

**CONSTITUTION
OF
EVERGREEN FORESTS LIMITED**

I certify that this document was adopted as the Constitution of
the Company by Special Resolution on []

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CONSTITUTION
OF
EVERGREEN FORESTS LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

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

“**Alternate Director**” means a person appointed by a Director as his or her alternate under section 26.

~~“**Associated Person**” has the meaning given to that term by the Listing Rules.~~

“**Board**” means Directors who number not less than the required quorum acting together as the board of directors of the Company.

~~“**Business Day**” means a day on which the Exchange is open for trading.~~

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

“**Company**” means Evergreen Forests Limited.

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

~~“**Convert**” in respect of a Security, means to convert that Security into, or exchange that Security for, a security of a different sort, whether at the option of the holder, or of the Company, or otherwise, or to subscribe for or obtain a Security of a different sort pursuant to a right conferred by the first mentioned Security and “**Conversion**” and “**Convertible**” have corresponding meanings.~~

“**Director**” means a person appointed as a director of the Company in accordance with this Constitution.

“**Distribution**” has the meaning set out in section 2(1) of the Act.

~~“**Employee**” has the meaning set out in Listing Rule 7.3.6.~~

“**Equity Security**” means ~~a Security of the Company which~~ an Equity Security as defined in the Listing Rules issued, or to be issued, by the Company, as the case may require.

~~(a) confers a present or future right to participate in the assets of the Company after payment of all liabilities of the Company, other than up to a fixed amount; or~~

~~(b) confers a present or future right to participate in the income or profits of the Company, other than at a fixed rate or at a rate fixed by reference to a formula or index external to the Company; or~~

~~(c) carries, or will in future carry:~~

~~(i) a right to vote at meetings of holders of Securities of the Company other than a right to vote:~~

~~(aa) solely upon matters of a nature immaterial or inconsequential to the control of the Company or to the control of any material part of the business or operations of the Company; or~~

~~(bb) only when a payment in respect of the Security in question is in arrears or some other default exists, or on a proposal to change the rights attaching to that Security, or in other circumstances of a special or remote nature; or~~

~~(cc) attaching to Securities which are not Equity Securities exercisable only at meetings of holders of those Securities; or~~

~~(ii) a right to participate in the ultimate control of the Company; or~~

~~(d) may be Converted into a Security of the nature referred to in paragraphs (a) to (c) of this definition;~~

~~and includes any other Security which the Exchange NZX in its discretion deems to be an Equity Security.~~

~~“Exchange” means the New Zealand Stock Exchange and as the context permits includes any duly authorised delegate of the Exchange (including the Market Surveillance Panel of the Exchange).~~

“**Interest Group**” has the meaning set out in section 116 of the Act.

“**Interested**”, in relation to a Director, has the meaning set out in section 139 of the Act.

“**Listing Rules**” means the Listing Rules of ~~the Exchange~~ NZX in force from time to time.

“**Managing Director**” means a person appointed as a managing director of the Company under clause 27.1.

“**Minimum Holding**” has the meaning given to that term by the Listing Rules.

“**month**” means calendar month.

“**NZX**” means New Zealand Stock Exchange Limited and as the context permits includes any duly authorised delegate of NZX (including NZX Discipline).

~~“**Ordinary Resolution**” means a resolution that is approved ~~passed~~ by a simple majority of the votes of those Shareholders of Securities of the Company entitled to vote and voting on the question.~~

“**person**” includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

“Personal Representative” means:

- (a) in relation to a deceased individual Shareholder, the executor, administrator or trustee of the estate of that Shareholder;
- (b) in relation to a bankrupt individual Shareholder, the assignee in bankruptcy of that Shareholder; and
- (c) in relation to any other individual Shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed thereunder, and a donee of an enduring power of attorney complying with that Act.

~~“Recognised Stock Exchange” has the meaning given to that term by the Listing Rules.~~

“Records” means the documents required to be kept by the Company under section 189(1) of the Act.

~~“Renounceable”, in relation to a Right or offer of Securities means a Right or offer that is transferable by any holder for the time being to another person (whether or not an existing holder of any Securities to which the Right or offer relates).~~

“Representative” means:

- (a) a person appointed as a proxy under section 22;
- (b) a Personal Representative; or
- (c) a representative appointed by a corporation under section 23.

~~“Right” means a right to acquire any Security or benefit of any kind, whether conditional or not, and whether Renounceable or not.~~

~~“Ruling” means a decision, determination, ruling, waiver or dispensation by ExchangeNZX given pursuant to the Listing Rules.~~

~~“Security” has the meaning given to that term in the Listing Rules.~~

“Share” means a share issued, or to be issued, by the Company, as the case may require.

~~(a) “Shareholder” means a person whose name is entered in the Share Register as the holder for the time being of one or more Shares.~~

~~“Shareholders’ Funds” means the amount disclosed as equity (whether described as equity, shareholders’ funds, or otherwise) by the most recent published group financial statements of the Company and its subsidiaries provided that if at any time at which Shareholders’ Funds are required to be determined there has been a material decline in the consolidated equity of the Company and its subsidiaries since the date of the most recent published group financial statements then Shareholders’ Funds at the time shall be determined by a reference to the position which would be disclosed if group financial statements were prepared at that time.~~

“Share Register” means the share register for the Company kept in accordance with the Act.

“**Share Registrar**” means an agent appointed by the Company to maintain the Share Register.

“**Special Resolution**” means a resolution approved by a majority of 75% or more of the votes of those ~~Shareholders~~ of Securities of the Company entitled to vote and voting on the question.

~~“**Treasury Stock**” means Shares which have been acquired by the Company and are held by it as treasury stock in accordance with the Act, and includes Shares which are held by a subsidiary of the Company other than in accordance with section 82(6) of the Act.~~

“**Working Day**” has the meaning set out in section 2 of the Act.

1.2 **Definitions in the Listing Rules:** Words and expressions in this Constitution which commence with initial capital letters and are not defined in clause 1.1 but are defined in the Listing Rules have the respective meanings given to them by the Listing Rules.

1.3 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) the table of contents, headings, and descriptions relating to sections of the Act, 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) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
 - (i) that legislation or provision as from time to time amended, re-enacted or substituted;
 - (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (e) “written” and “in writing” include any means of reproducing words, figures and symbols in a tangible and visible form;
- (f) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise;
- (g) where any word or expression is defined in this Constitution, any other grammatical form of that word or expression has a corresponding meaning;
- (h) words and expressions defined or explained in the Act have the same meaning in this Constitution.

1.4 **Constitution to prevail:** If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

2. GENERAL

2.1 **Companies Act 1993:** 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 by this Constitution.

2.2 **Compliance with Listing Rules:** For so long as the Company is ~~a party to a listing agreement with the ExchangeNZX~~ Listed the Company shall comply with the Listing Rules, subject to:

- (a) the requirements of the Act and any other applicable legislative or regulatory requirements; and
- (b) the terms of any Ruling given from time to time by ExchangeNZX.

While the Company is Listed, if this Constitution contains any provision that is inconsistent with the Listing Rules (as modified by any Ruling relevant to the Company), then the Listing Rules prevail.

2.3 **Effect of failure to comply:** Failure to comply with any of the Listing Rules, ~~or with clauses 27.2 or 27.3 or sections 32 or 33,~~ shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, provided that:

- (a) a party to a transaction or contract who knew of the failure to comply with the Listing Rules ~~or those clauses, as the case may be,~~ is not entitled to enforce that transaction or contract; and
- (b) this provision shall not affect the rights of any holder of any Securities of the Company against the Company or the Directors arising from failure to comply with the Listing Rules or any of those provisions of this Constitution.

2.4 **Effect of Ruling:** If ~~the Exchange NZX~~ has given a Ruling authorising any act or omission, which in the absence of that Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission is deemed to be authorised by the Listing Rules and by this Constitution notwithstanding such contravention or inconsistency.

2.5 **References to Listing Rules:** A reference in this Constitution to a specific Listing Rule includes that Listing Rule as it may be amended from time to time and any Listing Rule which may be substituted for that Listing Rule.

2.6 **Incorporation of Listing Rules:** While the Company is Listed, those provisions of the Listing Rules which are required 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.

3. SHARES

3.1 **Existing Shares:** At the time of adoption of this Constitution, the Company has 131,434,372 issued Shares. No consideration is payable to the Company for any of those Shares.

3.2 **Classes of Shares:** Different Classes of Shares may be issued by the Company. Without limiting the Classes which may be issued, any Share may be issued upon the basis that it:

- (a) confers preferential rights to distributions of capital or income;
- (b) confers special, limited or conditional voting rights;
- (c) does not confer voting rights; or
- (d) is redeemable in accordance with section 68 of the Act.

3.3 **Consolidation and subdivision:** The Board may:

- (a) consolidate and divide the Shares or any Class; and
- (b) subdivide the Shares or any Class,

in each case in proportion to those Shares or the Shares in that Class, as the case may be.

