

Constitution of The New Zealand Refining Company Limited

Under the Companies Act 1993

MinterEllisonRuddWatts

20th Floor, Lumley Centre, 88 Shortland Street, Auckland 1010
TEL + 64 9 3539700 FAX + 64 9 3539701
www.minterellison.co.nz

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Part I

1. Defined terms, and interpretation

1.1 Defined terms

In this document:

Act means the Companies Act 1993.

Alternate Director means any person appointed under Clause 8.15.

Annual Meeting has the meaning given to that term in Section 2(1) of the Act.

Auditor means the person appointed to act as independent auditor of the Company.

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

Business Day means a time between 8.30am and 5.30pm on a day on which the NZX is open for trading.

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

Class has the meaning given to that word in the Rules.

Company means The New Zealand Refining Company Limited.

Constitution means this constitution of the Company as amended from time to time.

Convert, Conversion and Convertible have the meanings given to those terms in the Rules.

Director means a person appointed as, or holding the office of, a director of the Company.

Distribution has the meaning given to that term in Section 2(1) of the Act.

Dividend has the meaning given to that term in Section 53 of the Act.

Equity Security in respect of a Security of the Company has the meaning given to that term in the Rules.

Executive Director has the meaning given to that term in the Rules.

Independent Director has the meaning given to that term in the Rules.

Interested has the meaning given to it in section 139 the Act;

Issuer has the meaning given to that term in the Rules.

Listing and Listed have the meanings given to those terms in the Rules.

Minimum Holding has the meaning given to that term in the Rules.

NZSX means the main board equity security market operated by NZX.

NZX means NZX Limited, its successors and assigns and as the context permits includes any duly authorised delegate of NZX (including the NZX Markets Disciplinary Tribunal).

Office means the registered office for the time being of the Company.

Ordinary Resolution means (subject to Rule 1.6.8) a resolution passed by a simple majority of Votes of holders of Securities of the Company which carry Votes, entitled to vote and voting.

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.

Quoted, Quotation and Quote have the meanings given to those terms in the Rules.

Record Date has the meaning given to that term in the Rules.

Register means the register of Shareholders of the Company required to be kept pursuant to Section 87 of the Act.

Registered Address in relation to any Shareholder means the address of the Shareholder as entered in the Register or if the Shareholder has supplied to the Company an address within or beyond New Zealand for the purpose of giving notices to that Shareholder shall mean the address so supplied and shall include any such address supplied to the Company by:

- (a) any person entitled to a Share following the death or bankruptcy of a Shareholder; or
- (b) a Personal Representative.

Representative means a person appointed as a proxy or a Personal Representative.

Rules means the NZSX Listing Rules of NZX as amended from time to time. References to “permitted by the Rules” or “pursuant to the Rules” shall be read as permitted by or pursuant to the Rules themselves or permitted or allowed by NZX pursuant to any Ruling. Where the Company is no longer a Listed Issuer references in this Constitution to “the Rules” shall be read as references to “law”.

Ruling has the meaning given to that term in the Rules.

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

Share means a share (as that term is defined or used in the Act) in the Company and includes an Equity Security.

Shareholder means a person whose name is entered in the Register as the holder for the time being of Shares.

Solvency Test has the meaning given to that term pursuant to Section 4 of the Act.

Special Meeting has the meaning given to that term in Section 2(1) of the Act.

Special Resolution has the meaning given to that term in Section 2(1) of the Act.

Subsidiary has the meaning given to that term in the Rules.

Treasury Stock has the meaning given to that term in the Rules.

Vote has the meaning given to that term in the Rules.

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

- (a) References to “Sections” are references to sections of the Act and references to “Clauses” and “Parts” are references to Clauses and Parts of this Constitution.
- (b) Headings and sub-headings do not assist interpretation and appear only for convenience.
- (c) Words importing the singular number only include the plural number and vice versa.
- (d) 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.
- (e) Words importing the masculine gender only include the feminine or neutral gender and vice versa.
- (f) Save as aforesaid, any terms not defined in this Constitution but which are defined in the Act shall bear the same meaning in this Constitution as in the Act.
- (g) Save as aforesaid, any terms not defined in this Constitution nor defined in the Act but which are defined in the Rules shall bear the same meaning in this Constitution as in the Rules.
- (h) Where this Constitution adopts any definition in the Rules, references in that definition to “Issuer” shall be construed as references to the Company.
- (i) A reference to a “share” is a reference to that term as used or defined in the Act.
- (j) “In writing” and “written” includes facsimile and electronic communications and any other means of communication resulting in permanent visible reproduction.
- (k) A reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or statutory instrument as from time to time amended or re-enacted or substituted.

