Method of holding meetings:** A meeting of the Board may be held either:
- (a) by a number of Directors sufficient to form 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 the Directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.
- 19.8 **Acknowledgment of presence at meeting by conference:** Where a meeting of the Board is held pursuant to clause 19.7(b), at the commencement of the meeting each Director participating must acknowledge his or her presence to all the other Directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the Chairperson.
- 19.9 **Quorum:** A quorum for a meeting of the Board is a majority of the Directors. No business may be transacted at a meeting of Directors if a quorum is not present. In accordance with clause 16.13, an Alternate Director present at a meeting may be included for the purpose of establishing a quorum.
- 19.10 **Voting:** Every Director has one vote.
- 19.11 **Chairperson not entitled to casting vote:** The Chairperson does not have a casting vote.
- 19.12 **Resolution passed by majority of votes:** 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 are in favour of it.
- 19.13 **Absence of vote counts for the resolution:** A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board, unless he or she expressly dissents from (or votes against) the resolution at the meeting.
- 19.14 **Director may vote on interested transaction:** Subject to the Listing Rules (for so long as the Company is Listed), a Director may vote in respect of any transaction in which the Director is interested and if the Director does so the Director's vote will be counted and the Director will be counted in the quorum present at the meeting.
- 19.15 **Alternate Director may attend:** An Alternate Director may attend and vote at meetings of the Board in accordance with and subject to clauses 16.11 to 16.17 if the Director that has appointed the Alternate Director is absent from the meeting.

- 19.16 **Minutes:** The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of the Board. Minutes of proceedings of the Board which have been signed correct by the Chairperson are prima facie evidence of the proceedings.
- 19.17 **Unanimous resolution:** A resolution in writing, signed or assented to by all Directors then entitled to receive notice of a Board meeting, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile, electronic or other similar means of communication) in like form each signed or assented to by one or more Directors. A copy of any such resolution must be entered in the minute book of Board proceedings.
- 19.18 **Other proceedings:** Except as provided in this clause 19 the Board may regulate its own procedure.
- 19.19 **Appointment by Board:** Subject to clauses 1.4 to 1.8, the Board may at any time appoint any person who is not disqualified under the Act to be a Director to fill a casual vacancy or as an addition to the existing directors. Any Director so appointed shall retire at the next Annual Meeting of the Company but shall be eligible for election at that meeting.
- 19.20 **Continuing Directors:** Directors may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below the number fixed by this Constitution as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Equity Security holders, but for no other purpose

20. INTERESTED DIRECTORS

20.1 **Authority to remunerate Directors:** The Board may authorise:

- (a) the payment of remuneration (or the provision of other benefits) by the Company to a Director for his or her services as a Director (or in any other capacity), or by way of compensation for loss of office, subject to the Listing Rules (if applicable);
- (b) the making of loans by the Company to a Director;
- (c) the giving of guarantees by the Company for debts incurred by a Director; and
- (d) the entering into of a contract to do any of the things set out in paragraphs (a) to (c) of this clause 20.1,

if the Board is satisfied that to do so is fair to the Company.

20.2 **Separate authorisation unnecessary:** The payment of remuneration (or the giving of any other benefit) to a Director in accordance with a contract authorised pursuant to clause 20.1 need not be separately authorised by the Board.

20.3 **Entry in Interests Register:** The Board must ensure that forthwith after authorising any payment, loan, guarantee, or contract under clause 20.1, particulars are entered in the Interests Register.

20.4 **Directors to sign certificate:** The Directors who vote in favour of authorising a payment, loan, guarantee or contract under clause 20.1 must sign a certificate stating that, in their opinion, the making of the payment or loan or the giving of the guarantee, or the entering into of the contract is fair to the Company. Grounds for that opinion must also be stated in the certificate.