4. ISSUE OF NEW EQUITY SECURITIES

4.1 **Powers of Board to issue:** ~~Subject to clause 4.2, the~~ The Board may issue Shares or other Equity Securities, Securities that are Convertible into Shares, or options to acquire Shares, to any person and in any number it thinks fit provided that while the Company is listed, the issue is made in accordance with this Constitution and the Listing Rules. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Shares by the Company. ~~The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Shares by the Company made in accordance with clause 4.2.~~

~~4.2 Restrictions on Issue:~~ An issue of Equity Securities may not be made unless it meets the criteria set out in one or more of the following sub-clauses:

~~(a) Specifically approved issues:~~ The precise terms and conditions of the specific proposal to issue those Equity Securities have been approved by separate resolutions (passed by a simple majority of votes) of the holders of each Class of Quoted Equity Securities whose rights or entitlements could be affected by the issue, and the issue, if made solely to Employees is completed within 12 months after the passing of those resolutions, and in all other circumstances is completed within six months after the passing of those resolutions, provided that approval by a separate resolution of the holders of a Class of Securities is not required if:

~~(i) the terms of issue of those Securities expressly reserved the right to make the proposed issue of new Equity Securities and specified at least the maximum number, and Class, of new Equity Securities which could be issued, and the time within which they could be issued; or~~

~~(ii) those Securities were issued on terms that the holders would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in this sub-clause (a) and the issue is approved by a resolution (passed by a simple majority of votes) of holders of all the relevant Classes voting together.~~

~~(b) Pro rata issues:~~ The Equity Securities are:

~~(i) offered to the holders of existing Equity Securities on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to votes and to Distribution Rights, and that offer is Renounceable; or~~

~~(ii) issued to the holders of existing Equity Securities as fully paid Securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to votes and to Distribution Rights,~~

~~provided that notwithstanding paragraphs (i) and (ii) of this sub-clause (b) the Board:~~

~~(iii) may issue any Equity Securities in respect of which the offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the Company if the price and terms and conditions of issue are not materially more favourable to the persons to whom they are issued than the terms of the original offer;~~

~~(iv) may offer and issue Equity Securities to the holders of existing Securities in accordance with specific rights attached to those existing Securities to participate in issues of Equity Securities, notwithstanding that the effect may be that existing proportionate rights to votes and Distribution Rights are not maintained;~~

~~(v) may authorise a disproportionate offer to the extent necessary to round up holdings of Equity Securities to a Minimum Holding, or to avoid the creation of holdings which are not Minimum Holdings;~~

~~(vi) shall not offer or issue Equity Securities to holders of existing Equity Securities the terms of which expressly exclude the right to participate in the relevant offer or issue.~~

~~For the purposes of this sub-clause (b) the term "Distribution Right" means a right of the nature referred to in paragraphs (a) or (b) of the definition of "Equity Security" referred to in clause 1.1.~~

~~(c) **Issues within 10% limit:** The issue is not made in whole or in part to any Director, Associated Person of a Director, or Employee, and is such that the total number of Equity Securities issued, together with all other Equity Securities of the same Class issued pursuant to this sub-clause (c) or pursuant to the corresponding provision in the previous constitution of the Company during the period of 12 months preceding the date of the issue, will not exceed the aggregate of:~~

~~(i) 10% of the total number of Equity Securities of that Class on issue at the commencement of that period; and~~

~~(ii) 10% of the total number of Equity Securities of that Class issued during that period pursuant to the other sub-clauses of this clause 4.2 or pursuant to the corresponding provision in the previous constitution of the Company; and~~

~~(iii) any Securities of that Class issued pursuant to this sub-clause (c) or pursuant to the corresponding provision in the previous constitution~~

~~of the Company during that period, the issue of which has been ratified by an Ordinary Resolution;~~

~~less:~~

~~(iv) 10% of the number of Equity Securities of that Class which have been acquired or redeemed by the Company during that period and cancelled (other than Equity Securities held as Treasury Stock).~~

~~For the purposes of this sub-clause (c):~~

~~(v) Securities which will, or may, Convert to other Equity Securities are deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert; and~~

~~(vi) where the Conversion ratio of any such Securities is fixed by reference to the market price of the underlying Securities, the market price shall, unless otherwise specified in the terms of the issue of the Convertible Securities, be the average end-of-day market price over the Business Days in the calendar month before the earlier of the day the issue is made or the day it is announced to the market.~~

~~(d) **Employee Share issues:** The issue is of a Class of Securities already on issue and is made to Employees on such terms and conditions as the Board may determine provided that:~~

~~(i) the total number of Equity Securities which may be issued under the provisions of this sub-clause (d), together with all other Equity Securities of the same Class issued to Employees pursuant to this sub-clause (d) or pursuant to the corresponding provision in the previous constitution of the Company during the period of 12 months preceding the date of the issue shall not exceed 2% of the aggregate of the total number of Equity Securities of that Class on issue at the commencement of the relevant period and the total number of Equity Securities of that Class issued during that period pursuant to the other sub-clauses of this clause 4.2 or pursuant to the corresponding provisions in the previous constitution of the Company;~~

~~(ii) the total number of Equity Securities which may be issued under the provisions of this sub-clause (d), together with all other Equity Securities of the same Class issued to Employees pursuant to this sub-clause (d) or pursuant to the corresponding provision in the previous constitution of the Company) during the period of five years preceding the date of the issue shall not exceed 5% of the total number of Equity Securities of that Class on issue immediately prior to the date of issue;~~

~~(iii) no Director or Associated Person of a Director may participate in any such issue unless the scheme for such participation and the precise level of entitlement for each such person have previously been approved by an Ordinary Resolution.~~

~~For the purposes of this sub-clause (d):~~

~~(iv) an issue to a Director, or an Associated Person of a Director, solely in that person's capacity as the trustee of a bona fide employee share-scheme, superannuation scheme, or the like in which that Director or~~

~~Associated Person has no beneficial interest, is deemed not to be an issue to a Director or Associated Person of a Director, or an issue in which Directors or Associated Persons participate;~~

~~(v) Securities which will, or may, Convert to other Equity Securities are deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert.~~

~~(e) **Other issues:**—The issue is made as consideration in an offer made by the Company or any of its subsidiaries in accordance with:~~

~~(i) Part 1 of the Companies Amendment Act 1963; or~~

~~(ii) any takeover code approved under section 28 of the Takeovers Act 1993; or~~

~~(iii) the provisions of the constitution, articles of association or other governing document of another listed issuer of Securities which comply with the requirements of Section 4 of the Listing Rules; or~~

~~(iv) any takeover law regime of a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of the Exchange is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in paragraphs (i), (ii) or (iii) of this sub-clause;~~

~~and that offer is made to all holders (other than the Company and its related companies) of equity securities (as defined in the Listing Rules) in any company or other entity listed by the Exchange, or listed on a Recognised Stock Exchange, which is not a company or other entity that is an Associated Person of the Company or of any Director.~~

~~(f) **Conversion of convertible securities:**—The issue is made upon Conversion of any Securities from time to time issued by the Company if the terms of issue of those Securities provided for Conversion to Equity Securities of the kind issued.~~

~~(g) **Issues to round up holdings:**—The issue is made to a holder of Equity Securities in order to bring that person's holding up to a Minimum Holding.~~

~~(h) **Issues on amalgamation:**—The issue is made pursuant to an arrangement, amalgamation or compromise effected pursuant to Part XIII or Part XV of the Act.~~

~~(i) **Issues in lieu of dividends:**—The issue is made pursuant to a plan for the issue of the Securities in lieu of dividends.~~

~~**4.3 Transactions deemed to be issues of Equity Securities:**—The grant or creation by the Company in favour of the holders of any Class of Equity Securities of any right or entitlement to Securities of a third party (whether or not that third party is a listed issuer of Securities), or the transfer by the Company of any Treasury Stock, is deemed to be an issue of new Equity Securities to which the provisions of clause 4.2 apply.~~

~~**4.4 Transfer of Rights:**—Every person to whom unissued Equity Securities are offered pursuant to clause 4.2(b)(i) may decline or accept the offer, or transfer their Rights thereunder to any person or persons to whom the Equity Securities, when issued, could be transferred but the Directors have the same right to decline to accept any such transfer as they would have if the transfer were a transfer of Shares, and the~~

~~provisions of this Constitution as to the transfer of Shares, with all necessary modifications, apply to transfers of Rights to unissued Equity Securities.~~

~~**4.5 Issues of Securities affecting control:** Notwithstanding the provisions of clause 4.2 and section 6, no issue, acquisition or redemption of Securities shall be made by the Company if:~~

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

~~(b) that person or group of Associated Persons is entitled before the issue, acquisition or redemption to exercise, or direct the exercise of, not less than 1% of the total votes attaching to the Securities of the Company;~~

~~unless the precise terms and conditions of the issue, acquisition, or redemption, have been approved by an Ordinary Resolution.~~

~~**4.6.4.2 Bonus issues:** Subject to ~~clause 1.1(a)(i) 4.2(b)(ii)~~ any applicable provisions of the Listing Rules, the Board may resolve to apply any amount which is available for Distribution either:~~

~~(a) in paying up in full Shares or other Securities of the Company to be issued credited as fully paid to:~~

~~(i) the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and~~

~~(ii) if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of such Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or~~

~~(b) in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in clause ~~4.6(a)(i)~~ 4.2(a)(i),~~

~~or partly in one way and partly in the other.~~

5. ALTERATION OF RIGHTS OF SECURITY HOLDERS

~~**5.1 Procedure in respect of Shares:** The Company shall, before taking action affecting the rights attached to any Shares, comply with the provisions of sections 116 and 117 of the Act.~~

~~**5.2 Procedure in respect of other Securities:** The Company shall, before taking action affecting the rights attached to any Quoted Equity Securities other than Shares (excluding Quoted Equity Securities to which Listing Rule 8.3.2(b) applies), comply with the provisions of sections 116 and 117 of the Act on the basis that:~~

~~(a) references in those sections to "shares" are deemed to include references to all Equity Securities, and references to "holders of shares" and "shareholders" are deemed to be modified accordingly;~~

~~(b) the reference in section 117 to a “special resolution” is deemed to be a reference to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting on that resolution; and~~

~~(c) the references in section 117 to the “constitution” are deemed to be references to the document which governs the rights attaching to those Quoted Equity Securities;~~

~~but the provisions of section 118 of the Act shall not by virtue of this clause be deemed to apply to any such Equity Securities.~~

~~5.3 **Actions not invalid:** The taking of any action by the Company affecting the rights attached to any Quoted Equity Securities other than Shares shall not be invalid by reason only that the action was not approved in accordance with the provisions of clause 5.2.~~

4.3 **Issue of equal or prior ranking Equity Securities:** For the purposes of clause 1.1, the issue of further Shares or other Equity Securities which rank equally with, or in priority to, any existing Shares or other Equity Securities, whether as to voting rights, Distributions or otherwise, is deemed not to be action affecting the rights attaching to those existing Shares or other Equity Securities.

6.5. ACQUISITION AND REDEMPTION OF EQUITY SECURITIES

6.15.1 **Powers to acquire, redeem and hold Securities:** The Company may:

- (a) purchase or otherwise acquire Shares or other Equity Securities from one or more of the Shareholders;
- (b) redeem any redeemable Shares or other Equity Securities held by one or more of the holders; and
- (c) hold any Shares or other Equity Securities so purchased, acquired or redeemed,

provided it does so in accordance with the provisions, and subject to the restrictions, of the Act, ~~and this Constitution~~ and the Listing Rules.