Part II

2. The Act and the Rules

2.1 The Act

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

2.2 Incorporation of Rules

While the Company is Listed, those provisions of the Rules which are required to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will (to the extent they are not contained herein) be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification.

2.3 Rules prevail

While the Company is Listed, if there is any provision in this Constitution that is inconsistent with the Rules relevant to the Company, the Rules shall prevail.

2.4 Compliance with Rules

Subject to:

- (a) the terms of any Ruling from time to time given by NZX; and
 - (b) the requirements of the Act and any other applicable legislative or regulatory requirement,
- the Company shall, for so long as it is Listed, comply with the Rules.

2.5 NZX Rulings

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

2.6 Effect of failure to comply

Failure to comply with the Rules, or failure to comply with a provision of the Constitution corresponding with a provision of the Rules, shall not affect the validity or enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Rules, or those provisions of the 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 Rules, or those provisions of the Constitution.

2.7 Changes to Rules

Whenever a change is made to the Rules which requires a change to be made to this Constitution, the Company shall, at the first reasonable opportunity, cause this Constitution to be changed (as applicable). In the case of changes to those provisions in the Rules which are contained in this Constitution, the Company shall, at the first reasonable opportunity, cause the Constitution to be amended (as applicable) and, in the case of changes to those provisions in the Rules which are incorporated by reference into this Constitution, such amended Rules shall be deemed to be incorporated into this Constitution by reference on the date specified in the notice given pursuant to Rule 1.3.1 of the Rules.

Part III

3. Rights Of Holders Of Securities

3.1 Rights

Subject to the terms on which a Share is issued, a Share of the Company confers on the holder:

- (a) the right to one vote on a poll at a meeting of holders on any resolution, including any resolution to:
 - (i) appoint or remove a director or an auditor;
 - (ii) adopt a constitution;
 - (iii) alter this Constitution;
 - (iv) approve a Major Transaction;
 - (v) approve an amalgamation under the Act; and
 - (vi) put the Company into liquidation;
- (b) the right to an equal share in dividends authorised by the Directors; and
- (c) the right to equal share in the distribution of the Company's surplus assets.

3.2 Alteration of Shareholders' Rights

The issue by the Company of any further Equity Securities which rank equally with, or in priority to, any existing Equity Securities, whether as to voting rights or Distributions, shall:

- (a) be permitted (subject to Clause 4); and
- (b) not be deemed to be an action affecting the rights attached to those existing Equity Securities.

Part IV

4. Shares: Issues; Calls; Forfeiture; Surrender; Lien; Acquisition; Redemption; Financial Assistance; Minimum Holdings

4.1 Power to Issue Shares

4.1.1 **Issue** - The Board may issue Shares to any person and in any number it thinks fit provided that, while the Company is Listed, the issue is made in compliance with the Rules.

4.1.2 **Rights** - Subject to any provisions in the Constitution and without prejudice to any special rights previously conferred on the holders of any existing Share or Class of Share, any Share in the Company may be issued with such preferred or deferred or other special rights or such restrictions whether in regard to Dividend, voting, Distributions or otherwise as the Board may from time to time determine and, subject to the provisions of the Act, any Share may be issued on the terms that it is liable to be redeemed on a specified date or at the option of the Company or at the option of the Shareholder .

4.1.3 **Ranking** - Subject to any provisions in the Constitution, and the Rules, the Board may issue further Shares ranking equally with or in priority to existing Shares.

4.1.4 **Pre-emptive rights** - Except as provided in the Constitution, all pre-emptive rights including the pre-emptive rights in Section 45 of the Act are hereby negated.

4.2 Convertible Securities

4.2.1 **Issue of Convertible Securities** -Subject always to the Rules and Section 49 of the Act, the Board may from time to time at its discretion issue Convertible Securities upon such terms and conditions as the Board thinks fit.

4.3 Options

4.3.1 **Grant of Option** - Subject to the Rules and Section 49 of the Act, the Board may from time to time at its discretion grant Options to subscribe for Securities in the Company on such terms and conditions as to payment or exercise or otherwise as shall be determined by the Board at the time such options are granted.

4.4 Consolidation and subdivision

Subject to any applicable provisions of the Rules, the Board may:

- (a) consolidate and divide 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.

