

Constitution

of

Fletcher Building Limited

This document is the Constitution of Fletcher Building Limited as adopted by the Company by Special Resolution dated 16 March 2001 and as altered by Special Resolutions at the Annual Meetings of Shareholders held on 12 November 2002 and 11 November 2003.

Certified as the Constitution of the Company.

(SIGNED BY R G WATERS)

R G Waters

Director

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Constitution of Fletcher Building Limited

1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

Act means the Companies Act 1993;

ASX means Australian Stock Exchange Limited;

ASX Listing Rules means the listing rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

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 in its discretion deems to be of or not of that Class;

Company means Fletcher Building 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. **Conversion** and **Convertible** have corresponding meanings;

Debt Security means a Security having any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property) and includes a debenture, debenture stock, bond, note or certificate of deposit;

Director means a person occupying the position of director of the Company by whatever name called;

Distribution Right means a right of the nature referred to in paragraphs (a) or (b) of the definition of Equity Security;

Employee includes an employee or officer of the Company or any of its Subsidiaries, a labour only contractor, consultant, or consultant company who or which contracts with the Company or any of its Subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of or in respect of any pension, superannuation or like fund established for the benefit of any of the above employees or officers;

Equity Security means a Security which:

- (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;
- (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;
- (c) carries, or will in future carry, a right to vote at meetings of holders of Securities of the Company other than a right to vote:
 - (i) 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
 - (ii) 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
 - (iii) attaching to Securities which are not Equity Securities, exercisable only at meetings of holders of those Securities;
- (d) carries, or will in future carry, a right to participate in the ultimate control of the Company; or
- (e) may be Converted into a Security of the nature referred to in (a) to (d) above;

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

Exchange means the New Zealand Stock Exchange and as the context permits includes any delegate of the Exchange including the Panel;

Group means the Company and its Subsidiaries;

Listing Rules means the New Zealand Stock Exchange Listing Rules in force from time to time;

Option means an option to acquire a Security;

Ordinary Resolution means a resolution passed by a simple majority of the votes of shareholders of the Company entitled to vote and voting on the resolution;

Panel means the Market Surveillance Panel constituted by the Exchange under the Listing Rules and includes any division or duly authorised delegate of the Panel;

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;

Quotation means in respect of a Class of Securities, the right for Brokers to quote bids and offers for that Class of Securities on the Exchange; **Quote** and **Quoted** have corresponding meanings;

Recognised Stock Exchange means a stock exchange approved by the Exchange from time to time as enforcing rules, procedures and requirements sufficiently similar to those of the Exchange to justify classification as a Recognised Stock Exchange for the purposes of the Listing Rules;

Related Company has the meaning given in section 2(3) of the Act (read together with section 2(4) of the Act);

Relevant Interest has the meaning given to it in sections 5 and 6 of the Securities Amendment Act 1988;

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 person appointed as a proxy or representative under clause 22 or a Personal Representative.

Right means any right to acquire any Security or benefit of any kind, whether conditional or not, and whether Renounceable or not;

Security means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person and includes:

- (a) any renewal or variation of the terms or conditions of any existing security;
- (b) any Debt Security; and
- (c) any Option or Right;

Shareholders' Funds means the amount disclosed as equity (whether described as equity, shareholders' funds, or otherwise) by the most recent published financial statements of the Company, or, if the Company has Subsidiaries, the most recent published group financial statements of the Company and its Subsidiaries provided that if at any time at which Shareholders' Funds is required to be determined:

- (a) the Company has not published financial statements; or
- (b) since the date of the most recent published statements there has been a material decline in the equity of the Company or, if the Company has Subsidiaries, of the consolidated equity of the Company and its Subsidiaries,

then Shareholders' Funds at that time shall be determined by reference to the position which would be disclosed if financial statements were prepared at that time;

Special Resolution means a resolution passed by a majority of 75% or more of the votes of those shareholders entitled to vote and voting on the resolution;

Subsidiary means:

- (a) a subsidiary within the meaning of section 5 of the Act (read together with sections 6 to 8 of the Act); and
- (b) an entity treated as a subsidiary or in substance subsidiary within the meaning of Statement of Standard Accounting Practice Number 8 issued by the New Zealand Society of Accountants or within the meaning of any financial reporting standard approved in terms of the Financial Reporting Act 1993; and

Treasury Stock means shares in the Company which have been acquired by the Company and are held by the Company as treasury stock in accordance with the Act and includes shares in the Company held by a Subsidiary of the Company other than in accordance with section 82(6) of the Act.

1.2 **Construction**

In this Constitution, unless the context otherwise requires:

- (a) the headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) in the absence of an express indication to the contrary, references to clauses or paragraphs are to clauses and paragraphs of this Constitution;
- (c) a reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) a reference to a Listing Rule includes that Listing Rule as from time to time amended or substituted;
- (e) the singular includes the plural and vice versa and one gender includes the other genders;
- (f) the words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (g) the word "person" includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality; and
- (h) words or expressions defined in the Act or the Listing Rules have the same meaning in this Constitution.

1.3 **Terms**

In this Constitution unless the context otherwise requires, the following words shall have the meanings given to them in the Listing Rules: **Appraisal Report; Associated Person; Broker; Issuer; Listing; Minimum Holding; Offering Document; Ruling** and **Vote**.

1.4 Powers of shareholders

Unless otherwise specified in the Act or this Constitution any power reserved to shareholders may be exercised and any approval of shareholders may be given by Ordinary Resolution.

2. The Companies Act and the Listing Rules

2.1 Companies Act

The Company, the Board, each Director and each shareholder of the Company 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

Subject to:

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

the Company shall, for so long as it is listed on the Exchange, comply with the Listing Rules.

Further:

- (c) if the Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision;
- (d) if the Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision; and
- (e) if any provision of this Constitution is or becomes inconsistent with the Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

2.3 Listing Rules prevail

Nothing in this Constitution will prohibit or restrict any action which is or may be permitted by the Listing Rules or the Exchange to be taken by the Company, the Board, each Director or the shareholders of the Company.

2.4 Exchange rulings

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

2.5 Effect of failure to comply

Failure to comply with:

- (a) the Listing Rules; or
- (b) the provisions of clauses 21.1, 21.2, 26 or 27,

shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules or those provisions of this Constitution shall not be entitled to enforce that transaction or contract. This provision does not affect the rights of any holder of Securities of the Company against the Company or the Directors arising from failure to comply with the Listing Rules or those provisions of this Constitution.

2.6 Compliance with ASX Listing Rules

- (a) Notwithstanding anything contained in this Constitution, if the ASX Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Constitution prevents an act being done that the ASX Listing Rules require to be done.
- (c) If the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the ASX Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
- (e) If the ASX Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
- (f) If any provision of this Constitution is or becomes inconsistent with the ASX Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

3. Rights attaching to shares

3.1 Existing ordinary shares

Each ordinary share in the Company at the date of adoption of this Constitution confers on the holder the following rights (in addition to the rights set out elsewhere in this Constitution):

- (a) subject to the rights of holders of any shares or other Equity Securities which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board; and
- (b) subject to the rights of holders of any shares or other Equity Securities which confer special rights as to surplus assets, the right to an equal share in the distribution of surplus assets of the Company.

3.2 New shares

Subject to clause 4, further shares in the Company (including different Classes of shares) may be issued which:

- (a) rank equally with, or in priority to, existing shares in the Company; or
- (b) have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
- (c) confer preferential rights to distributions of capital or income; or
- (d) confer special, limited or conditional voting rights; or
- (e) do not confer voting rights; or
- (f) are redeemable in accordance with section 68 of the Act.

Sections 45(1) and 45(2) of the Act shall not apply to the issue of shares by the Company.

3.3 Modification of rights of security holders

The Company shall comply with sections 116 and 117 of the Act in respect of shares of the Company and shall also comply with those sections in respect of other Equity Securities on the basis that those sections shall be deemed to be modified so that:

- (a) references in those sections to "shares" shall (subject to clause 3.5) be deemed to include references to all Equity Securities of the Company and references to "holders of shares" and "shareholders" are deemed to be modified accordingly; and
- (b) in respect of Equity Securities of the Company which are not shares of the Company:
 - (i) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and
 - (ii) references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

3.4 Issue of prior or equally ranking shares or Equity Securities

The issue by the Company of any 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 or distributions, shall:

- (a) be permitted (subject to clause 4);
- (b) not be deemed to be action affecting the rights attached to those existing shares or other Equity Securities; and
- (c) not be subject to the provisions of clause 3.3.