~~6.2 **Prohibitions on acquisition:** The Company shall not acquire any Equity Securities unless the acquisition is:~~

- ~~(a) effected by offers made by the Company through the order matching market of the Exchange, or of a Recognised Stock Exchange; or~~
- ~~(b) effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Act; or~~
- ~~(c) an acquisition of the nature referred to in section 61(7) of the Act; or~~
- ~~(d) approved in accordance with clause 6.6; or~~
- ~~(e) required by a Shareholder pursuant to section 110 or section 118 of the Act; or~~
- ~~(f) effected in compliance with section 60(1)(b)(ii) (read together with section 61) of the Act and:~~
 - ~~(i) is not made from any person who is a Director, Associated Person of a Director, or Employee; and~~

~~(ii) the total number of Equity Securities acquired, together with all other Equity Securities of the same Class acquired pursuant to this sub-clause (f) during the period of 12 months preceding the date of the acquisition, will not exceed 10% of the total number of Equity Securities of that Class on issue at the commencement of that period,~~

~~provided that for the purposes of this sub-clause (f):~~

~~(iii) Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Securities into which they will, or may, Convert; and~~

~~(iv) where the Conversion ratio of any such Securities is fixed by reference to the market price of the underlying Securities, the market price for the purposes of this sub-clause (f) shall be the average end-of-day market price over the Business Days in the calendar month before the earlier of the day the acquisition is entered into and the day it is announced to the market.~~

~~**6.3 Prior notice of acquisition:** Before the Company acquires any Equity Securities, other than an acquisition from a holder who holds less than a Minimum Holding, the Company shall give at least three Business Days' notice to the Exchange specifying:~~

~~(a) a period of time, not exceeding 12 months from the date of the notice, within which the Company will acquire the Equity Securities; and~~

~~(b) the Class and maximum number of Equity Securities to be acquired in that period;~~

~~provided that the Company may at any time cancel any notice so given, or, by three Business Days' notice to the Exchange, vary any such notice.~~

~~**6.4 Prohibitions on redemption:** The Company shall not redeem any Equity Securities, other than a redemption from a holder who holds less than a Minimum Holding, unless:~~

~~(a) the redemption is effected in compliance with section 69(1)(a) of the Act; or~~

~~(b) the redemption is approved in accordance with clause 6.6; or~~

~~(c) those Equity Securities were issued in compliance with clause 4.2(a) or clause 4.2(b) and the Company is bound or entitled to redeem those Equity Securities pursuant to their terms of issue; or~~

~~(d) those Equity Securities are Debt Securities (as defined in the Securities Act 1978) which may be Converted into Shares in the Company and before that Conversion they are redeemed in cash.~~

~~**6.5 Acquisition of Equity Securities other than Shares:** Equity Securities which are not Shares may be acquired pursuant to clauses 6.2(b), 6.2(c) and 6.2(f), or redeemed pursuant to clause 6.4(a), if the Company complies with the sections of the Act referred to in the relevant clause, on the basis that references in those sections of the Act to:~~

~~(a) "shares" shall be deemed to be references to all Equity Securities of the Class of Equity Securities which is the subject of the acquisition or redemption and references to "shareholders" shall be read accordingly; and~~

~~(b) "constitution" shall be deemed to be references to the document which governs the rights attaching to those Equity Securities.~~

~~6.6 Acquisition or redemption with approval of holders:~~ The Company may acquire Equity Securities under clause 6.2(d), or redeem Equity Securities under clause 6.4(b) if:

- ~~(a) the precise terms and conditions of the specific proposal to acquire or redeem those Equity Securities have been approved by separate resolutions (passed by a simple majority of votes) of members of each separate group of each Class of Quoted Equity Securities whose rights or entitlements are materially affected in a similar way by the proposal; and~~
- ~~(b) the acquisition is completed within 12 months, or the redemption is completed within six months, as the case may be, after the passing of the relevant resolutions.~~

~~7. RESTRICTIONS ON FINANCIAL ASSISTANCE~~

~~7.1 Prohibition on financial assistance:~~ The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued, or to be issued, by the Company unless the giving of that assistance is in accordance with the provisions of the Act and:

- ~~(a) complies with clause 7.2; or~~
- ~~(b) is approved in accordance with clause 7.3.~~

~~7.2 Permitted financial assistance:~~ The Company may give financial assistance of the nature referred to in clause 7.1 if:

- ~~(a) the financial assistance is not given in whole or in part to any Director, Associated Person of a Director, or Employee, and the amount of the financial assistance, together with the amount of all other financial assistance given by the Company under this sub clause (a) during the period of 12 months preceding the date of the giving of the financial assistance does not exceed 5% of Shareholders' Funds; or~~
- ~~(b) the financial assistance is given to Employees and:

 - ~~(i) the amount of the financial assistance, together with the amount of all other financial assistance given under this sub clause (b) by the Company during the period of 12 months preceding the date of the giving of the financial assistance does not exceed 2% of Shareholders' Funds; and~~
 - ~~(ii) the amount of the financial assistance, together with the amount of all other financial assistance given under this sub clause (b) during the shorter of the period of five years preceding the date of the giving of the financial assistance and the period from the date on which the Company was listed by the Exchange to the date of the giving of that financial assistance, does not exceed 5% of Shareholders' Funds; and~~
 - ~~(iii) the financial assistance is not given to any Director or Associated Person of a Director unless it is given solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest; or~~~~
- ~~(c) the financial assistance is offered or given so that all holders of Equity Securities are treated, or given the opportunity to be treated, on the same basis.~~

~~7.3 **Financial assistance with approval of Equity Security holders:** The Company may give financial assistance under clause 7.1(b) if:~~

~~(a) the precise terms and conditions of the specific proposal to give that financial assistance have been approved by separate resolutions (passed by a simple majority of votes) of members of each separate group of each Class of Quoted Equity Securities whose rights or entitlements are materially affected in a similar way by the proposal; and~~

~~(b) the giving of the financial assistance is completed within six months after the passing of the relevant resolution.~~

8.6. EQUITABLE INTERESTS IN SHARES

8.16.1 No notice of trusts: No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.

8.26.2 No recognition of equitable interests: Except as required by law or by this Constitution, no person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Share, or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share.

9.7. CALLS ON SHARES

9.47.1 Board may make calls: The Board may, from time to time, make such calls as it thinks fit upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.

9.27.2 Time of call: A call is deemed to be made at the time when the resolution of the Board making the call is passed.

9.37.3 Fixed instalments deemed calls: An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.

9.47.4 Notice of call: At least 14 days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.

9.57.5 Differential calls: The Board may, on the issue of Shares, differentiate between the Shareholders as to the amounts to be paid in respect of the Shares and the times of payment of such amounts.

9.67.6 Manner of payment: A Shareholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.

9.77.7 Joint Shareholders: Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.

9.87.8 Default interest: If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due

date to the date of actual payment at such rate as the Board determines, unless the Board waives payment of interest wholly or in part.

9.97.9 Proceedings for recovery of call: In any proceedings for recovery of a call:

- (a) it is sufficient to prove that:
- (i) the name of the relevant Shareholder is entered in the Share Register as the holder, or one of the holders, of the Shares to which the call relates; and
 - (ii) except in relation to any amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date, the resolution making the call is entered in the Records and notice of the call has been duly given,
- and proof of the matters mentioned in this clause is conclusive evidence of the debt; and
- (b) it is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.

9.107.10 Payment in advance of calls: The Company may receive from any Shareholder in advance any amount uncalled and unpaid upon any Shares held by that Shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the Board and the Shareholder agree.

~~9.11 Cancellation of unpaid amounts: No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.~~

10.8. FORFEITURE OF SHARES

10.18.1 Notice requiring payment of call: If a Shareholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.

10.28.2 Contents of notice: The notice shall specify a further date (not earlier than 14 days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due, is liable to be forfeited.

10.38.3 Forfeiture for non-payment: If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all Distributions declared in respect of the forfeited Share and not paid before the forfeiture.

10.48.4 Notice of forfeiture: When a Share has been forfeited, the Company shall give notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture, and shall enter in the Share Register details of the forfeiture.

10.58.5 Cancellation of forfeiture: A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.

10.68.6 Effect of forfeiture: The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share, but remains liable to the Company for all money payable in respect of the forfeited Share.

11.9. LIEN ON SHARES

11.19.1 Lien on Shares: The Company has a first and paramount lien upon each Share, the proceeds of sale of the Share, and all Distributions made in respect of the Share, for:

- (a) all unpaid calls owing in respect of the Share and interest thereon (if any); and
- (b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived.

11.29.2 Waiver of lien: Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share, except as provided in clause 12.2.

12.10. SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN

12.10.1 Company may sell Shares: The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, but the Company shall not sell any Share:

- (a) unless the amount in respect of which a lien exists is due and payable; and
- (b) until the expiry of 14 days after written notice demanding payment of the amount has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Share.

12.210.2 Proceeds of sale: The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale or, if applicable in either case, to the Personal Representative of the holder.

12.310.3 Evidence: A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.

12.410.4 Sale procedure: For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.

13.11. TRANSFER OF SHARES

13.11.1 Right to transfer: Subject to any restrictions contained in this Constitution, a Shareholder or Personal Representative may transfer any Share:

- (a) by an instrument of transfer which complies with this Constitution; or
- (b) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company.

13.211.2 Securities Transfer Act: A Share which is disposed of in a transaction to which the provisions of the Securities Transfer Act 1991 apply may be transferred in accordance with the provisions of that Act. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of that Act if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company or the Share Registrar.

13.311.3 Other forms of transfer: An instrument of transfer of Shares to which the provisions of clause 11.2 are not applicable shall:

- (a) be in any common form or any other form approved by the Company or the Share Registrar;
- (b) be signed or executed by or on behalf of the transferor;
- (c) if registration as holder of the Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.