4.5 Bonus issues

Subject to any applicable provisions of the Rules, 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
- (c) partly as set out in paragraph (a)(i) and partly as set out in paragraph (a)(ii).

4.6 Treasury Stock

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

4.7 Third party

Entitlements conferred by the holding of Equity Securities of the Company, to Securities of a third party (whether or not that third party is an Issuer), shall not be created or conferred other than in compliance with this Clause 4, as if such Securities comprised an issue of Equity Securities of the Company.

4.8 Calls on Shares

- 4.8.1 **Calls** – The Board may from time to time make calls as it thinks fit upon the Shareholders in respect of all or any of the moneys unpaid on their Shares and not by the conditions of allotment thereof made payable at fixed times. At least 14 days notice specifying the time and place for payment and the person to whom such call shall be paid shall be given of each call and each Shareholder shall pay the amount of every call so made on such Shareholder to the persons and at the times and places appointed by the Board. A call may be made payable by instalments.
- 4.8.2 **Call made when resolution of Board passed** - A call shall be deemed to have been made when the resolution of the Board authorising such call was passed.
- 4.8.3 **Liability of joint holders** - The joint holders of a Share shall be jointly and severally liable for the payment of all calls and instalments due in respect of that Share.
- 4.8.4 **Difference in calls** - The Board can make arrangements on the Issue of Shares for a difference between the holders of such Shares in respect of the amount of calls to be paid and in the time of payment of such calls.
- 4.8.5 **Liability for interest on unpaid calls** - If the sum payable in respect of any call or instalment is not paid on or before the due date for payment thereof, the holder for the time being of the Share in respect of which the call has been made shall be liable to pay interest at such rate or rates as the Board may determine from the due date to the date of actual payment. The Board may waive payment of that interest wholly or in part.
- 4.8.6 **Sums payable in terms of Issue deemed calls** -
 - (a) If by the terms of Issue of any Shares or otherwise any amount is made payable at any fixed time or by instalments at fixed times, every such amount or instalment shall be payable as if it were a call duly made by the Board and of which due notice has been given and all the provisions contained in this Constitution in respect of calls, liens and forfeiture shall relate to such amount or instalment accordingly and to the Shares in respect of which they are payable; and
 - (b) every such amount or instalment shall when due be payable to the Company by the person who for the time being is registered as the holder of the Shares.
- 4.8.7 **Calls may be paid in advance** - The Board may, if it thinks fit, receive from any Shareholder willing to advance the same all or any part of the money uncalled and unpaid on any Shares held by that Shareholder and may (until the same would, but for the advance, become payable) pay

interest on all or any part of the money so advanced, at such rate as may be agreed upon between the Board and the Shareholder paying the sum in advance, but no Shareholder shall be entitled as of right to any interest on any money so paid in advance except by agreement with the Board. The Company may at any time repay the amount so advanced.

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

4.9 Forfeiture of Shares

- 4.9.1 **Board may require payment of call with interest and expenses** - If any Shareholder fails to pay any call on the due date for payment thereof, the Board may, at any time thereafter during such time as the call remains unpaid, serve a notice on such Shareholder requiring such Shareholder to pay such call together with interest that may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment. For the purposes of Clauses 4.9.1 and 4.9.3, 'call' shall include any instalment of a call and any instalment payable by the terms or conditions of Issue of any Share or any part thereof respectively and any interest thereon respectively and the provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of Issue of a Share becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.
- 4.9.2 **Cancellation of unpaid amounts** - No obligation to pay amounts unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.
- 4.9.3 **Notice requiring payment to contain certain particulars** - The notice referred to in Clause 4.9.1 shall name a further day (not being less than 14 days from the date on which such notice is deemed to have been served) on or before which such call and all interest and expenses that have accrued or have been incurred by the Company by reason of such non-payment are to be paid. It shall also name the place where payment is to be made (the place so named being either the Office or some other place at which calls of the Company are made payable). The notice shall also state that in the event of non-payment at or before the time and at the place appointed the Shares in respect of which such call was made or is payable will be liable to be forfeited.
- 4.9.4 **Forfeiture for non-payment** - If the requirements of any notice given pursuant to Clauses 4.9.1 and 4.9.3 are not complied with, any Share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all Dividends declared in respect of the forfeited Shares and not actually paid before the forfeiture.
- 4.9.5 **Shares forfeited deemed cancelled** - Any Share forfeited in accordance with this Constitution shall be deemed to be cancelled immediately on forfeiture.
- 4.9.6 **Holders of forfeited Shares cease to be Shareholders but remain liable for calls made before forfeiture** - A person whose Shares have been forfeited shall cease to be a Shareholder in respect of the forfeited Shares, but shall notwithstanding be liable to pay and shall forthwith pay to the Company all calls, instalments, interest and expenses owing upon or in respect of such Shares at the time of forfeiture (together with interest thereon from the date of the forfeiture at such rate or rates as the Board determines, until the date of payment) and the Board may enforce the payment of such monies or any part thereof if it thinks fit, but shall not be under any obligation to do so.