3.5 Further exceptions to clause 3.3

Clause 3.3 shall not require the Company to comply with sections 116 and 117 of the Act in respect of actions that affect the rights attached to:

- (a) Equity Securities which are not Quoted; or

- (b) Equity Securities which are not shares of the Company if those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the approval of holders of those Equity Securities, and those terms were clearly disclosed in the offering document (if any) pursuant to which those Equity Securities were offered.

3.6 Section 118 of the Act

Clause 3.3 shall not have the effect of deeming section 118 of the Act to apply to any Securities other than shares of the Company.

3.7 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 3.3.

4. Issue of new Equity Securities

4.1 Requirements for issue

The Company shall not issue any Equity Securities unless:

- (a) the precise terms and conditions of the specific proposal have been approved (subject to clause 4.3) by separate resolutions (passed by a simple majority of votes) of holders of each Class of Quoted Equity Securities of the Company whose rights or entitlements could be affected by the issue and the issue is completed within the time specified in clause 4.2; or
- (b) the issue is made in accordance with any of clauses 4.4 to 4.12.

4.2 Time limit

An issue of Equity Securities authorised by a resolution passed pursuant to clause 4.1(a) shall be completed:

- (a) if that issue is made solely to Employees, within 12 months after the passing of those resolutions; or
- (b) in all other circumstances, within six months after the passing of those resolutions,

provided that nothing in this clause or clause 4.1(a) shall require the Board to issue all or part of the Equity Securities approved for issue pursuant to clause 4.1(a), if the issue of such Equity Securities is at the discretion of the Board.

4.3 Exception to requirement for separate resolutions

A resolution pursuant to clause 4.1(a) of the holders of a Class of Securities shall not be required if:

- (a) the terms of issue of those Securities expressly reserved the right to make the issue of the 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

- (b) those Securities were issued on terms that the holders of those Securities would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in clause 4.1(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.

4.4 Pro rata issues

The Board may issue Equity Securities if:

- (a) those Equity Securities are offered to holders of existing Equity Securities on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to votes and to Distribution Rights, and that offer is Renounceable; or
- (b) those Equity Securities are issued to holders of existing Equity Securities as fully paid Securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to votes and to Distribution Rights.

Notwithstanding paragraphs (a) and (b), the Board may:

- (c) issue any Equity Securities in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such Equity Securities are not materially more favourable to the persons to whom they are issued than the terms of the original offer;
- (d) 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;
- (e) 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; and
- (f) not offer or issue Equity Securities to holders of existing Equity Securities the terms of which existing Equity Securities expressly exclude the right to participate in the relevant offer or issue.

4.5 Issues within 10% limit

The Board may issue Equity Securities if:

- (a) the issue is not made in whole or in part to any Director, Associated Person of a Director, or Employee; and
- (b) the total number of Equity Securities issued, and all other Equity Securities of the same Class issued pursuant to this clause 4.5 during the shorter of the period of 12 months preceding the date of the issue and the period from the date on which the Company was Listed on the Exchange to 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;

- (ii) 10% of the number of the Equity Securities of that Class issued during that period pursuant to any of clauses 4.1(a), 4.4, 4.6 and 4.8; and
- (iii) any Securities of that Class issued pursuant to this clause 4.5 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 (other than Equity Securities held as Treasury Stock).

For the purposes of paragraph (b), Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will or may Convert. Where the Conversion ratio of those Securities is fixed by reference to the market price of the underlying Securities, the market price, unless otherwise specified in the terms of the issue, shall 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 announced to the market.

4.6 **Employee share issues**

The Board may issue Equity Securities if:

- (a) the issue is made to Employees; and
- (b) the issue is of a Class of Securities already on issue; and
- (c) the total number of Securities issued, and all other Equity Securities of the same Class issued to Employees pursuant to this clause 4.6 during the shorter of the period of 12 months preceding the date of the issue and the period from the date on which the Company was Listed on the Exchange to the date of the issue, does not exceed 2% of the aggregate of:
 - (i) the total number of Equity Securities of that Class on issue at the commencement of that period; and
 - (ii) the total number of Equity Securities of that Class issued during that period pursuant to any of clauses 4.1(a), 4.4, 4.5 and 4.8; and
- (d) the total number of Securities issued, and all other Equity Securities of the same Class, issued to Employees pursuant to this clause 4.6 during the shorter of the period of 5 years preceding the date of the issue and the period from the date on which the Company was listed on the Exchange to the date of the issue, does not exceed 5% of the total number of Equity Securities of that Class on issue immediately preceding the date of the issue.

For the purposes of this clause 4.6, Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert.

Directors and Associated Persons of Directors shall not participate in any such issue unless the scheme for such participation and the precise levels of entitlement for each such person have been previously approved by an Ordinary Resolution.

4.7 Exception for scheme trustees

For the purposes of clause 4.6, an issue to a Director, or an Associated Person of a Director, solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person of a Director has no beneficial interest, shall be deemed not to be an issue to a Director or Associated Person of a Director, or an issue in which Directors or Associated Persons participate.

4.8 Other issues

The Board may issue Equity Securities if:

- (a) the issue is made as consideration in an offer made by the Company or any of its Subsidiaries in accordance with:
 - (i) any takeover code approved under section 28 of the Takeovers Act 1993;
 - (ii) provisions of the constitution or articles of association or trust deed of another issuer which is Listed on the Exchange which comply with the requirements of section 4 of the Listing Rules; or
 - (iii) any takeover law regime of a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of the Exchange is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in paragraphs (i) or (ii),and that offer is made to all holders (other than the Company and its Related Companies) of Equity Securities in any company or other entity listed on the Exchange or on a Recognised Stock Exchange which is not a company or other entity that is an Associated Person of the Company or of any Director;
- (b) 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;
- (c) the issue is made to an existing holder of Equity Securities in order to bring that holder's holding up to a Minimum Holding;
- (d) the issue is made pursuant to an arrangement, amalgamation, or compromise effected pursuant to Part XIII or Part XV of the Act; or
- (e) the issue is made pursuant to a plan for the issue of Securities in lieu of dividends.

4.9 Treasury Stock

The transfer by the Company of Treasury Stock shall for the purposes of this clause 4 be deemed to constitute an issue of Equity Securities.

4.10 Entitlements to third party Securities

Entitlements conferred by the holding of Equity Securities, to Securities of a third party (whether or not that third party is an Issuer listed on the Exchange), shall not be created or

conferred other than in compliance with clauses 4.1 to 4.8, as if such Securities comprised an issue of Equity Securities of the Company.

4.11 Issues of Securities affecting control

Notwithstanding the other provisions of this clause 4 or the provisions of clause 5, 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 of (either then or at any future time) effective control of the Company; and
- (b) that person or group of Associated Persons is entitled before the issue, acquisition, or redemption to exercise or direct the exercise of, not less than 1% of the total votes attaching to Securities of the Company,

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

4.12 Consolidation and subdivision of shares

Subject to any applicable provisions of this clause 4, the Board may:

- (a) consolidate and divide the shares or shares of any Class in proportion to those shares or the shares in that Class; or
- (b) subdivide the shares or shares of any Class in proportion to those shares or the shares in that Class.

4.13 Bonus issues

Subject to any applicable provisions of this clause 4, the Board may resolve to apply any amount which is available for distribution to shareholders 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 those Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any shares held by the shareholders referred to in paragraph (a)(i),

or partly in one way and partly in the other.

4.14 **Board may otherwise issue**

Subject to the other provisions of this clause 4, the Board may issue Securities to any person and in any number it thinks fit.

4.15 **Participation of Options in Rights issues**

An Option must not confer the Right to participate in a Rights issue unless the Option:

- (a) is exercised before the Record Date for the Rights issue; or
- (b) was issued under a pro-rata offer made pursuant to clause 4.4 to the holders of Quoted Equity Securities; or
- (c) was issued with the approval of holders of Quoted Equity Securities and the Option holder can participate in a new issue to the holders of the underlying Securities in accordance with the terms of such an Option.

4.16 **Change of options, exercise price or number of underlying securities on a Rights issue**

An Option must not confer the right to a change in the exercise price or number of underlying Securities, except if the Option:

- (a) was issued with the approval of holders of Quoted Equity Securities, then the exercise price or number of underlying Securities may change in accordance with the formula or provision contained in the terms of the Option if there is a Rights issue to the holders of the underlying Securities; or
- (b) was not issued with the approval of holders of Quoted Equity Securities and there is a Rights issue to the holders of the underlying Securities, then the exercise price of an Option may be reduced according to the formula set out as follows:

$$O^1 = O - \frac{E [P - (S+D)]}{N + 1}$$

O^1 = the new exercise price of the Option.

O = the old exercise price of the Option.