13.411.4 Delivery to Company: An instrument transferring Shares must be delivered to the Company or to the Share Registrar, together with such evidence (if any) as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

13.511.5 Board may refuse to register: Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse to register or delay the registration of a transfer of any Quoted Security Share if permitted to do so by the Listing Rules. In addition, it may refuse or delay the registration of any transfer of Shares Securities which are not Quoted if:

- (a) the Company has a lien on the Share;
- (b) the transferor fails to produce such evidence as the Company or the Share Registrar reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share; or
- (c) registration of the transfer (together with registration of any further transfer or transfers then held by the Company and awaiting registration) would result in less than a Minimum Holding of Shares of the relevant Class standing in the name of the transferee,

provided that the Board resolves to exercise its power under this clause within 30 Working Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board.

13.611.6 When transfer effective: A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

13.711.7 Company to retain transfer: If the Company registers an instrument of transfer it shall retain the instrument.

13.811.8 Multiple registers: The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places, and may be kept by one or more Share Registrars.

13.911.9 Compulsory disposal when holding less than Minimum Holding: The Board may at any time give notice to a Shareholder holding less than a Minimum Holding of Shares of any Class that if at the expiration of three months after the date the notice is given the Shareholder still holds less than a Minimum Holding of Shares of that Class, the Board may exercise the power of sale of those Shares set out in this clause. If that power of sale becomes exercisable:

- (a) The Board may arrange for the sale of the relevant Shares on behalf of the Shareholder, through ~~the ExchangeNZX~~, or in some other manner approved by ~~the ExchangeNZX~~.
- (b) The Shareholder shall be deemed to have authorised the Company to act on behalf of the Shareholder in relation to the sale of the relevant Shares, and to sign all necessary documents relating to such sale.
- (c) The Company shall account to the Shareholder for the net proceeds of sale (after deduction of reasonable sale expenses) which shall be held on trust by the Company for, and paid (together with interest at such rate (if any) as the Board deems appropriate) to, the Shareholder, on surrender of the certificate (if any) relating to the relevant Shares.
- (d) The title of the purchaser of any Shares sold pursuant to this clause shall not be affected by any irregularity in the exercise or purported exercise of the power of sale specified in this clause and the receipt of the Company shall be a good discharge to the purchaser for the purchase price.

13.1011.10 Securities other than Shares: The provisions of this section 11 shall apply, with any necessary modifications, to Securities of the Company other than Shares except to the extent (if any) provided otherwise by the terms of issue of such Securities, by the Listing Rules, or by law.

~~14. PROVISIONS INCIDENTAL TO SECTIONS 15—18~~

~~14.1 Definitions:~~ In sections ~~15—18~~ of this Constitution, unless the context otherwise requires, the following words shall have the meanings given to them respectively in section 4 of the Listing Rules:

~~“Affected Group”; “Default”; “Defaulter”; “Defaulter’s Securities”; “Differential Offer” “Insider”; “Relevant Group”; “Restricted Transfer”; “Transfer”; “Transferee”; “Transferor”.~~

~~14.2 Exchange Rulings:~~ If the Exchange (or the Panel or any delegate of the Panel) makes a Ruling dealing with any provision in sections ~~15—18~~ of this Constitution or with any matter dealt with by section 4 of the Listing Rules, that Ruling shall be binding upon the Company and all holders of Securities of the Company, and shall take effect as if that Ruling were itself incorporated in this Constitution.

~~14.3 Meetings of groups of Security holders:~~ A meeting of the holders of Securities in an Affected Group or a Relevant Group may be called by the Board at any time, and shall be called on the written request of persons holding Securities carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be

~~considered at the meeting of the group in question. All the provisions of his Constitution relating to meetings of Shareholders apply, with all necessary modifications, to a meeting of a group of Security holders, except that:~~

- ~~(a) the necessary quorum is one holder of Securities in the group, present in person or by Representative;~~
- ~~(b) any holder of Securities in the group, present in person or by Representative, may demand a poll; and~~
- ~~(c) if the Board so elects, one meeting may be held of holders constituting more than one group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each group.~~

~~14.4 **Takeovers code:** If a takeovers code comes into force under the Takeovers Act 1993 then subject to:~~

- ~~(a) any applicable provisions of that code; and~~
- ~~(b) the Company first obtaining the approval of the Exchange and complying with any conditions of that approval; and~~
- ~~(c) such conditions as the Exchange may from time to time impose;~~

~~the whole of sections 15—18 and clauses 14.1—14.3, or such part or parts thereof as may be determined by the Exchange, shall cease to apply and shall be deemed to be cancelled with effect from the date upon which that code comes into force, except that they shall nevertheless continue to apply in respect of any non-compliance with the provisions of section 15 which has occurred prior to that date.~~

15. RESTRICTIONS ON ACQUISITIONS

~~15.1 **Notice of proposed acquisition:** No Restricted Transfer of Quoted Equity Securities may take place unless:~~

- ~~(a) a notice containing the particulars specified in Listing Rule 4.5.2 has been given to the Issuer, and to the Exchange in a manner complying with Listing Rule 4.0.2.3 for release to the market, not later than the time specified in clause 4.5.2;~~
- ~~(b) a notice of any change in, or addition to, the particulars notified under clause 4.5.1(a) has been given in accordance with clause 4.5.3; and~~
- ~~(c) any Restricted Transfer status report required by clause 4.5.6 has been given in accordance with that clause.~~

~~15.2 **Time for initial notice:** A notice under clause 4.5.1(a) shall be given:~~

- ~~(a) if any Transferee under the Transfer in question is an Insider, at least 15 Business Days before the Transfer;~~
- ~~(b) if no Transferee is an Insider, at least one Business Day if the Restricted Transfer complies with Listing Rule 4.5.5, and at least three Business Days in any other case, before the Transfer.~~

~~15.3 **Notice of change:** Any change in, or addition to, the particulars notified under clause 15.1(a) shall be made by giving a notice of change. Each such notice shall be given:~~

~~(a) if any Transferee under the Transfer in question is an Insider, at least two Business Days before the change takes effect, in the case of a change to price or other consideration, and at least 15 Business Days before the change takes effect, in the case of a change to any other particulars;~~

~~(b) if no Transferee is an Insider:~~

~~(i) in the case of a change to price or other consideration, at least two hours during which the Exchange is open for business if the Restricted Transfer complies with Listing Rule 4.5.5, and at least one Business Day in any other case, before the change takes effect; and~~

~~(ii) in the case of a change to any other particulars, at least one Business Day if the Restricted Transfer complies with Listing Rule 4.5.5, and at least three Business Days in any other case, before the change takes effect.~~

~~15.4 **Board response to initial notice:** If a notice is given under clause 15.1(a) the Board shall:~~

~~(a) give a notice, as soon as can be achieved, and before the expiry of the relevant notice period referred to in clause 15.2, containing the particulars required by Listing Rule 4.5.6; and~~

~~(b) comply (so far as is applicable) with Listing Rule 4.5.7.~~

~~15.5 **Appraisal Report:** If any Transferee under a Restricted Transfer is an Insider, the Board shall (unless the requirements of Listing Rule 4.5.9 are met) forthwith upon a notice being given under clause 15.1 in respect of that Restricted Transfer, commission an Appraisal Report which complies with Listing Rule 4.5.8, and deal with that Appraisal Report in accordance with the requirements of that Listing Rule.~~

~~15.6 **Restricted Transfer status report:** If a Restricted Transfer is not completed within three months of the notice required to be given under clause 15.1(a), or of any status report previously given under this clause 15.6, then, before continuing with the Restricted Transfer, additional market information on the status of the Restricted Transfer shall be provided to the Company and the Exchange in a manner complying with Listing Rule 10.2.3 for release to the market, including:~~

~~(a) advice as to when the Restricted Transfer is intended to be completed; and~~

~~(b) details of the Transfers that comprise the Restricted Transfer which have not been completed.~~

~~15.7 **Board response to status report:** On receipt of the information provided under clause 15.6, the Board shall promptly:~~

~~(a) advise the Exchange of any change in circumstances (and the implications of the change) which would affect the continuing relevance and currency of any Appraisal Report or of the response initially provided under clause 15.4; and~~

~~(b) confirm to the Exchange that the Company is complying with Listing Rule 10.1.~~

16. ENFORCEMENT OF ACQUISITION RESTRICTIONS

16.1 Consequences of Default: In the event of a Default:

- ~~(a) no vote may be cast in respect of the Defaulter's Securities on a poll (and any vote cast shall be disregarded) while the Default is unremedied;~~
- ~~(b) the Defaulter's Securities may be sold by the Company in accordance with clause 16.2 but this power may not be exercised:

 - ~~(i) until one month after the Company has given notice to the Defaulter (and if the Defaulter is not the registered holder of the Defaulter's Securities, to the registered holder) of its intention to exercise this power; and~~
 - ~~(ii) if, during that month the Defaulter has remedied the Default (if capable of being remedied), or has transferred the Defaulter's Relevant Interest in the Defaulter's Securities to a person who is not a Defaulter.~~~~

16.2 Sale procedure: If the power of sale specified in clause 16.1(b) becomes exercisable:

- ~~(a) the Company shall arrange for the sale of the Defaulter's Securities through the Exchange or in some other manner approved by the Exchange;~~
- ~~(b) each holder of Defaulter's Securities is deemed to have authorised the Company to act on behalf of that holder in relation to the sale of the relevant Securities, and to sign all documents relating to such sale which may be required to give effect thereto;~~
- ~~(c) the net proceeds of sale shall be held on trust by the Company for, and paid (after deduction of amounts referred to in sub clause (d)) to holders of the relevant Securities on surrender of the certificate (if any) relating to the relevant Securities; and~~
- ~~(d) the Company may deduct from the proceeds of sale any costs of sale and any costs to the Company of determining whether a person is a Defaulter and exercising powers permitted by this section 16, and any amounts which the Company may choose to pay to members of any Affected Group acting pursuant to clause 16.4, in reimbursement of expenses incurred by those members.~~

~~**16.3 Protection of other persons:** No purchaser or other person dealing with the Company shall be concerned to enquire whether the power of sale specified in clause 16.1(b) has become properly exercisable, or as to the propriety or regularity of a sale made in purported exercise of that power, or as to the application of the proceeds of sale received by the Company. The receipt of the Company is a good discharge to the purchaser for the purchase price, and no question may be raised as to the title of the purchaser to Securities sold in purported exercise of the power of sale specified in clause 16.1(b).~~

~~**16.4 Affected Group:** The Board shall, if so directed by a resolution of an Affected Group (passed by a simple majority of votes), cause the Company to exercise the power referred to in clause 16.1(b), if that power has become exercisable.~~

~~**16.5 No liability:** Neither the Company nor any Director shall be under any liability whatsoever to any Defaulter, any holder of Defaulter's Securities, or any person whom the Board believes to be a Defaulter or holder of Defaulter's Securities, for or in connection with the exercise or purported exercise of the powers specified in this section 16.~~

~~16.6~~**Limitation of remedies:**—The sole remedy of the Company, a holder of Securities, a Director, or any other person, in respect of a breach or alleged breach of section 15 shall be to exercise, or require the Company or the Board to exercise, the powers referred to in clause 16.1. Without limiting the preceding sentence, no person is entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of section 15. Nothing in this clause affects the remedies of a holder of Securities against any Director in respect of a breach of section 15 by that Director.