- 20.5 **Director may act in other professional capacity for Company:** Any Director may act by himself or herself, or by the Director's firm in a professional capacity for the Company; and the Director or the Director's firm will be entitled to remuneration for professional services as if the Director were not a Director. Nothing in this clause authorises a Director or the Director's firm to act as auditor for the Company.
- 20.6 **Director may hold other position in Company:** A Director may hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the Director's office of Director, for such period and on such terms (as to remuneration and otherwise) as the Board may determine.
- 20.7 **Transaction with Company valid:** Other than as provided in clauses 20.8 to 20.10, a Director is not disqualified by virtue of his or her office from entering into any transaction with the Company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a Director and not in a fiduciary relationship with the Company. No such Director shall be liable to account to the Company for any profit realised by the transaction by reason of the Director holding that office or of the fiduciary relationship thereby established.
- 20.8 **Notice of Interest to be given:** A Director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, cause to be entered in the Interests Register, and, if the Company has more than one Director, disclose to the Board of the Company:
- (a) if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
 - (b) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.
- 20.9 **Disclosure not required:** A Director is not required to comply with clause 20.8 if:
- (a) the transaction or proposed transaction is between the Director and the Company; and
 - (b) the transaction or proposed transaction is or is to be entered into in the ordinary course of the Company's business and on usual terms and conditions.
- 20.10 **General notice of interest may be given:** For the purposes of clause 20.8, a general notice entered in the Interests Register and, if the Company has more than one Director, disclosed to the Board to the effect that a Director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

21. MANAGEMENT OF THE COMPANY

- 21.1 **Appointment:** The Board may from time to time appoint one or more of their number to the office of Managing Director or Managing Directors of the Company, either for a fixed term or an indefinite term.

- 21.2 **Dismissal:** Every Managing Director is liable to be dismissed or removed by a resolution of the Board. 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 length and conditions of the Managing Director's employment. The remedy of any such person for any breach of the agreement will be in damages only and the Managing Director will not have a right or claim to continue in office as Managing Director contrary to the will of the Board.
- 21.3 **Termination of employment:** A Managing Director is, subject to the terms of any contract, subject to the same provisions as regards rotation, resignation, removal and disqualification as the other Directors. If the Managing Director ceases to hold the office of Director for any reason, the Managing Director will immediately cease to be a Managing Director.

PART V: ADMINISTRATION AND MISCELLANEOUS

22. AUTHORITY TO BIND

- 22.1 **Method of Contracting:** A contract or other enforceable obligation may be entered into by the Company as follows:
- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
 - (i) two or more Directors of the Company (or where there is only one Director, by that Director whose signature must be witnessed); or
 - (ii) one or more Directors or other persons or classes of persons authorised by the Board for that purpose whose signature or signatures must be witnessed;
 - (iii) one or more attorneys appointed by the Company in accordance with clause 22.3;
 - (b) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
 - (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.
- 22.2 **Resolution of authority proof of authority:** A copy of a resolution of the Board authorising a person to enter into a contract or other enforceable obligation on behalf of the Company shall be proof of such authority notwithstanding that the authority may have been subsequently revoked.
- 22.3 **Attorneys:** The Company may, by an instrument in writing executed in accordance with clause 22.1(a), appoint a person as its attorney either generally or in relation to a specified matter or matters. An act of the attorney in accordance with the instrument binds the Company.

23. LIQUIDATION

- 23.1 **Appointment of Liquidator:** A liquidator of the Company may be appointed by a Special Resolution of those Shareholders entitled to vote and voting on the question.
- 23.2 **Distribution of surplus assets:** Subject to the terms of issue of any Shares and clause 23.3, upon the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed among the holders of the Ordinary Shares in proportion to their shareholding; provided however, that a holder of Shares not fully paid up shall receive only a proportionate share of his or her entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares.
- 23.3 **Distribution of assets in kind:** Upon the liquidation of the Company the liquidator may, with the sanction of an Ordinary Resolution and any other sanction required by law, divide amongst the 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). The liquidator may for that purpose set such value, as the liquidator deems fair upon any assets to be divided as aforesaid and may determine how the division shall be carried out as between the Shareholders holding different Classes of Shares. 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 the Shareholders as the liquidator thinks fit (but so that no Shareholders shall be compelled to accept any shares or other Financial Products whereon there is any liability).
- 23.4 **Removal from New Zealand register:** Subject to sections 318 and 320 of the Act, a Director, who has been authorised by the Board to do so, may request the Registrar to remove the Company from the New Zealand register on the grounds that:
- (a) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
 - (b) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation.
- 23.5 **Distribution of assets on solvent dissolution:** For the purposes of clause 23.4(a) the Company shall have distributed its surplus assets in accordance with this Constitution if the Company does so in accordance with clause 23.2 or 23.3 except that no liquidator needs to be appointed and references to the liquidator in that clause shall be construed as references to the Shareholders acting by an Ordinary Resolution.