E = the number of underlying Securities into which one Option is exercisable.
[Note: E is generally one unless the number has changed because of a bonus issue or capital change].

P = the average market price per share (weighted by reference to volume) of underlying Securities during the five Business Days ending on the day before the Rights date.

S = the subscription price for a Security under the Rights issue.

D = the dividend (in the case of a trust, distribution) due but not yet paid on the existing underlying Securities (except those to be issued under the Rights issue).

N = the number of Securities with Rights or entitlements that must be held to receive a Right to one new Security.

4.17 **Change of Option on a change of capital**

If there is a bonus issue to the holders of the underlying Securities or a consolidation or subdivision of the underlying Securities, the number of Securities over which the Option is exercisable may be increased or decreased by the number of Securities which the holder of the Option would have received if the Option had been exercised before the Record Date for the issue, consolidation or subdivision.

5. **Buybacks of equity securities and financial assistance**

5.1 **Power**

The Company may in accordance with the provisions of the Act and this Constitution:

- (a) purchase or otherwise acquire shares issued by it from one or more shareholders;
- (b) purchase or otherwise acquire other Equity Securities;
- (c) hold any shares or Equity Securities so purchased or acquired; and
- (d) redeem any redeemable shares or other Equity Securities.

5.2 **Prohibition on acquisition**

Subject to clause 5.3. the Company shall not acquire any Equity Securities unless the acquisition is in accordance with the provisions of the Act and is:

- (a) effected by offers made by the Company through the Exchange's order matching market, or through the order matching market of a Recognised Stock Exchange;
- (b) effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Act;
- (c) an acquisition of the nature referred to in section 61(7) of the Act;
- (d) approved in accordance with clause 5.7;
- (e) required by a shareholder of the Company 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 made only from any person who is not 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 paragraph (f) during the shorter of the period of 12 months preceding the date of the acquisition and the period from the date the Company was listed on the Exchange to 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.

For the purposes of paragraph (f) Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert. Where the Conversion ratio of those Securities is fixed by reference to the market price of the underlying Securities, the market price for the purposes of paragraph (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 or announced to the market.

5.3 Prior notice of acquisition

Before the Company acquires Equity Securities other than an acquisition from a holder who holds less than a Minimum Holding, the Company shall give at least 3 Business Days notice to the Exchange specifying:

- (a) a period of time not exceeding 12 months from the date of the notice within which the Company will acquire Equity Securities; and
- (b) the Class and maximum number of Equity Securities to be acquired in that period.

The Company may at any time by 3 Business Days notice to the Exchange vary any notice so given and may cancel any such notice at any time.

5.4 Prohibition on redemption

The Company shall not redeem Equity Securities, other than a redemption from a holder who holds less than a Minimum Holding, unless:

- (a) those Equity Securities were issued in compliance with clause 4.1(a) or clause 4.4 and the Company is bound or entitled to redeem those Equity Securities pursuant to the terms of their issue;
- (b) those Equity Securities are redeemed in compliance with section 69(1)(a) of the Act;
- (c) those Equity Securities are Debt Securities which may be Converted into shares in the Company, and, before that Conversion, they are redeemed in cash; or
- (d) the redemption of those Equity Securities is approved in accordance with clause 5.7.

5.5 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 5.6; or
- (b) is approved in accordance with clause 5.7.

5.6 Permitted financial assistance

The Company may give financial assistance of the nature referred to in clause 5.5 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 under this paragraph (a) by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance and the period from the date on which the Company was listed on the Exchange to the date of 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 paragraph (b) by the Company during the shorter of the period of 12 months preceding the date of giving of the financial assistance and the period from the date on which the Company was listed on the Exchange to the date of giving of the financial assistance does not exceed 2% of Shareholders' Funds;
 - (ii) the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (b) during the shorter of the period of five years preceding the date of giving of the financial assistance and the period from the date on which the Company was listed on the Exchange to the date of giving of the 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; 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.

5.7 Acquisition, redemption or assistance with approval of holders

The Company may acquire Equity Securities under clause 5.2(d) or redeem Equity Securities under clause 5.4(d), or give financial assistance under clause 5.5(b), if the precise terms and conditions of the specific proposal to acquire or redeem those Equity Securities, or of the giving of 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. Any such acquisition shall be completed within 12 months, and redemption or financial assistance completed or given within six months, after the passing of the relevant resolution.

5.8 Exception for scheme trustees

For the purposes of clause 5.6(b)(iii) financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be financial assistance given to a Director or Associated Person of a Director.

5.9 Acquisition of Equity Securities other than shares

Equity Securities which are not shares may be acquired pursuant to clauses 5.2(b), (c) and (f) or redeemed pursuant to clause 5.4(b) 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. Calls

6.1 Power to make calls

Subject to the terms of issue, the Board may make such calls as it thinks fit upon the holders of Securities in respect of all or any of the moneys unpaid on their Securities. At least 21 days' notice of each call must be given, specifying the time and place for payment. Each holder of Securities shall pay the amount of every call so made at the times and places appointed by the Board. The Board may determine that a call is payable by instalments.

6.2 When a call is made

Unless otherwise specified, a call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.

6.3 Liability of joint holders

The joint holders of a Security are jointly and severally liable to pay all calls in respect of that Security.

6.4 Interest on unpaid calls

If a call remains unpaid after it has become due and payable, the person from whom the sum is due shall pay interest on the unpaid sum at such rate as the Board may determine. Interest shall accrue from the date it became due until it is paid. The Board may waive payment of that interest wholly or in part.

6.5 Instalments to be treated as calls

Any sum payable in respect of a Security on allotment or at any fixed date shall be deemed to be a call. If it is not paid, the provisions of this Constitution shall apply as if that sum had become due and payable by virtue of a call.

6.6 Difference in calls

The Board may, on the issue of Securities, differentiate between the holders as to the amount of calls to be paid and the times of payment.

6.7 Calls in advance

The Board may, in its discretion, receive any moneys uncalled and unpaid upon any Securities in advance of its due date and may pay interest on the amount received at such rate (if any) and on such terms as the Board determines.

6.8 Evidence

In any proceedings for the recovery of moneys due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:

- (a) the name of the holder of the Securities is entered in the register as the holder (or one of the holders) of the relevant Securities;
- (b) the resolution making the call is recorded in the records of the Company; and
- (c) notice of the call was sent to the holders of the Securities,

shall be conclusive evidence of the indebtedness of the holder of the Securities to the Company in respect of the call.

6.9 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.

7. Lien on securities

7.1 Lien on unpaid and partly paid Securities

The Company shall have a first and paramount lien on every Security which is not a fully paid Security (and any dividends or other distributions in respect of that Security) for:

- (a) all unpaid calls, instalments, premiums or other amounts, and any interest payable on those amounts, relating to that Security; and
- (b) any amounts the Company may be called upon to pay under any legislation in respect of that Security.

7.2 Liability of transferee who is given notice of lien

Transferees of Securities who prior to the registration of the transfer have been given notice of the Company's lien upon such Securities will be liable to pay to the Company, upon demand, all moneys for the time being called up and unpaid in respect of the Securities transferred to them, together with any interest thereon as provided in this Constitution.

7.3 Power of sale

If any amount due in respect of a Security on which the Company has a lien is unpaid for more than 14 days after notice in writing demanding payment has been given to the holder or the person entitled to receive notices in respect of that Security:

- (a) the Company may sell the Security on such terms as the Board determines; and
- (b) to give effect to any such sale, the Board may authorise any person to execute a transfer of the Security to, or at the direction of, the purchaser.

7.4 Absolute title of purchaser

The title of a purchaser of any Securities sold pursuant to clause 7.3 shall not be affected by any irregularity or invalidity in any sale.

7.5 Application of sale proceeds

The net proceeds of sale of any Security sold pursuant to clause 7.3, after deducting expenses of sale, shall be applied in and towards satisfaction of any unpaid calls, instalments, premiums or other amounts and any interest on those amounts and the balance (if any) will be paid to the person entitled to the Security at the date of sale.

8. Forfeiture of securities

8.1 Notice

If a call on a Security is not paid when due, the Board may give 14 days' notice to the holder of the Security requiring payment of the call, together with interest on the amount of the call. The notice will specify the place of payment and state that if the notice is not complied with the relevant Security will be liable to be forfeited.

8.2 Forfeiture

If the notice is not complied with the Security may, before payment of the overdue amount has been made, be forfeited by resolution of the Board. Such forfeiture will include all dividends and any other distributions declared in respect of forfeited Securities and not paid or satisfied before forfeiture.

8.3 Sale of forfeited Securities

A forfeited Security may be sold or otherwise disposed of on such terms and in such manner as the Board determines. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

8.4 Application of sale proceeds

The net proceeds of sale of any forfeited Security shall be applied in the same manner as set out in clause 7.5.