~~16.7~~**Voting restrictions:**—The Company shall use reasonable endeavours to ascertain for the purposes of clause 16.1(a) whether any Securities are Defaulter's Securities. If any holder of Securities, or the Exchange, alleges that any Securities are Defaulter's Securities, the Board shall properly consider and investigate that allegation. The ruling of the chairperson of any meeting as to whether any person is or is not entitled to vote at that meeting pursuant to clause 16.1(a) shall, for the purposes of proceedings at that meeting, be conclusive, and the proceedings of, or any resolution passed at, any meeting shall not be impugned by reason of a breach of clause 16.1(a), but this provision shall not prejudice any action which any person may have against any holder of Securities by reason of that holder having cast a vote at any meeting in breach of clause 16.1(a).

17.COMPULSORY ACQUISITION PROVISIONS

~~17.1~~**Acquisition Notice:**—If a person, or a group of Associated Persons, acquires beneficial ownership of 90% or more of a Class of Quoted Equity Securities of the Company, that person or group of persons (the "Majority Holder") shall, within 20 Business Days after that circumstance arises, give notice (an "Acquisition Notice") to all other holders (the "Remaining Holders") of Securities of that Class ("Affected Securities") and at the same time to the Company and the Exchange. In calculating the total number of Quoted Equity Securities of a Class, Treasury Stock shall not be regarded as part of that Class.

~~17.2~~**Contents of Notice:**—The Acquisition Notice shall specify:

- ~~(a)~~that the Majority Holder has beneficial ownership of 90% or more of the Affected Securities;
- ~~(b)~~either:
 - ~~(i)~~that the Majority Holder intends to acquire all Affected Securities held by the Remaining Holders; or
 - ~~(ii)~~that any Remaining Holder may require the Majority Holder to acquire the Affected Securities held by that Remaining Holder by giving notice to that effect to the Majority Holder within one month after the date of the Acquisition Notice; and
- ~~(c)~~the consideration which the Majority Holder is prepared to provide for Affected Securities.

~~17.3~~**Obligation of Majority Holders:**—Upon giving an Acquisition Notice, the Majority Holder shall be entitled and bound:

- ~~(a)~~if the Acquisition Notice contains the statement in clause 17.2(b)(i), to acquire all Affected Securities held by the Remaining Holders; or
- ~~(b)~~if the Acquisition Notice contains the statement in clause 17.2(b)(ii), to acquire all Affected Securities held by Remaining Holders in respect of which the holder,

~~within one month after the date of the Acquisition Notice, gives notice requiring the Majority Holder to acquire.~~

~~17.4**Consideration:**—The consideration to be provided for Affected Securities which the Majority Holder is entitled and bound to acquire shall be determined as follows:~~

~~(a)The Acquisition Notice shall specify the consideration which the Majority Holder is prepared to provide. The Majority Holder shall, before giving the Acquisition Notice, provide to the Company and the Exchange a report from an independent, appropriately qualified, person, who has been previously approved by the Exchange, confirming that for the purposes of this section 17 (using the same criteria as are set out in clause 17.4(c)(v)) that consideration is fair to the Remaining Holders.~~

~~(b)If, within 10 Business Days after the date of the Acquisition Notice, the Company receives written objections to the consideration specified in the Acquisition Notice from the holders of 10% or more of the Affected Securities held by the Remaining Holders, the Company shall forthwith notify the Majority Holder and the Exchange of that fact and the consideration shall then be determined in accordance with clauses 17.4(c) and 17.4(d). If no such objection is received, the consideration shall be as specified in the Acquisition Notice.~~

~~(c)If objections of the nature referred to in clause 17.4(b) are received by the Company, the consideration shall be fixed by an independent, appropriately qualified, person, who shall:~~

~~(i)be appointed by the Disinterested Directors (as defined in Listing Rule 4.5.9), if any, and otherwise by the Board, after approval by the Exchange; and~~

~~(ii)be a different person from the one referred to in clause 17.4(a); and~~

~~(iii)act as an expert and not as an arbitrator; and~~

~~(iv)be directed to provide a decision within 20 Business Days after being appointed; and~~

~~(v)be directed to determine the consideration on the basis that it is fair to the Remaining Holders and is the pro rated value of the Affected Securities based on the value of the Company as a whole and the rights and obligations attached to those Securities without taking into account any strategic or hold out value of the Affected Securities or any other factors relating to the Remaining Holders, the Majority Holder, their respective holdings in the Company or the relative extent of those holdings.~~

~~(d)If the consideration determined by the person appointed in accordance with clause 17.4(c):~~

~~(i)is less than, or the same as, the consideration specified in the Acquisition Notice, the fee and expenses of that person shall be borne by the Remaining Holders who made the objections referred to in clause 17.4(b) and the Majority Holder shall deduct that amount from the consideration payable by the Majority Holder to the objectors, in proportion to their holdings (and may, if the consideration is not cash, deduct and sell sufficient of that consideration to produce sufficient cash);~~

~~(ii) is more than the consideration specified in the Acquisition Notice, the fee and expenses of that person shall be borne by the Majority Holder.~~

~~17.5 **Payment to Remaining Holders:**—The Majority Holder shall pay or provide the consideration to each Remaining Holder within 12 Business Days after the Majority Holder becomes bound to acquire the Affected Securities of that Remaining Holder, or if the consideration requires to be determined in terms of clause 17.4, within two Business Days after it has been so determined.~~

~~17.6 **Holders not located:** If any holder of Affected Securities which are to be acquired cannot be located the Majority Holder shall pay or provide the consideration due to that holder to the Company to be held by the Company upon trust for that holder until claimed by that holder. If such consideration remains unclaimed for more than five years it may be forfeited by the Board for the benefit of the Company. The Company shall nevertheless, at any time after such forfeiture, annul the forfeiture and pay or provide the consideration to a claimant who produces satisfactory evidence of entitlement.~~

~~17.7 **Procedure:**—Upon payment or provision by the Majority Holder of the consideration for Affected Securities in accordance with clauses 17.5 and 17.6, the Company shall forthwith execute on behalf of all the holders of those Securities transfers of those Securities in favour of the Majority Holder or its nominee, and shall cause the name of the Majority Holder or its nominee to be entered in the relevant register in respect of those Affected Securities. If the Company fails to execute any such transfer, the Majority Holder may do so.~~

~~17.8 **Default consequences:**—If a Majority Holder fails to give an Acquisition Notice when required to do so by this section 17, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this section 17, fails to do so, then the provisions of clauses 16.1 to 16.5 and 16.7 shall apply with the following modifications:~~

- ~~(a) the Affected Securities held by the Majority Holder shall be deemed to be Defaulter's Securities;~~
- ~~(b) the failure to comply with this section 17 shall be deemed to be a Default; and~~
- ~~(c) the Remaining Holders shall be deemed to be an Affected Group.~~

18. HOLDING BY BARE TRUSTEE

~~18.1 **Bare trustee:**—For all purposes of sections 15, 16 and 17 and notwithstanding anything in those sections:~~

- ~~(a) the Transfer of Quoted Equity Securities, or of any interest in Quoted Equity Securities, to a bare trustee shall be deemed to be a Transfer to the person or persons for whom that bare trustee holds those Securities or that interest as trustee (the "Beneficial Owners");~~
- ~~(b) Quoted Equity Securities, or any interest in Quoted Equity Securities, held by a bare trustee shall be deemed to be held by the Beneficial Owners; and~~
- ~~(c) a trustee may be a bare trustee notwithstanding that that trustee is entitled as a trustee to be remunerated out of the income or property of the relevant trust.~~

~~18.2 **Other circumstances:**—Without limiting clause 18.1:~~

~~(a) a bare trustee and a Beneficial Owner shall not, by reason solely of their relationship as bare trustee and Beneficial Owner, be Associated Persons;~~

~~(b) a bare trustee of Quoted Equity Securities shall not, solely by reason of its position as bare trustee for the Beneficial Owner, have a Relevant Interest in those Quoted Equity Securities; and~~

~~(c) a Beneficial Owner of Quoted Equity Securities shall not have a Relevant Interest in the Quoted Equity Securities of another Beneficial Owner solely because the same bare trustee acts as trustee for both of those Beneficial Owners.~~

~~18.3 **Defaulter's Securities:** In the event of a Default, if any Quoted Equity Securities held by a person as bare trustee on behalf of different Beneficial Owners include any Defaulter's Securities:~~

~~(a) the bare trustee shall on request by the Company or the Exchange, provide to the Company and the Exchange details of the Beneficial Owners of those Defaulter's Securities; and~~

~~(b) the Company may at any time, and shall upon request by the bare trustee or any Beneficial Owner, take appropriate steps to ensure that those Defaulter's Securities are separately designated in the Share Register recording those Quoted Equity Securities.~~

19.12. TRANSMISSION OF SHARES

~~19.12.1 **Transmission on death of Shareholder:** If a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Personal Representative, shall be the only persons recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder but nothing in this clause shall release the estate of a deceased joint Shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.~~

~~19.212.2 **Rights of Personal Representatives:** A Personal Representative of a Shareholder:~~

~~(a) is entitled to exercise all rights (including without limitation the rights to receive Distributions, to attend meetings and to vote in person or by Representative), and is subject to all limitations, attached to the Shares held by that Shareholder; and~~

~~(b) is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this sub-clause.~~

~~19.312.3 **Joint Personal Representatives:** Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.~~

20.13. DISTRIBUTIONS

~~20.413.1 **Power to authorise:** The Board, if satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the solvency test may, subject to the Act and this Constitution, authorise Distributions by the Company at times, and of amounts, and to any Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.~~

20.213.2 Form of Distribution: Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit, but except as provided in clause 13.3 shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.