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

4.10 **Surrenders of Shares**

Board may accept surrenders of Shares - The Board may accept from any Shareholder a surrender of such Shareholder's Shares (or any part thereof) which are liable to forfeiture upon such terms as may be agreed upon between such Shareholder and the Board subject always to compliance with the Rules and this Constitution.

4.11 **Lien**

4.11.1 **Company to have lien on Shares** - The Company shall have a first and paramount lien upon each Share registered in the name of each Shareholder (whether solely or jointly with others) for all unpaid calls and instalments payable in respect of that Share, and for all sums of money which the Company may be called upon to pay under any legislation in respect of that Share, whether payable presently or in the future, and such lien shall extend to all Dividends or other Distributions from time to time in respect of such Share. The registration of a transfer of Equity Securities on which the Company has any lien shall, unless notice to the contrary is first given to the transferee, operate as a waiver of such lien.

4.11.2 **Lien may be enforced by sale of Shares** - The Company may sell, in such manner as the Board think fit, any Shares on which the Company has a lien, but no sale shall be made unless a sum in respect of which a lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the holder for the time being of the Share, or the persons entitled thereto by reason of the death or bankruptcy of the holder or the Personal Representative.

4.11.3 **Application of proceeds of sale** - Upon any sale being made of any Shares to satisfy the lien of the Company thereon, the proceeds of such sale shall be applied first in payment of expenses, next in satisfaction of the debts or obligations of the Shareholder to the Company in respect of which the lien exists, and the residue (if any) shall be paid to the former Shareholder or his or her Personal Representative or assigns against whom such lien has been enforced or as such former Shareholder may direct.

4.11.4 **Board may enter purchaser's name in Register** - Upon any sale after forfeiture or for enforcing a lien in purported exercise of the powers hereinbefore given, the Board may appoint some person to execute an instrument of transfer of the Shares sold and cause the purchaser's name to be entered in the Register in respect of the Shares sold and the purchaser shall not be bound to see to the regularity of the proceedings, or to the application of the purchase money, and after the purchaser's name has been entered in the Register in respect of such Shares, the validity of the sale shall not be impeached by any person, and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.

4.11.5 **Liability of transferee who is given notice of lien** - A transferee of Shares, who, prior to the registration of the transfer, has been given notice of the Company's lien upon such Shares, shall be liable to pay to the Company on demand all moneys for the time being called up and unpaid in respect of the Shares transferred to such person together with interest thereon as provided in this Constitution.

4.12 Acquisition and redemption of Shares by Company and financial assistance

4.12.1 **Powers** - The Company may in accordance with the provisions, and subject to the restrictions, of the Act, this Constitution and, while the Company is Listed, the Rules:

- (a) make an offer to one or more holders of Shares to acquire Shares in such numbers or proportions as it thinks fit;
- (b) purchase or otherwise acquire Shares issued by it from one or more Shareholders;
- (c) purchase or otherwise acquire other Equity Securities from one or more holders;
- (d) hold any Shares or other Equity Securities so purchased or acquired as Treasury Stock; and
- (e) redeem any redeemable Shares or other Equity Securities held by one or more holders, either:
 - (f) at its option; or
 - (g) at the option of the holder of the Shares or other Equity Securities if permitted by the terms of issue; or
 - (h) on a date specified in this Constitution or the terms of issue of the Shares or other Equity Securities,

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified person who is not associated with or interested in the Company as provided in section 68 of the Act.

4.12.2 **Financial assistance** - The Company may give financial assistance for the purpose of, or in connection with, the acquisition of any Shares or other Equity Securities issued, or to be issued, by the Company provided that the giving of that assistance is in accordance with the provisions of the Act and, while the Company is Listed, the Rules.