8.5 Absolute title of purchaser

The title of a purchaser of a forfeited Security shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the Security.

8.6 Consequences of forfeiture

A person whose Securities have been forfeited will cease to be a holder in respect of those Securities and will surrender the certificate (if any) for cancellation but will remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Securities together with interest thereon.

8.7 Notice to holder

On the forfeiture of any Securities, the Board shall cause a note of the forfeiture and the date thereof to be entered into the register of shareholders and give notice of such forfeiture and the date thereof to the person in whose name the Securities stood immediately prior to the forfeiture. Upon the disposal of any forfeited Security the Board shall cause a note of the manner and date of disposition to be similarly entered.

8.8 Evidence of forfeiture

A statutory declaration by a Director or any other person authorised by the Board that a Security has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

8.9 Right of set off

The Board may deduct from the dividends payable to any holder of Securities, all sums of money as may be due from that holder to the Company on account of calls, instalments upon the specific Securities in respect of which the dividend is declared, and on account of amounts that the Company may be called upon to pay under any statute or legislative enactment in respect of the Securities of a deceased or other holder.

9. Transfer of shares

9.1 Transferor to remain holder until registration

The transferor of a share shall remain the holder of the share until the name of the transferee is entered in the Share Register.

9.2 Authorised transactions

Any shares disposed of by an "authorised transaction" or a "stock exchange transaction" within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act or by an instrument complying with clause 9.4.

9.3 Transfer executed outside New Zealand

Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or otherwise in any usual manner for execution by such a corporation, or in any other case if the signature of the transferor has been witnessed by a person who has added his or her occupation and address after his or her signature.

9.4 Form of transfer

Every instrument of transfer of shares not falling within clauses 9.2 and 9.3 shall comply with the following provisions:

- (a) the form of the instrument of transfer shall be any usual or common form, or any other form which the Board may approve;

- (b) the instrument of transfer must be signed or executed by or on behalf of the transferor; and
- (c) where the shares being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

9.5 Power to refuse to register

The Board may decline to register any transfer of shares where:

- (a) the Company has a lien on any of the shares;
- (b) the transfer is not accompanied by the certificate (if any) for the shares to which it relates or other evidence as the Board may reasonably require to show the right of the transferor to make the transfer;
- (c) registration, together with the registration of any further transfer then held by the Company and awaiting registration, would result in the proposed transferee holding shares of less than a Minimum Holding; or
- (d) with the approval of the Exchange, a transfer of Shares of a Class that is not Quoted,

provided that the Board resolves to exercise its powers under this clause 9.5 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.

9.6 Sale of less than Minimum Holding

The Board may at any time give notice to any 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 shares which are less than a Minimum Holding, the Board may exercise the power of sale of those shares set out in this clause 9.6. If that power of sale becomes exercisable:

- (a) the Board may arrange for the sale of those shares through the Exchange or in some other manner approved by the Exchange;
- (b) the shareholder shall be deemed to have authorised the Company to act on the shareholder's behalf and to execute all necessary documents for the purposes of that sale;
- (c) the Company shall account to the shareholder for the net proceeds of sale of the shares (after deduction of reasonable sale expenses), which shall be held on trust for the shareholder by the Company and paid to the shareholder on surrender of any certificates for the shares sold; and
- (d) the title of a purchaser of any shares sold pursuant to this clause 9.6 shall not be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

9.7 Registration of transfers

Every instrument of transfer shall be delivered to the Company's share registrar, together with the share certificate (if any) for the shares to be transferred. If there is no share certificate for those shares or if the share certificate has been lost, damaged or destroyed, the transferee

shall provide such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.

9.8 Participation in share transfer systems

The Company may participate in any share transfer system approved under the Securities Transfer Act 1991 and implemented by the Exchange or in any share transfer system which operates in relation to trading in securities on any other stock exchange on which the Company's shares are traded and, in so participating, it shall comply with the requirements of the Exchange or of the relevant share transfer system. The Board may register any transfer of Securities presented for registration in accordance with the requirements of any such system and will not be obliged to enquire as to the due execution of any transfer effected by reason of such system.

9.9 Power to divide share register

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

9.10 Untraced holders of Securities

(a) Entitlement to sell

The Board will be entitled to transfer to a trust (the **Trust**) set up for that purpose, the Equity Securities of any person where three or more dividends paid in respect of the Equity Securities in question have remained unclaimed for at least one year after having been authorised and 14 days' prior notice of the intention to transfer the Equity Securities to the Trust has been given.

(b) Further securities

If any further Equity Securities have been issued in respect of the Equity Securities referred to in paragraph (a) above, the Board may also transfer the further Equity Securities to the Trust notwithstanding that the requirement that three dividends remain unclaimed for at least one year after having been authorised may not have been satisfied with respect to such further Equity Securities.

(c) Sale by Trust

If at the end of a three year period commencing on the date of transfer of the Equity Securities to the Trust, and after 14 days' prior notice of the intention to sell has been given, no person has claimed ownership of the Equity Securities, the Board may arrange for the sale of those Equity Securities through the Exchange or in some other manner approved by the Exchange.

(d) Sale procedures

To give effect to any transfers or sales under paragraphs (a) to (c) of this clause, the Board may authorise some person to execute an instrument of transfer of the Equity Securities sold to, or in accordance with the directions of, the transferee and an instrument of transfer executed by that person will be as effective as if it had been executed by the holder of, or person entitled by transmission to, the Equity Securities. The transferee will not be bound to see to the application of the purchase monies nor will title to the Equity Securities be affected by any irregularity or invalidity in the exercise of the power of sale or the sale itself.

(e) **Proceeds**

Upon any sale of the Equity Securities by the Trust, the net proceeds of sale (after deduction of reasonable sale expenses) will belong to the Company. The Board will, nevertheless, agree to pay the net proceeds of sale to a claimant who produces satisfactory evidence of entitlement but the Board will have no requirement to account for any money earned on the net proceeds, which may be employed in the business of the Company or invested in such investments as determined by the Board.

9.11 Transfer of securities other than shares

This clause 9 shall apply to transfers of Securities of the Company other than shares with any necessary modifications.

9.12 Registration of separate parcels

The Company:

- (a) may on the request of a holder of Securities or a transferee of Securities; and
- (b) shall, if requested by a holder of Securities who produces satisfactory evidence that the Securities he or she holds are held as bare trustee or nominee and two or more other persons are separate beneficial owners of parcels of those Securities or have other separate Relevant Interests in parcels of those Securities,

register the Securities held or acquired by that holder of Securities or transferee in two or more separately identifiable parcels. The Company may thereafter, so far as it considers convenient, communicate with the holder of the Securities, pay dividends and otherwise act in respect of each parcel, as if the separately identifiable parcels belonged to different persons.

10. Transmission of shares

10.1 Transmission on death of shareholder

If a shareholder dies the survivor, if the deceased was a joint shareholder, or the shareholder's 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. Nothing in this clause 10.1 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.

10.2 Rights of Personal Representatives

A shareholder's Personal Representative:

- (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 paragraph (b).

10.3 **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.

11. **Takeover restrictions - minority veto provisions**

11.1 **Definitions**

In clauses 11, 12, 13 and 14 of this Constitution unless the context otherwise requires, the following words shall have the meanings given to them in the Listing Rules: **Affected Group; Default; Defaulter; Defaulter's Securities; Differential Offer; Insider; Relevant Interest; Restricted Transfer; Transfer; Transferee and Transferor.**

11.2 **Exchange Rulings**

If the Exchange (or the Panel or any delegate of the Panel) makes a Ruling dealing with clauses 11, 12, 13 or 14 or with the matters dealt with by section 4 of the Listing Rules, that Ruling shall be binding on the Company and all holders of Securities of the Company, and shall take effect as if that Ruling were incorporated in this Constitution.