20.313.3 Currency of payment: The Board, if it thinks fit, may differentiate between Shareholders as to the currency in which any Distribution is to be paid. In exercising its discretion the Board may have regard to the registered address of a Shareholder, the register on which a Shareholder's Shares are registered and such other matters (if any) as the Board considers appropriate. If the Board determines to pay a Distribution in a currency other than New Zealand currency, the amount payable shall be converted from New Zealand currency in such manner, at such time, and at such exchange rate, as the Board thinks fit.

20.413.4 Entitlement to dividends: The Board shall 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 it is 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 liability of the Shareholder under this Constitution or under the terms of issue of the Share, but a Shareholder may waive that Shareholder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of the Shareholder.

20.513.5 Deduction of money: The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.

20.613.6 Method of payment: A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.

20.713.7 No interest on Distributions: The Company is not liable to pay interest in respect of any Distribution.

20.813.8 Payment of small Distribution amounts: Where the net amount of a Distribution payable to a Shareholder is less than such minimum amount as may be determined from time to time by the Board for the purposes of this clause, the Company may, with the prior approval of that Shareholder, defer payment of the Distribution to that Shareholder until the earlier of:

- (a) such time as that Shareholder has an aggregate entitlement to net Distributions of not less than such minimum amount; and
- (b) the date upon which that Shareholder ceases to hold any Shares.

20.913.9 Unclaimed Distributions: Dividends or other monetary Distributions unclaimed for more than one year after having been authorised, may be used for the benefit of the Company until claimed. All dividends or other monetary Distributions unclaimed for more than five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Board shall nevertheless, at any time after such

forfeiture, annul the forfeiture and agree to pay a claimant who produces satisfactory evidence of entitlement.

21.14. EXERCISE OF POWERS OF SHAREHOLDERS

21.14.1 Alternative forms of 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) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can reasonably be expected to be able to hear each other simultaneously throughout the meeting.

21.214.2 Powers exercisable by Ordinary Resolution: Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by an Ordinary Resolution.

22.15. MEETINGS OF SHAREHOLDERS

22.415.1 Annual meetings: The Company shall hold annual meetings of Shareholders in accordance with section 120 of the Act.

22.215.2 Special meetings: All meetings of Shareholders, other than annual meetings, shall be called special meetings.

22.315.3 Calling of special meetings: A special meeting of Shareholders entitled to vote on an issue:

- (a) may be called by the Board at any time;
- (b) shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

22.415.4 Time and place of meetings: Each meeting of Shareholders shall be held at such time and place as the Board appoints.

22.515.5 Equity Security holders entitled to attend: Equity Security holders of all Classes are entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to the holders of all Securities entitled to vote at meetings of Shareholders but are not entitled to vote at any such meeting unless the terms of the relevant Equity Securities so provide.

22.615.6 Meetings of Interest Groups: A meeting of the Shareholders constituting an Interest Group may be called by the Board at any time. All the provisions of this Constitution relating to meetings of Shareholders shall apply, with all necessary modifications, to meetings of Interest Groups, except that:

- (a) the necessary quorum for a meeting is one Shareholder having the right to vote at the meeting, present in person or by Representative;
- (b) any Shareholder in the relevant Interest Group, present in person or by Representative, may demand a poll; and

- (c) if the Board so elects, one meeting may be held of Shareholders constituting more than one Interest Group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of the Shareholders in each Interest Group.

23.16. NOTICE OF MEETINGS OF SHAREHOLDERS

23.16.1 Written notice: Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting, to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice, and in such manner, as those Shareholders agree.

23.16.2 Contents of notice: A notice of meeting shall 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; and
- (c) that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder.

23.16.3 Form of resolutions: So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.

23.16.4 Waiver of notice irregularity: 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.

23.16.5 Accidental omission of notice: The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.

23.16.6 Notice of 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 clause 16.1.

24.17. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

24.17.1 Requirement for quorum: Subject to clause 17.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

24.17.2 Quorum: Subject to clause 17.3, a quorum for a meeting of Shareholders is five Shareholders having the right to vote at the meeting, present in person or by Representative.

24.17.3 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 by the Board on the written request of Shareholders entitled to exercise that right, 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 Board may appoint and, if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders or their Representatives present are a quorum.

24.417.4 Regulation of procedure: Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the procedure at meetings of Shareholders.

24.517.5 Adjournment of meeting: The chairperson may, with the consent of a meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.

24.617.6 Adjournment or dissolution of disorderly meeting: If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the meeting.

24.717.7 Completion of unfinished business if meeting dissolved: If a meeting is dissolved by the chairperson pursuant to clause 17.6, the unfinished business of the meeting shall be dealt with as follows:

- (a) in respect of a resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution;
- (b) in respect of a resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors;
- (c) the chairperson may direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, be put to the vote by a poll without further discussion, in accordance with clause 21.4.

25.18. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

25.118.1 Chairperson: If the Directors have elected a chairperson of the Board and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.

25.218.2 Directors may appoint chairperson: If no chairperson of the Board has been elected or if, at any meeting of Shareholders, the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.

25.318.3 Shareholders may appoint chairperson: If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

26.19. VOTING AT MEETINGS OF SHAREHOLDERS

26.419.1 Voting at meeting in one place: In the case of a meeting of Shareholders held under clause 14.1(a), unless a poll is demanded in accordance with clause 21.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.

26.219.2 Voting at audio/visual meeting: In the case of a meeting of Shareholders held under clause 14.1(b), unless a poll is demanded in accordance with clause 21.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

26.319.3 Postal votes: Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act shall apply, with such modifications (if any) as the Board thinks fit.

26.419.4 Entitlement to vote: A Shareholder may exercise the right to vote either in person or by Representative.

26.519.5 Number of votes: Subject to clauses 20.1 and [27.2 the Listing Rules](#) and to any rights or restrictions for the time being attached to any Share:

- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
- (b) on a poll every Shareholder present in person or by Representative has:
 - (i) in respect of each fully paid Share held by that Shareholder, one vote;
 - (ii) in respect of each Share held by that Shareholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Share were fully paid equivalent to the proportion which the amount paid (excluding amounts credited as paid) on that Share bears to the total amount paid and payable thereon (excluding amounts credited as paid and amounts paid in advance of calls).

26.619.6 Vote of overseas protected persons: A Shareholder who is not living in New Zealand, and who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction, may vote in respect of any Shares held by that Shareholder, by his or her committee, manager, or other person of a similar nature appointed by that court, voting in person or by proxy.

26.719.7 Declaration by chairperson: A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 21.1.

26.819.8 Chairperson's casting vote: The chairperson of a meeting of Shareholders is not entitled to a casting vote.

26.919.9 Joint Shareholders: Where two or more persons are registered as joint Shareholders, the vote of the person named first in the Share Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

27.20. RESTRICTIONS ON VOTING

27.120.1 No vote when amount owing on Share: A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

~~27.2 Voting restrictions: Notwithstanding anything to the contrary in this Constitution or the Listing Rules, a person is not entitled to cast a vote in favour of a resolution when that person is disqualified from doing so by virtue of the voting restrictions specified in the Listing Rules.~~

~~27.3 Deadline for challenge: Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a vote at a meeting in breach of clause 27.2, no resolution of, or proceeding at, that meeting may be impugned on the basis of a breach of that clause. Any objection by a holder of Securities to the accuracy or completeness of any list of holders of Securities who are disqualified from voting on a resolution pursuant to clause 27.2, which has been supplied by the Company to the Exchange or to any holder of Equity Securities on request pursuant to the Listing Rules shall be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.~~

28.21. POLLS

28.121.1 Right to demand poll: At a meeting of Shareholders a poll may be demanded by:

- (a) the chairperson; or
- (b) not less than five Shareholders having the right to vote at the meeting; or
- (c) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
- (d) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.

28.221.2 When poll may be demanded: A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

28.321.3 When poll taken: A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

28.421.4 Poll procedure: A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.

28.521.5 Votes: On a poll:

- (a) votes may be given either personally or by Representative;
- (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares;
- (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.

28.621.6 Scrutineers: The auditors shall be scrutineers unless they are unable or unwilling to act, or the chairperson of the meeting directs otherwise, in which case the scrutineers shall be appointed by the chairperson.

28.721.7 Declaration of result: The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers stating that sufficient votes to determine the result of the resolution have been counted and setting out the basis of that determination.

29.22. PROXIES

29.422.1 Right to appoint: A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting, and to demand or join in demanding a poll, as if the proxy were the Shareholder.

29.222.2 Notice of appointment: A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a particular meeting or for a specified term. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant meeting reasonably permit) provide for two way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the vote.

29.322.3 Proxy form to be sent with notice of meeting: The Company shall send a form of notice of appointment of proxy to every Shareholder entitled to attend and vote at a meeting, with the notice convening the meeting.

29.422.4 Proxy form must not name proxy: The Company shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Company may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Shareholder desires to appoint them or any of them.

29.522.5 Production of notice: No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office, or by the Share Registrar at such address as is specified for that purpose in the form of notice of appointment or in the notice convening the meeting, not later than 48 hours before the start of the meeting.

29.622.6 Validity of proxy vote: A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office, or by the

Share Registrar, before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

30.23. CORPORATE REPRESENTATIVE

30.123.1 Appointment of representative: A corporation which is a Shareholder may appoint a person to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

31.24. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

31.124.1 Shareholder proposals: A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause.

31.224.2 Management review by Shareholders: The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a resolution relating to the management of the Company at that meeting but no such resolution is binding on the Board.

32.RESTRICTION ON DISPOSAL OR ACQUISITION OF ASSETS

~~32.1 Restriction: Subject to clauses 32.3 and 32.4 the Company shall not enter, or permit any of its subsidiaries to enter, into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (other than by way of charge) assets held or to be held by the relevant company:~~

~~(a) which will change the essential nature of the business of the Company and its subsidiaries taken as a whole; or~~

~~(b) in respect of which the gross value is in excess of 50% of the lesser of the Average Market Capitalisation or the Gross Value of Assets of the Company,~~

~~except with the prior approval of an Ordinary Resolution, or of a Special Resolution if section 129 of the Act applies to the transaction or transactions.~~

~~32.2 Definitions: In clause 32.1 and in clause 33.3(a):~~

~~(a) "Average Market Capitalisation" means the average end-of-day market capitalisation over the Business Days in the calendar month before the earlier of the day the transaction is entered into and the day it is announced to the market; and~~

~~(b) "Gross Value of Assets" and "Aggregate Gross Value" shall be calculated as the greater of the gross tangible asset backing value (from the most recently published financial statements) or market value (in both cases irrespective of and ignoring any liabilities attributable to the assets or of any subsidiaries or other entities through which the assets are held).~~

~~32.3 Conditional transaction: The Company or any of its subsidiaries may enter into an agreement involving a transaction which in terms of clause 32.1 requires the approval of a resolution if the agreement provides that the transaction is conditional upon the passing of such a resolution and may not be completed until the resolution is passed.~~

~~32.4 Permitted exception:~~ Clause 32.1 does not apply to any transaction entered into by the Company or any of its subsidiaries with a Bank (as defined in the Listing Rules), on arms length terms and in the ordinary course of banking business, as a result of which transaction the relevant company has recourse to the credit risk of that Bank.

33.RESTRICTION ON TRANSACTIONS WITH RELATED PARTIES

~~33.1 Restriction:~~ The Company shall not enter, or permit any of its subsidiaries to enter, into a Material Transaction (as defined in clause 33.3) if a Related Party (as defined in clause 33.4) is, or is likely to become:

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

~~unless that Material Transaction is approved by an Ordinary Resolution.~~

~~33.2 Conditional transaction:~~ The Company or any of its subsidiaries may enter into an agreement involving a Material Transaction which in terms of clause 33.1 requires the approval of an Ordinary Resolution if the agreement provides that the transaction is conditional upon the passing of such a resolution and may not be completed until the resolution is passed.

~~33.3 Definition of Material Transaction:~~ For the purposes of this section 33 "Material Transaction" means a transaction whereby the Company or any of its subsidiaries:

- ~~(a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Gross Value (as defined in clause 32.2) in excess of 5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company; or~~
- ~~(b) borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company; or~~
- ~~(c) enters into any guarantee, indemnity, or similar obligation, or gives any security, for or of obligations which could expose the Company and its subsidiaries to liability in excess of 5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company; or~~
- ~~(d) provides or obtains any services (including, without limitation, the underwriting of Securities or services as an employee) in respect of which the actual gross cost to the Company and its subsidiaries in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 0.5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company; or~~
- ~~(e) amalgamates, except for amalgamations of a wholly owned subsidiary of the Company with another wholly owned subsidiary of the Company or with the Company.~~

~~33.4 Definition of Related Party:~~ For the purposes of this section 33 "Related Party" means a person who is at the time of the Material Transaction, or was at any time within six months before the Material Transaction:

- ~~(a) a Director or officer of the Company or a director or officer of any of its subsidiaries; or~~
- ~~(b) a substantial security holder (as defined in the Securities Amendment Act 1988) of the Company; or~~
- ~~(c) an Associated Person of the Company or of any of the persons referred to in clauses 33.4(a) or 33.4(b) other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or~~
- ~~(d) a person in respect of whom there are arrangements other than the Material Transaction itself which are intended to result in that person becoming a person described in any of the preceding sub-clauses of this clause, or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself,~~
- but excludes a wholly owned subsidiary of the Company, other than one which:
- ~~(e) is a party to a Material Transaction of the type described in clause 33.3(d); and~~
- ~~(f) the Company intends to sell, or otherwise dispose of, to a Related Party.~~

33.5 Permitted exceptions: Clause 32.1 does not apply to:

- ~~(a) any transaction entered into by the Company or any of its subsidiaries with a Bank (as defined in the Listing Rules) which is a Related Party of the Company, on arms-length terms and in the normal course of banking business, as a result of which transaction the relevant company has recourse to the credit risk of that Bank; or~~
- ~~(b) the issue, acquisition or redemption by the Company of Securities of the Company, or the transfer by the Company of any Treasury Stock, or the giving by the Company or any of its subsidiaries of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a Distribution to holders of Securities of the Company, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder; or~~
- ~~(c) any employment or service contract which is a Material Transaction under clause 33.3 where the Exchange is satisfied that the terms of the contract have been set on an arm's-length, commercial basis; or~~
- ~~(d) any transaction indemnifying any Director or Employee of the Company or any Related Company which would be a Material Transaction under clause 33.3, where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or Employee under the proposed indemnity; or~~
- ~~(e) arrangements, amalgamations or compromises pursuant to Part XV of the Act.~~

34.25. DIRECTORS

34.125.1 Number of Directors: The number of Directors (other than alternate Directors) shall not at any time be less than three and subject to this limitation the number of Directors

to hold office shall be fixed from time to time by the Board. At least two Directors must be persons who are ordinarily resident in New Zealand.

~~34.2~~**25.2 Appointment by Shareholders:** Subject to clause 25.1, a person may be appointed as a Director at any time by an Ordinary Resolution.

~~34.3~~**25.3 Appointment by Board:** Subject to clause 25.1, the Board may at any time appoint a person to be a Director. A Director so appointed holds office only until the next annual meeting of the Company but is eligible for ~~re~~-election at that meeting.

~~34.4~~**25.4 Existing Directors to continue:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.

~~34.5~~**25.5 Rotation of Directors:** At the annual meeting of the Company in each year one third of the Directors, or if their number is not a multiple of three then the number nearest to one third, shall retire from office. The Directors to retire shall be those who have been longest in office since they were last elected or deemed elected. If two or more of those Directors were last elected on the same day, the Directors to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Director is eligible for re-election.

~~34.6~~**25.6 Exceptions to rotation:** In determining the Directors who are to retire by rotation at a meeting:

- (a) a Director who is retiring pursuant to clause 25.3 and who seeks election at the next annual meeting shall not be liable to retire by rotation at the meeting or be taken into account in calculating the number of Directors to retire;
- (b) a Managing Director, even though not liable to retire by rotation by virtue of clause 27.2, shall be taken into account in calculating the number of Directors to retire.

~~34.7~~**25.7 Re-election of retiring Director:** A Director retiring by rotation at a meeting shall, if standing for re-election, be deemed to have been re-elected unless:

- (a) some other person is elected to fill the vacated office; or
- (b) it is resolved not to fill the vacated office; or
- (c) a resolution for the re-election of that Director is put to the meeting and lost.

~~34.8~~**Nomination of Directors:** ~~No person may be elected as a Director at a meeting (other than a Director retiring at the meeting) unless, not more than four months nor less than two months before the meeting, that person has been nominated by a Security holder entitled to attend and vote at the meeting by written notice to the Company accompanied by the consent in writing of that person to the nomination. Notice of every valid nomination of a Director received by the Company before the closing date for nominations shall be sent by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of meeting.~~

~~34.9~~**Restriction on appointment of several Directors by single resolution:** ~~A single resolution for the appointment of two or more persons as Directors shall not be moved unless a separate resolution that it be so moved has first been passed by the meeting without any vote being cast against it but nothing in this clause prevents the election of two or more Directors by ballot or poll.~~

~~34.10~~**25.8 Vacation of office:** A Director ceases to be a Director if he or she:

- (a) is removed from office by an Ordinary Resolution; or
- (b) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- (c) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (d) becomes disqualified from being a Director pursuant to the Act; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (f) has for more than six months been absent without approval of the Board from meetings of the Board held during that period.

34.1125.9 Timing of retirement and appointment: If:

- (a) a Director retires at a meeting of shareholders and is not re-elected or deemed to be re-elected at that meeting, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting;
- (b) a Director is removed from office at a meeting of shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting;
- (c) a person who is not already a Director is appointed or elected as a Director at a meeting of shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

35.26. ALTERNATE DIRECTORS

35.126.1 Power to appoint: A Director may from time to time by written notice to the Company appoint any person, who is not already a Director and who is approved by a majority of the other Directors, to be that Director's alternate. No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this section 26.

35.226.2 Rights of Alternate Director: Unless otherwise specified by the terms of his or her appointment, an Alternate Director:

- (a) is entitled, in the absence or unavailability of the Director who appointed him or her (the "**Appointor**"), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
- (b) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor;
- (c) is not entitled to be given notice of a meeting of the Directors unless the Appointor has given written notice to the Company requesting that notice be given to the Alternate Director.

35.326.3 Remuneration and expenses: An Alternate Director is not entitled to any remuneration from the Company in his or her capacity as an Alternate Director but is entitled to be reimbursed by the Company for all expenses incurred in attending

meetings of the Directors and in the discharge of his or her duties, to the same extent as if he or she were a Director.

35.426.4 Cessation of appointment: An Alternate Director ceases to be an Alternate Director:

- (a) if the Appointor ceases to be a Director, or revokes the appointment by written notice to the Company; or
- (b) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director; or
- (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

36.27. MANAGING DIRECTORS

36.127.1 Appointment: The Board may from time to time appoint one or more Directors to the office of Managing Director for such period not exceeding five years, and on such terms, as the Board thinks fit and, subject to the terms of any agreement entered into in any particular case, may at any time revoke such appointment.

36.227.2 Not subject to rotation: A Managing Director is not liable to retire by rotation under clause 25.5 while holding that office, unless there is more than one Managing Director, in which event the Board may nominate one Managing Director who is not to be liable to retire by rotation.

36.327.3 Resignation: A Managing Director is subject to the same provisions as regards resignation, removal, and disqualification as the other Directors, and if a Managing Director ceases to hold the office of Director from any cause he or she automatically ceases to be a Managing Director.