11.3 **Notice requirements**

No Restricted Transfer of Quoted Equity Securities shall take place unless:

- (a) a notice has been given to the Company, and to the Exchange in a manner complying with Listing Rule 10.2.3 for release to the market, not later than the time specified in clause 11.4, such notice to contain:
 - (i) the price or consideration either specified as a fixed amount or expressed as a range with the higher price or consideration being not greater than 20% more than the lower price or consideration of that range;
 - (ii) any conditions or arrangements directly or indirectly associated with the Transfer which could be material to the assessment of the price or price range by prospective Transferors of the Equity Securities;
 - (iii) identification of the Class, and the maximum number of Securities and percentage of the relevant Class, to which the Transfer proposal relates;
 - (iv) the identify of all persons reasonably expected to acquire Relevant Interests in the Equity Securities as a result of the Transfer proposal;
 - (v) the number of Equity Securities (expressed in each case as a percentage of the total number in each relevant Class of Securities) which will be held, or in which Relevant Interests will be held, upon completion of the proposed transactions, by each Transferee and Associated Persons of each Transferee;
 - (vi) the times within which the Transfers are intended to occur;
 - (vii) how the Transfers are to be effected (for example, through the Exchange's order matching market, by widespread direct offer, private treaty, etc);

- (viii) the date the notice is given;
- (b) notice of any change in, or addition to, the particulars notified under clause 11.3(a), has been given in accordance with clause 11.5; and
- (c) any Restricted Transfer status report required by clause 11.10 has been given in accordance with that clause.

11.4 Time for initial notice

Subject to clause 11.6, each notice referred to in clause 11.3(a) shall be given at least 15 Business Days before the Transfer.

11.5 Time for notice of change

Subject to clause 11.6, each notice referred to in clause 11.3(b) shall be given 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.

11.6 Exchange transactions

If:

- (a) a Restricted Transfer is effected solely by trades matched through the Exchange's order matching market;
- (b) no Transferee is an Insider; and
- (c) conditions (d) to (h) set out below are satisfied,

then the period of notice referred to in clause 11.4 shall be five Business Days and the periods of notice referred to in clause 11.5 shall be two Business Days and five Business Days, respectively. The conditions referred to above are:

- (d) before notice is given the Brokers instructed to make the offers must be satisfied that the entire offer in the notice has been the subject of instructions accepted by Brokers;
- (e) the consideration must be readily capable of settlement through the FASTER system;
- (f) the Transferee must have previously undertaken to the Brokers through whom its orders are placed, for the benefit of holders of the relevant Securities, to complete the transaction in accordance with the notice given, if offers or acceptances are sufficient to enable it to do so;
- (g) the instructions must be in terms that orders will be matched and completed by the Exchange's order matching system even if the entire offer is not accepted completely; and
- (h) the period during which transactions will be effected does not end before one Business Day after it begins or until Transfers have been agreed to complete the maximum number of securities to which the Transfer proposal relates, whichever is the earlier.

11.7 Additional requirements

Except with the sanction of resolutions passed by a simple majority of votes of each Affected Group:

- (a) all Transfers involved in a Restricted Transfer must be pursuant to:
 - (i) an offer in writing to all holders of Equity Securities of any Class which is the subject of the proposed Restricted Transfer, on the same terms; or
 - (ii) orders placed through a Broker for execution in and through the Exchange's order matching market and in accordance with clause 11.6; and
- (b) the Transfers must not result from Differential Offers, other than differences which arise from the change in the price of an on market offer authorised under paragraph (a)(ii) of this clause.

11.8 Response requirements

If a notice is given under clause 11.3(a) then the Board shall give a notice in accordance with Listing Rule 4.5.6 and take all steps as are necessary to comply with Listing Rule 4.5.7.

11.9 Independent report

The Board shall, upon the giving of a notice under clause 11.3(a), unless that notice is given in respect of a Transfer complying with Listing Rule 4.5.5, commission a report in accordance with Listing Rule 4.6.3 from an independent appropriately qualified person previously approved by the Exchange. The Board shall deal with that report in accordance with the requirements of the Listing Rules.

11.10 Restricted Transfer status report

If a Restricted Transfer is not completed within three months of the notice required to be given under clause 11.3(a) (or of any status report previously given under this clause 11.10), 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. The additional information shall include:

- (a) advice as to when the Restricted Transfer is intended to be completed; and
- (b) details of the Transfer(s) that comprise the Restricted Transfer which have not been completed.

11.11 Board response to status report

On receipt of the information provided under clause 11.10, 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 the response initially provided under clause 11.8; and
- (b) confirm to the Exchange that they are complying with Listing Rule 10.1.

12. Enforcement of takeover restrictions

12.1 Default consequences

In the event of a Default:

- (a) no vote may be cast on a poll, and if it is cast it shall be disregarded, on the Defaulter's Securities while the Default is unremedied;
- (b) the Defaulter's Securities may be sold by the Company. This power may not be exercised until one month after the Company has given notice to the Defaulter of its intention to exercise this power. This power shall not be exercised if, during that month:
 - (i) the Defaulter has remedied the Default (where it can be remedied); or
 - (ii) the Defaulter has transferred its Relevant Interest in the Securities to a person who is not a Defaulter.

12.2 Exercise of power of sale

If the Company's power to sell is exercised, the Company shall sell the Defaulter's Securities through the Exchange, or in some other manner approved by the Exchange, and shall account to the holder of those Securities for the proceeds of sale after deduction of all sale expenses. For the purpose of this clause 12.2, the Defaulter shall be deemed to have appointed the Company to act on its behalf in relation to the sale of the Defaulter's Securities and to execute all documents to effect the sale of the Defaulter's Securities.

12.3 Company and directors not liable

Neither the Company nor the Directors (or any of them) shall be liable to a Defaulter or apparent Defaulter for or in connection with the exercise or purported exercise of the powers permitted by this clause 12.

12.4 Lien on Defaulter's Securities

The Company shall have a lien on the Defaulter's Securities for, and may deduct from the proceeds of sale pursuant to clauses 12.1 and 12.2, any costs to the Company of determining whether a person is a Defaulter and exercising powers permitted by this clause 12. The Company may treat as its costs for the purposes of this clause 12.4, the reimbursement by it of expenses of members of any Affected Group acting pursuant to clause 12.5.

12.5 Powers of Affected Group

The Board shall, if so directed by a resolution of an Affected Group (passed by a simple majority of votes) exercise the power referred to in clause 12.1(b), if that power has become exercisable. The holders of 5% or more of the Securities of an Affected Group may by notice to the Directors require the Directors to convene a meeting of the Affected Group for the purpose of considering such a resolution.

12.6 Voting restriction

The Company shall use reasonable endeavours to ascertain for the purposes of clause 12.1(a) whether any Securities are Defaulter's Securities, and accordingly whether a holder of those

Securities is entitled to vote. If any holder of Securities, or the Exchange, alleges that any Securities are Defaulter's Securities, the Company shall properly consider and investigate that allegation.

12.7 Proceedings at meeting

The ruling of the chairman of any meeting as to whether any holder of Securities is or is not entitled to vote at that meeting pursuant to clause 12.1(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 12.1(a). This clause 12.7 shall not prejudice any action which any person may have against the Security holder by reason of that holder having cast a vote at any meeting in breach of clause 12.1(a).

12.8 Limitation of remedies

The sole remedy of the Company, a Security holder, a Director or any other person in respect of a breach or alleged breach of any of clauses 11, 12 or 13 or of the provisions of section 4 of the Listing Rules, shall be to exercise, or require the Company or the Directors to exercise, the powers referred to in clause 12.1. Without limiting the preceding sentence, no person shall be entitled to seek any injunction or other remedy to prevent a transaction alleged to be in breach of the provisions referred to in that sentence. Nothing in this clause 12.8 shall affect the remedies of a Security holder against the Directors in respect of a breach of clauses 11 to 13 or the provisions of section 4 of the Listing Rules by that Director.

13. Compulsory acquisition

13.1 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 (the "**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. When calculating the total number of the Quoted Equity Securities of a Class for the purposes of this clause, Treasury Stock shall not be regarded as part of that Class.

13.2 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 to be provided by the Majority Holder for Affected Securities.

13.3 **Obligation of Majority Holder**

Upon giving an Acquisition Notice, the Majority Holder shall be entitled and bound:

- (a) if the Acquisition Notice contains the statement in clause 13.2(b)(i), to acquire all Affected Securities held by the Remaining Holders; or
- (b) if the Acquisition Notice contains the statement in clause 13.2(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.

13.4 **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 Exchange a report from an independent appropriately qualified person, previously approved by the Exchange, confirming that that consideration is fair to the Remaining Holders, using the same criteria set out in paragraph (c)(iv).
- (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, then the consideration shall be determined in accordance with paragraphs (c) and (d). If objections are received, the Company shall forthwith notify the Majority Holder and the Exchange of that fact. If such objections are not received, the consideration shall be as specified in the Acquisition Notice.
- (c) If objections of the nature referred to in paragraph (b) are received by the Company, the consideration shall be determined by an independent appropriately qualified person. That person shall:
 - (i) be a different person from the person referred to in paragraph (a);
 - (ii) act as an expert and not as an arbitrator;
 - (iii) be directed to provide a decision within 20 Business Days after his or her appointment;
 - (iv) 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, or their respective holdings in the Company or the relative extent of those holdings; and
 - (v) be appointed by the Disinterested Directors (as defined in Listing Rule 4.5.9) of the Company (if any, and otherwise by the Directors of the Company) after approval by the Exchange.
- (d) If the consideration determined by the person appointed in accordance with paragraph (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 paragraph (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.

13.5 Default consequences

If a Majority Holder fails to give an Acquisition Notice, or, after having become bound to acquire the Affected Securities of Remaining Holders in accordance with the provisions of this clause 13, fails to do so, then the provisions of clauses 12.1 to 12.7 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 clause 13 shall be deemed to be a Default; and
- (c) the Remaining Holders shall be deemed to be an Affected Group.

13.6 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 pursuant to clause 13.4, within two Business Days after the consideration is determined.

13.7 Remaining Holders who cannot be found

The consideration payable to Remaining Holders who cannot be found shall be paid by the Majority Holder to the Company and shall be held in trust by the Company for those Remaining Holders for five years. All consideration remaining unclaimed after five years may be forfeited by the Board for the benefit of the Company. The Company shall, nevertheless, annul the forfeiture and pay a Remaining Holder who produces evidence of entitlement.

13.8 Execution of transfers

Upon payment or provision of the consideration by a Majority Holder in accordance with clause 13.6 or 13.7, the Company shall execute transfers of the relevant Affected Securities on behalf of the Remaining Holders and take all other steps necessary to transfer the Affected Securities to the Majority Holder, including the entry of the name of the Majority Holder in the relevant register as the holder of those Affected Securities.

14. Holding by bare trustee

14.1 Bare trustee

For all purposes of clauses 11, 12 and 13, and notwithstanding anything in those clauses:

- (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.

14.2 Specific issues

Without limiting clause 14.1:

- (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.

14.3 Separate registration of 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 register recording those Quoted Equity Securities.

15. Takeovers Code

Upon a Takeovers Code coming into force under the Takeovers Act 1993 then subject to:

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

the whole of clauses 11, 12, 13 and 14 or such part or parts of those clauses as may be determined by the Exchange, shall cease to apply with effect from the date upon which that Code comes into force provided that the provisions of clauses 11, 12 and 14 shall

nevertheless continue to apply in respect of any non-compliance with the provisions of clauses 11 and 13 which has occurred prior to that date.

16. Meetings of shareholders

16.1 Methods of holding meetings

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 simultaneously hear each other throughout the meeting.

16.2 Meetings of other groups

A meeting of the holders of Securities in an Interest Group, or an Affected Group (as defined in Listing Rule 4.1.1), or a Relevant Group (as defined in Listing Rule 4.1.1) 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 this 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 three persons holding, or representing the holders of, Securities of the group;
- (b) 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; and
- (c) any holder of Securities in the group, present in person or by Representative, may demand a poll.

17. Notice of meetings of shareholders

17.1 Method of Service

- (a) All notices, reports, accounts or documents required to be sent to a holder of a Security of the Company will be sent in the manner set out in the Act.
- (b) If a holder of Quoted Securities of the Company has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices are to be posted to the holder at that address and will be deemed to have been received by the holder 24 hours after the time of the posting.
- (c) A notice may be given by the Company to the joint holders of a Security of the Company by giving the notice to the joint holder named first in the register in respect of the Security.

17.2 Rights of Equity Security holders and Directors

Subject to the rights attached to any Equity Securities, Equity Security holders of all Classes are entitled to attend meetings of shareholders and to receive copies of all notices, reports and accounts issued generally to holders of Securities carrying votes. Each Director who is not also a shareholder shall have the same rights.

17.3 Contents of notice

The notice must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- (b) the text of any special resolution to be submitted to the meeting.

17.4 Irregularity in notice

An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.

17.5 Adjourned meetings

If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time, date and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

18. Chairman of meetings of shareholders

18.1 Chairman of the Board to act

If the Directors have elected a chairman of the Board, and the chairman of the Board is present at a meeting of shareholders, that Director must chair the meeting.

18.2 Other chairman

If no chairman of the Board has been elected or if at any meeting of shareholders the chairman of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or the chairman is unwilling or unable to act, the Directors present, if any, may elect one of their number to be chairman of the meeting. If no Director is willing to act as chairman or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of their number to be chairman.

18.3 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairman may regulate the proceedings at meetings of shareholders.

19. **Quorum for meetings of shareholders**

19.1 **Quorum required**

Subject to clause 19.3 no business may be transacted at a meeting of shareholders if a quorum is not present.

19.2 **Size of quorum**

A quorum for a meeting of shareholders is present if three persons having the right to vote at the meeting are present in person.

19.3 **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 shareholders under section 121(b) of the Act, the meeting is dissolved;
- (b) in the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the shareholders or their Representatives present will constitute a quorum.

20. **Voting at meetings of shareholders**

20.1 **Meetings in one place**

In the case of a meeting of shareholders held under clause 16.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairman:

- (a) voting by voice; or
- (b) voting by show of hands.

20.2 **Audio-visual meetings**

In the case of a meeting of shareholders held under clause 16.1(b), unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.

20.3 **Postal votes**

Shareholders may exercise their right to vote at a meeting by casting a postal vote in accordance with the procedures in relation to postal voting set out in the First Schedule to the Act, together with any other procedures determined by the Board.

20.4 **Number of votes**

Subject to the provisions of clauses 21.1 and 21.3 and subject to any rights or restrictions attached to any share:

- (a) where voting is by voice or a show of hands, 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) one vote in respect of every fully paid share held by that shareholder;
 - (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 was fully paid. That fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amount paid and payable (excluding amounts credited and amounts paid in advance of a call).

20.5 **Declaration of chairman conclusive**

A declaration by the chairman that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 20.6.

20.6 **Right to demand poll**

At a meeting of shareholders a poll may be demanded by:

- (a) not less than five shareholders having the right to vote at the meeting; or
- (b) 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
- (c) a shareholder or shareholders holding shares in the Company 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; or
- (d) the chairman.

For the purposes of this clause 20.6, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

20.7 **Time of demand for poll**

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

20.8 **Timing of poll**

The chairman may determine the time and manner in which a poll is to be taken and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

20.9 **Counting of votes on poll**

If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by Representative and voting, or exercising its right to vote by casting a postal vote.

20.10 **Scrutineers**

If a poll is taken the scrutineers shall be the auditors of the Company for the time being unless they are unable or unwilling to act or unless the chairman directs to the contrary in which case the scrutineers shall be appointed by the chairman.

20.11 **Declaration of result**

The chairman may declare the result of a poll upon receipt of notice from the scrutineers that sufficient votes to determine the result of the resolution have been counted.

20.12 **Chairman's casting vote**

The chairman of the meeting is not entitled to a casting vote.

20.13 **Votes of joint holders**

Where two or more persons are registered as the holder of a share, 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.

20.14 **Validity of votes**

In the case of any dispute as to the admission or rejection of a vote the chairman shall determine the same and such determination made in good faith shall be conclusive.

21. **Voting restrictions**

21.1 **Restriction**

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 voting in favour of the resolution by the voting restrictions contained in Listing Rule 9.3.

21.2 **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 21.1, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of clause 21.1. 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 21.1 which has been supplied by the Company to the Exchange or any holder of Equity Securities pursuant to the Listing Rules shall be disregarded by the Company and the chairman 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.

21.3 No vote if amounts unpaid

No person shall be entitled at any meeting of shareholders to exercise voting rights on any Equity Securities in respect of which any call or other sums payable by that person remain unpaid.

22. Proxies and corporate representatives

22.1 Proxies permitted

A shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

22.2 Form of proxy

A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

22.3 Lodging proxy

No proxy is effective in relation to a meeting unless the proxy form is received by or on behalf of the Company at any place specified for the purpose in the notice of meeting not later than 48 hours before the time for holding the meeting or adjourned meeting, or before such lesser time or in such other manner as the Board determines. Otherwise, the instrument appointing proxy shall not be treated as valid.

22.4 Proxy form to be sent with notice of meeting

A proxy form shall be sent with each notice of meeting of Quoted Security holders and:

- (a) shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the Security holder to instruct the proxy as to the casting of the vote; and
- (b) shall not be sent with any name or office (eg chairman of directors) filled in as proxy holder.

So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates two way voting instructions for proxy holders.

22.5 Validity of proxy vote

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

22.6 **Corporate representatives**

A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. A representative shall have the same rights and powers as if the representative were a proxy.

23. **Minutes of shareholder meetings**

The Board must ensure that minutes are kept of all proceedings at meetings of shareholders. Minutes which have been signed correct by the chairman are prima facie evidence of the proceedings.