36.427.4 Remuneration: A Managing Director is entitled to receive such remuneration for his or her services as an employee (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Board may determine.

37.28. REMUNERATION AND OTHER BENEFITS OF DIRECTORS EXPENSES

~~37.1 Restriction on authorisation: The Board may not exercise the power conferred by section 161 of the Act to authorise any payment of remuneration to Directors in their capacity as such, without the prior approval of an Ordinary Resolution, except as provided in this section 37. Each such resolution shall express the Directors' remuneration as either:~~

- ~~(a) a monetary sum per annum payable to all Directors taken together; or~~
- ~~(b) a monetary sum per annum payable to each person from time to time holding office as a Director.~~

~~37.2 Power to increase: If at any time while the approved remuneration of the Directors is expressed in accordance with clause 37.1(a), the total number of Directors holding office is increased, the amount of remuneration then payable in accordance with that clause may be increased by the Board by such amount as is necessary to enable the Company to pay the additional Director or Directors by way of remuneration a fee not exceeding the average amount then being paid to each of the other non executive Directors (other than the chairperson).~~

~~37.3~~**Notice of proposed increase:**— No resolution which increases the amount of the Director's remuneration shall be moved at a meeting of Shareholders unless notice of the amount of increase has been given in the notice of meeting.

~~37.4~~**28.1 Payment of expenses:** Notwithstanding the provisions of clause ~~37.1~~, Directors are entitled to be paid for all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board, or any committee of the Board, or meetings of Shareholders, or in connection with the business of the Company.

~~37.5~~**Special remuneration:**— Subject to clause ~~33.1~~, the Board may authorise the Company to pay special remuneration to any non-executive Director who is, or has been, engaged by the Company to carry out work in a capacity other than that of Director.

~~37.6~~**Retirement benefits:**— The Company may make a payment to a Director or former Director, or to his or her dependants, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if:

(a) the total amount of the payment (or the base for the pension) does not exceed the total remuneration of the Director in his or her capacity as a Director in any three years chosen by the Company; or

(b) the payment is authorised by an Ordinary Resolution;

but nothing in this clause shall affect any amount paid to an executive Director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

38.29. INDEMNITY AND INSURANCE

~~38.4~~**29.1 Indemnity of Directors:** Subject to clause 29.3, every Director shall be indemnified by the Company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission in his or her capacity as a Director or a director of a subsidiary of the Company and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) in respect of liability to any person other than the Company or a ~~related company~~subsidiary of the Company for any act or omission by him or her in his or her capacity as a Director or a director of a subsidiary of the Company, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability,

and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by a Director prior to the date of such revocation or amendment.

~~38.2~~**29.2 Other indemnities:** Subject to clause 29.3, the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or a related company:

- (a) for any costs incurred by him or her in any proceeding that relates to liability for any act or omission by him or her in such capacity and in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and

- (b) in respect of liability to any person other than the Company or a related company for any act or omission by him or her in such capacity, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

38.329.3 Exceptions: An indemnity conferred by clause 29.1(b), or given pursuant to clause 29.2(b), shall not apply in respect of:

- (a) any criminal liability; or
- (b) in the case of an employee of the Company or a related company, any liability in respect of a breach of any fiduciary duty owed to the Company or related company; or
- (c) in the case of a Director or a director of a related company, any liability in respect of a breach of the duty specified in section 131 of the Act.

38.429.4 Insurance: The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or a director or employee of a related company, in respect of:

- (a) liability, not being criminal liability, for any act or omission by him or her in such capacity; or
- (b) costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by him or her 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.

38.529.5 Definitions: In this section 29:

- (a) "Director" includes a former Director and "director" includes a former director; and
- (b) other words given extended meanings in section 162(9) of the Act have those extended meanings.

39.30. POWERS OF DIRECTORS

39.130.1 Management of Company: The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

39.230.2 Exercise of powers by Board: The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

39.330.3 Delegation of powers: The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the second schedule to the Act.

39.430.4 Appointment of attorney: The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also

authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

39.530.5 Ratification by Shareholders: Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

40.31. INTERESTS OF DIRECTORS

40.131.1 Disclosure of Interests: A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 31.2.

40.231.2 Personal involvement of Directors: Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:

- (a) contract with the Company in any capacity;
- (b) be a party to any transaction with the Company;
- (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

40.331.3 Interested Directors may not vote: A Director who is Interested in a transaction entered into, or to be entered into, by the Company:

- (a) may attend a meeting of the Board at which any matter relating to the transaction arises but shall not be included ~~among the Directors present at the meeting for the purposes of a quorum~~ in the quorum for the Board for the purposes of consideration of and may not vote on any Board resolution in respect of any matter relating to the transaction except as provided in clause 31.4;
- (b) may sign a document relating to the transaction on behalf of the Company, and may do any other thing in his or her capacity as a Director in relation to the transaction, as if the Director were not interested in the transaction.

40.431.4 Exception to voting prohibition: A Director may vote in respect of, and be counted in the quorum for the Board for the purposes of, a matter in which he or she is Interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

41.32. PROCEEDINGS OF BOARD

41.32.1 Third schedule of Act not to apply: The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

41.32.2 Alternative forms of meeting: A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

41.32.3 Procedure: Except as provided in this Constitution, the Board may regulate its own procedure.

41.32.4 Notice of meeting: The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings or as provided in clause 32.5):

- (a) Not less than two clear days' notice of a meeting of the Board shall be sent to each Director, unless:
 - (i) the Director waives that right; or
 - (ii) a shorter period of notice is required to enable the Board to comply with its obligations under the Listing Rules; or
 - (iii) the issue which is to be the subject of the meeting is, in the reasonable opinion of a majority of the Directors, a matter of urgency, in which event such notice as is practicable in the circumstances shall be given.
- (b) Notice to a Director of a meeting of the Board may be:
 - (i) given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (v) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.
- (c) A notice of meeting shall specify the date, time and where relevant, place of the meeting and, in the case of a meeting by means of audio, or audio and visual, communication, the manner in which each Director may participate in the proceedings of the meeting.
- (d) A notice of meeting given to a Director pursuant to this clause is deemed to be given:

- (i) in the case of oral communication, at the time of notification;
- (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
- (iii) in the case of posting, three days after it is posted;
- (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
- (v) in the case of electronic means, at the time of transmission.

41.532.5 Director may convene meeting: Without limiting the provisions of clauses 32.3 or 32.4, a Director has the right at any time to convene a meeting of the Board, or to require an employee of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than seven days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.

41.632.6 Waiver of notice irregularity: An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during, or after the meeting) to the waiver.

41.732.7 Quorum: Subject to clause 31.3(a), a quorum for a meeting of the Board is three Directors or such greater number as the Board may from time to time determine. No business may be transacted at a meeting of Directors if a quorum is not present.

~~41.8 Insufficient number of Directors: The Directors may act notwithstanding any vacancy in their body, but if and so long as the number of Directors holding office is less than the minimum number fixed by clause 34.1, the continuing Directors may act only for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Shareholders.~~

41.932.8 Election of chairperson: The Directors may from time to time elect a chairperson and (if they think fit) a deputy chairperson, of their meetings, and determine the period for which they respectively are to hold office. The chairperson, or failing the chairperson the deputy chairperson (if any), shall ~~preside at~~ chair all meetings of the Directors but if no such chairperson or deputy chairperson is elected, or if at any meeting the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for holding the meeting, or is present but not entitled to vote on a particular matter, the Directors present may choose one of their number to be chairperson of the meeting, or for consideration of the particular matter, as the case may be.

~~41.1032.9~~ **Voting:** Subject to clauses 31.3 and 31.4, every Director has one vote. The chairperson has a casting vote provided there are three or more Directors present at the meeting and entitled to vote. A resolution of the Board is passed if it is agreed to without dissent by all Directors present ~~without dissent and entitled to vote on the resolution,~~ or if a majority of the votes cast on it are in favour of 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, or expressly abstains from voting on, the resolution at the meeting.

~~41.1132.10~~ **Written resolution:** A resolution in writing, signed or assented to by all the Directors is as valid and effective as if passed at a meeting of the Board duly convened

and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered in the Records.

41.1232.11 Committees: A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

41.1332.12 Validity of actions: The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.

41.1432.13 Minutes: The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

42.33. METHOD OF CONTRACTING

42.133.1 Deeds: A deed which is to be entered into by the Company may be signed on behalf of the Company, by:

- (a) two or more Directors; or
- (b) any Director, together with any other person authorised by the Board whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company.

42.233.2 Other written contracts: An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

42.333.3 Other obligations: Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

43.34. INSPECTION OF RECORDS

43.134.1 Inspection by Directors: Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.

43.234.2 Inspection by Shareholders: No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders (who are not also Directors).

44.35. NOTICES

44.135.1 Method of service: All notices, reports, accounts and other documents required to be sent:

- (a) to a Shareholder, shall be sent in the manner provided in section 391 of the Act;
- (b) to a holder of any other Equity Security, shall be sent in the same manner, as though that holder were a Shareholder.

~~44.2 Service of notices overseas: If the holder of a Share or other Equity Security has not given to the Company or the Share Registrar an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that holder at such address and shall be deemed to have been received by that holder 24 hours after the time of posting.~~

~~44.335.2 Accidental omissions:~~ The failure to send an annual report, notice, or other document to a Shareholder or other Equity Security holder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.

~~44.435.3 Joint Shareholders:~~ A notice may be given by the Company to the joint holders of an Equity Security by giving the notice to the joint holder named first in the register in respect of that Equity Security.

~~44.535.4 Shareholder deceased or bankrupt:~~ If the holder of an Equity Security dies or is adjudicated bankrupt, notice may be given in any manner in which notice might have been given if the death or bankruptcy had not occurred, or by giving notice in the manner provided in section 391 of the Act to the Personal Representative of the holder at the address supplied to the Company for that purpose.

~~44.635.5 Waiver by Shareholders:~~ Subject to section 210 of the Act (which requires financial statements to be sent to Shareholders who elect not to receive annual reports), a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

45.36. LIQUIDATION

~~45.136.1 Distribution of assets:~~ If the Company is liquidated the liquidator may, with the approval of Shareholders and any other sanction required by the Act:

- (a) divide among 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) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.