24. **Shareholder proposals**

24.1 **Notice to the Board**

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

24.2 **Notice to shareholders at Company's expense**

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

24.3 **Notice to shareholders at proposing shareholder's expense**

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

24.4 **Late notice**

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

24.5 **Proposing shareholder's right to give written statement**

If the Directors intend that shareholders may vote on the proposal they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

24.6 **Defamatory, frivolous or vexatious statements**

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

24.7 **Deposit of costs by proposing shareholder**

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

25. **Adjourned meetings and disorderly meetings**

25.1 **Chairman's discretion to adjourn meetings**

The chairman may, in his or her sole discretion, at any time during the meeting adjourn from time to time and place to place (including either to a later time at the same meeting or to an adjourned meeting):

- (a) the meeting; or
- (b) any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion in relation to any of those matters.

In addition, if at any meeting a motion or proposal to adjourn the meeting has been defeated, the chairman has an absolute discretion whether or not to accept and put to the meeting any further motion or proposal to adjourn the meeting.

25.2 **Direction to adjourn**

If directed by the meeting, the chairman must adjourn the meeting.

25.3 **Provisions relating to adjourned meetings**

No business can be transacted at any adjourned meeting other than the unfinished business at the original meeting. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as the original meeting. Otherwise, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

25.4 **Adjournment of disorderly meetings**

If any meeting becomes so unruly or disorderly that in the opinion of the chairman the business of the meeting cannot be conducted in a proper and orderly manner, or if any meeting in the opinion of the chairman becomes unduly protracted the chairman, 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 reasons, either adjourn or dissolve the meeting.

25.5 Completion of unfinished business

If any meeting is adjourned or dissolved by the chairman pursuant to clause 25.4 then with respect to any unfinished business of such meeting:

- (a) in respect of any resolution concerning the appointment and remuneration of the auditors, the meeting shall be deemed to have resolved that such resolution is approved; and
- (b) the chairman may direct that any item of business uncompleted at the meeting of which notice was given in the notice convening the meeting, and 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 the provisions of this Constitution.

26. Disposal or acquisition of assets

26.1 Restriction

The Company shall not (subject to clause 26.3) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Company or assets to be held by the Company:

- (a) which would change the essential nature of the business of the Company; or
- (b) in respect of 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,

unless the transaction or series of transactions is first approved by an Ordinary Resolution (or a Special Resolution if section 129 of the Act applies to the transaction or transactions).

26.2 Definitions

In clauses 26 and 27:

- (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 or 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).

26.3 Exception

Clause 26.1 shall not apply to any transaction entered into by the Company 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 Company has recourse to the credit risk of a Bank.

26.4 Conditional arrangements

Clause 26.1 shall not prevent the Company entering into any agreement or arrangement to do any of the things to which that clause relates if the agreement or arrangement is conditional upon the approval of an Ordinary Resolution (or a Special Resolution if section 129 of the Act applies) and the agreement or arrangement is not completed until that approval is obtained.

26.5 Application to group

References to the Company in clauses 26.1, 26.2, 26.3 and 26.4 shall, where the context permits, be extended to the group comprised of the Company and its Subsidiaries.

27. Transactions with Related Parties

27.1 Restriction

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

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (c) of clause 27.2, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution.

27.2 Definition of Material Transaction

For the purposes of clause 27.1, "**Material Transaction**" means a transaction or a related series of transactions whereby the Company:

- (a) purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Gross Value in excess of 5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company;
- (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;
- (c) enters into any guarantee, indemnity, or similar obligation, or gives any security, for or of obligations which could expose the Company to liability in excess of 5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company;
- (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 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.

27.3 Definition of Related Party

For the purposes of clause 27.1, "**Related Party**" means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) a Director or officer of the Company or any of its Subsidiaries;
- (b) a substantial security holder (as defined in the Securities Amendment Act 1988) of the Company;
- (c) an Associated Person of the Company or any of the persons referred to in paragraphs (a) or (b) of this clause 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 intended to result in that person becoming a person described in any of paragraphs (a), (b) or (c) 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 a wholly owned Subsidiary which:

- (e) is a party to a Material Transaction of the type described in clause 27.2(d); and
- (f) the Company intends to sell, or otherwise dispose of, to a Related Party.

27.4 Exception

Clause 27.1 shall not apply to:

- (a) any transaction entered into by the Company 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 Company has recourse to the credit risk of a Bank; or
- (b) the issue, acquisition or redemption by the Company of Securities of the Company, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder. For the purposes of this paragraph (b), the transfer, by the Company of shares held by the Company in itself, shall be deemed to constitute an issue of Securities; or
- (c) any employment or service contracts which are Material Transactions under clause 27.2(d) where the Exchange is satisfied that the terms of the contract have been set on an arms' length, commercial basis; or
- (d) any transaction indemnifying any Director or Employee of the Company or a Related Company which would be a Material Transaction under clause 27.2(c), 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.

27.5 Conditional arrangements

Clause 27.1 shall not prevent the Company entering into any agreement or arrangement to do any of the things to which that clause relates if that agreement or arrangement is conditional upon the approval of an Ordinary Resolution and the agreement or arrangement is not completed until that approval is obtained.

27.6 Application to group

References to the Company in clauses 27.1 to 27.5 shall, where the context permits, be extended to the group comprised of the Company and its Subsidiaries.

28. Appointment and removal of Directors

28.1 Number and residence

The number of Directors must not at any time be more than 9 nor less than 3 and subject to these limitations the number of Directors to hold office shall be fixed from time to time by the Board. At least two Directors must be ordinarily resident in New Zealand.

The Directors in office at the date of adoption of this Constitution (namely, Dr Roderick S. Deane, Paul E.A. Baines, Hugh A. Fletcher, Sir Dryden Spring, Kerrin M. Vautier and Michael J. Andrews) shall continue in office and shall be deemed to have been appointed by Ordinary Resolution pursuant to this Constitution.

28.2 Appointment and removal by Ordinary Resolution

A Director may be appointed by Ordinary Resolution. All Directors shall be subject to removal from office as director by Ordinary Resolution.

28.3 Appointment by Board

The Board may at any time appoint additional Directors. A Director appointed by the Board shall hold office only until the next annual meeting of the Company but shall be eligible for re-election at that meeting.

28.4 Nominations

No person (other than a Director retiring at a meeting) shall be elected as a Director at a meeting of the Company unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. Nominations must be received by the Company between the date three months before the date of the meeting and the date two months before the date of the meeting. Notice of every valid nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of meeting.

28.5 Rotation

One third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting of the Company each year. The Directors to retire shall be those who have been longest in office since they were last elected

or deemed elected. In the case of Directors who were last appointed Directors on the same day, those to retire shall be determined by agreement between those Directors or, if they cannot agree, by lot.

Notwithstanding the above, for the purposes of the first annual meeting following adoption of this Constitution, the Directors named in clause 28.1 are deemed to have been in office for the same period of time and, therefore, those to retire shall be determined by agreement between all such Directors or, if they cannot agree, by lot.

28.6 Exceptions to rotation

The provisions of clause 28.5 will not apply to:

- (a) a Director appointed pursuant to clause 28.3 and who is subject to retirement pursuant to that clause. That Director shall not be included in the number of Directors upon which the calculation of the number of Directors to retire by rotation at that annual meeting is made; and
- (b) if the Board has appointed one or more executive Directors, one of those executive Directors of the Company. That executive Director shall be included in the number of Directors upon which the calculation of the number of Directors to retire by rotation at that annual meeting is made.

28.7 Appointment of Directors to be voted on individually

No resolution to appoint or elect a Director (including a resolution to re-elect a Director under clause 28.3) shall be put to the shareholders unless:

- (a) the resolution is for the appointment of one Director; or
- (b) the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.

Nothing in this clause prevents the election of two or more Directors by ballot or poll.

28.8 Re-election of retiring Director

At a meeting at which a Director retires, the shareholders may elect a person to fill the vacated office. If no other person is elected, the retiring Director shall, if standing for re-election, be deemed to have been re-elected unless it is resolved not to fill the vacated office or unless a resolution for the re-election of that Director is put to the meeting and lost.

28.9 Vacation of office

A Director shall cease to hold office as a Director if the Director:

- (a) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally;
- (b) becomes disqualified from being a Director pursuant to section 151 of the Act;
- (c) resigns from office by notice in writing to the Company;

- (d) is removed from office pursuant to this Constitution or the Act; or
- (e) has for more than six months been absent without permission of the Board from meetings of the Board held during that period.

28.10 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.

29. No alternate Directors

No Director may appoint any other person to act as an alternate, deputy or agent for him or her.

30. Executive Director

30.1 Appointment and removal

The Board may from time to time appoint one or more Directors to be an executive Director either for a fixed term (but not exceeding five years) or otherwise and on such other terms (including remuneration) as the Board determines. The Board may from time to time remove any such executive Director and appoint another or others in his or her place. Any executive Director who is removed by resolution of the Board shall have no right or claim to continue in office and his or her only remedy against the Company (if any) shall be in damages. Any Director holding the office of executive Director at the date of adoption of this Constitution shall continue in office.

30.2 Resignation

An executive Director shall, subject to the provisions of any contract between him or her and the Company, be subject to the same provisions concerning resignation, removal and disqualification as the other Directors. If an executive Director ceases to hold the office of Director from any cause he or she immediately ceases to be an executive Director.

31. Proceedings of the Board

31.1 Methods of holding meetings

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 the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

31.2 Notice of meeting

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause 31.2 and clause 31.3. Each Director must be given not less than 2 days notice of a meeting of the Board, unless the Director waives that right or a shorter period of notice is required to enable the Board to comply with its obligations under clause 11. Notice may be given to a Director in any of the following ways:

- (a) by telephone to the telephone number given by the Director to the Company for the purposes of receiving notices, in which case the notice will be deemed to be given when the call is answered at that number;
- (b) by delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered;
- (c) by sending the notice by facsimile transmission to the facsimile number given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when sent; or
- (d) by posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted.

31.3 Contents of notice

A notice of a meeting must specify the date, time and place of the meeting and, if the meeting is to be by means of audio or audio and visual communication, the manner in which the Director will be contacted to participate at the time of the meeting.

31.4 Waiver of irregularity

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

31.5 Quorum

A quorum for a meeting of the Board is one-third of the Directors or the number nearest one-third of the Directors; but in no circumstances will the quorum be less than two Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

31.6 Insufficient number of Directors

The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the minimum number fixed by clause 28.1, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Company, but for no other purpose.

31.7 **Chairman**

The Directors may elect one of their number as chairman of the Board and determine the period for which the chairman is to hold office. If no chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairman of the meeting.

31.8 **Votes**

Subject to clauses 31.12 and 31.13 every Director has one vote. In the case of an equality of votes the chairman will not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. 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 that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.

31.9 **Resolutions in writing**

A resolution in writing, signed or assented to by all Directors is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings.

31.10 **Minutes**

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

31.11 **Validity of acts**

All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:

- (a) any defect in the appointment of any Director or person acting as a Director; or
- (b) that they or any of them were disqualified;
- (c) any irregularity in a notice of meeting.

31.12 **Interested Directors may not vote**

Subject to clause 31.13, a Director may not vote at a meeting of the Board in respect of a matter in which the Director is interested, and the Director shall not be counted in the quorum for the purposes of consideration of that matter. In this clause and clause 31.13 the word "**interested**" has the meaning given to that word in section 139 of the Act.

31.13 **Exception to voting prohibition**

Notwithstanding clause 31.12, a Director may vote in respect of and be counted in the quorum for the purposes of a matter in which the Director is interested if the 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.

31.14 Other procedures

Except as set out in this clause 31, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

31.15 Authorised signatories

In addition to the methods permitted by the Act, a contract or other enforceable obligation of the Company which, if entered into by a natural person, would, by law, be required to be by deed may be entered into on behalf of the Company in writing signed under the name of the Company by a Director or any two persons who are designated as "Authorised Signatories" from time to time by the Board, whose signature or signatures must be witnessed (if required by law).

32. Directors' remuneration

32.1 Fixing remuneration

No remuneration shall be paid to a Director in his or her capacity as a Director unless that remuneration has been authorised by an Ordinary Resolution. Each such resolution shall express Directors' remuneration as a maximum monetary sum per annum payable to either:

- (a) all Directors taken together; or
- (b) any person who from time to time holds office as a Director.

32.2 Increase in number of Directors

If remuneration is expressed in accordance with clause 32.1(a), then in the event of an increase in the total number of Directors holding office, the Directors may, without the authorisation of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairman or a chairman of a Board committee).

32.3 Notice of increase

No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a meeting of the Company unless notice of the amount of increase has been given in the notice of meeting.

32.4 Board's discretion

If remuneration is expressed in accordance with clause 32.1(a), the remuneration may be distributed among the Directors in such manner as the Board from time to time determines.

32.5 Executive Directors

Nothing in clauses 32.1 to 32.3 shall affect the remuneration of executive Directors in their capacity as executives.

32.6 Expenses

Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.

32.7 Special remuneration

Notwithstanding clause 32.1, but subject to clause 27, the Board may authorise special remuneration to any Director who is or has been engaged by the Company to carry out any work or perform any services which is not in the capacity of a director and which, in the opinion of the Board, is or are additional to the work or services usually required of directors of a company similar to the Company.

32.8 Payments upon cessation of office

The Company may make a payment to a Director or former Director, or 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 Board; or
- (b) the payment is authorised by an Ordinary Resolution.

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.

33. Indemnity and insurance for Directors and Employees

33.1 Indemnity for Directors

Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

33.2 Other indemnities and insurance

In addition to the indemnity set out in clause 33.1, the Company may:

- (a) indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act;
- (b) indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; and
- (c) effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.

33.3 Interpretation

Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 33.

34. Dividends

34.1 Method of payment

Any dividend or other money payable to a holder of Securities may be paid by cheque sent through the post to the registered address of the holder or in any other manner determined by the Board and directed by the person entitled to the payment. In the case of joint holders, cheques may be sent to the registered address of the person first named on the register.

34.2 Currency of payment

The Board may, in its discretion, differentiate between shareholders as to the currency in which dividends are to be paid. In exercising that discretion the Board may have regard to the registered address of a shareholder, the register on which a shareholder's shares are registered or any other matter the Board considers appropriate. In any case where a dividend is to be paid in a currency other than New Zealand currency, the amount payable will be converted from New Zealand currency in a manner, at a time and at an exchange rate determined by the Board.

34.3 Deductions

The Board may deduct from dividends payable to any shareholder in respect of any shares any:

- (a) unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific shares; and
- (b) amounts the Company may be called upon to pay under any legislation in respect of the specific shares.

34.4 Entitlement date

Dividends and other distributions or payments to holders of Securities of the Company will be payable to the persons who are the registered as holders of those Securities on an entitlement date fixed by the Board.

34.5 Unclaimed dividends

Dividends or other monetary distributions unclaimed for 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 five years or more after having been authorised may be forfeited by the Board for the benefit of the Company. The Company shall, nevertheless, annul the forfeiture and pay a claimant who produces evidence of entitlement.

34.6 Dividend election plans

Without limiting the generality of clause 4, the Board may implement and maintain, on such terms and conditions as it may determine, a plan for the benefit of the holders of Equity Securities whereby the holders of Equity Securities are issued Securities in lieu of a proposed dividend or invest the dividend in subscribing for or acquiring (on-market or otherwise) Securities or any other option in respect of the whole or any part of any dividend on any Equity Securities held by them as the Board may determine.

35. Notices

35.1 Method of service

All notices, reports, accounts or documents required to be sent to a shareholder shall be sent in the manner set out in section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a shareholder.

35.2 Service of notices outside New Zealand

If a Quoted Security Holder has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to the holder at that address and shall be deemed to have been received by the holder 24 hours after the time of the posting.

35.3 Joint holders

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

36. Inspection of records

Except as provided in the Act or unless the Board determines otherwise in any particular case, no holder of Securities shall be entitled to:

- (a) inspect any records, books, papers, correspondence or documents of the Company; or
- (b) require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

37. Liquidation

37.1 Distribution of surplus

Subject to the rights of the holders of any Securities in the Company and to clauses 37.2 and 37.3, upon the liquidation of the Company the assets remaining (if any) after the payment of all debts and liabilities of the Company and the costs of liquidation (the "**surplus assets**") must be distributed among the shareholders in proportion to their shareholding. If any shareholder's shares are not fully paid up the liquidator of the Company may require those shares to be fully paid up before the shareholder receives any distribution of the surplus assets of the Company in respect of those shares. If the surplus assets are insufficient to repay the whole of the paid

up Equity Securities, such surplus assets will be distributed so that as nearly as may be the losses are borne by the holders of Equity Securities in proportion to their holdings.

37.2 Distribution in kind

With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator of the Company may divide among the shareholders in kind the whole or any part of the surplus assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

- (a) attribute values to assets as the liquidator considers fair; and
- (b) determine how the division will be carried out as between the Equity Security holders or different Classes of Equity Security holders.

37.3 Trusts

With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of shareholders of the Company. The liquidator may determine the terms of the trust.