4.13 Minimum Holdings

4.13.1 **Small holder** - The Company at any time, may give notice in writing (“Company Notice”) to a holder whose holding of Securities is less than a Minimum Holding (“Small holder”) of its intention to exercise its powers under this Clause. Any Director may act on the Company's behalf in exercising the powers of the Company under this Clause 4.13.

4.13.2 **Sale** - Unless during the period specified in the Company Notice, being not less than three months after dispatch of the Company Notice, the Small holder concerned lodges for registration a transfer of Securities which, together with Securities already registered in the Small holder's name, will result in the holding of at least a Minimum Holding, the Company may arrange for the sale of the Small holder's Equity Securities through NZX or in some other manner approved by NZX.

4.13.3 **Attorney** - For the purposes of this Clause 4.13 the Small holder concerned is deemed to have appointed any Director as the holder's attorney to execute all documents relating to the sale and transfer of such Securities.

4.13.4 **Trust** - The proceeds of sale less all reasonable costs incurred by the Company in respect thereof shall be held by the Company in trust for the Small holder concerned and paid to the Small holder subject to the deduction of reasonable sale expenses and satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Securities.

Part V

5. Transfers, Transmissions and General

5.1 Transferor is deemed to remain holder until registration of transfer

The transferor of a Share shall be deemed to remain the holder of the Share until the name of the transferee is entered in the Register in respect thereof.

5.2 Securities Transfer Act

- (a) Any Share 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 5.3, or under a system of electronic or other transfer approved under section 7 of the Securities Transfer Act 1991.
- (b) 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 in a manner acceptable to the Company or the Company's share registrar.

5.3 Compliance

Every instrument of transfer of Shares not falling within the provisions of Clause 5.2 shall either 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 shall be signed or executed by or on behalf of the transferor; and
- (c) where the Shares the subject of such transfer are not fully paid up or registration as holder of the shares otherwise imposes a liability on the transferee, the instrument of transfer shall be signed or executed by or on behalf of the transferee.

5.4 Board's refusal to register transfers of Shares

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

- (a) the Company has a lien on the Shares; or
- (b) there is insufficient evidence of entitlement to transfer; or
- (c) registration of such transfer, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than a Minimum Holding; or
- (d) such action is permitted by the Rules.

5.5 No other restrictions

Subject as set out above and to the provisions of any legislation, the Board shall not impose any restrictions on the right of a holder of a Share to transfer that Share or upon the registration of a properly completed transfer of Shares.

5.6 Suspension of registration

The registration of transfers may be suspended by the Board for such periods of time as the Board may determine, provided that registration shall not be suspended for more than 30 days or such other length of time in any year as may be specified from time to time by the Act.

5.7 Return of unregistered Transfers

A transfer of any Share the registration of which has been declined shall be promptly returned to the person submitting it, for completion, and (subject to Clauses 5.4 and 5.6) shall be registered when any errors or omissions have been rectified.

5.8 Transmission of Shares

5.8.1 On death of Shareholder, survivor or Personal Representative only recognised - The Personal Representatives of a deceased holder of a Share shall be the only persons recognised by the Company as having any title to the Share. In the case of a Share registered in the names of two or more holders the survivors or survivor, or the Personal Representatives of the deceased, shall be the only person recognised by the Company as having any title to such a Share but nothing in this Constitution shall release the estate of a deceased joint holder from any liability which had been jointly held by the holder with other persons.

5.8.2 Person becoming entitled on death or bankruptcy of Shareholder may be registered – Any person becoming entitled to a Share in consequence of the death or bankruptcy of a Shareholder shall, upon such evidence being produced as may from time to time be properly required by the Board, have the right either to be registered as a Shareholder in respect of the Share or, instead of being so registered, to make such transfer of the Share as the deceased or bankrupt person could have made; but the Board shall, in either case, have the same right to decline or suspend registration as it would have had in the case of a transfer of the Share by the deceased or bankrupt person before the death or bankruptcy.

5.8.3 Rights of Personal Representative - A holder's Personal Representative shall, upon the production of such evidence as may from time to time be properly required by the Board be entitled to the same Distributions and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise) as the holder would have been entitled to. Where two or more persons are jointly entitled to any Share in consequence of the death of the holder they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

5.9 Transfer of Securities other than Shares

The provisions of this Clause 5 shall also apply to the transfer of Securities other than Shares, with any necessary modifications.

Part VI

6. Distributions to Shareholders

6.1 Satisfaction of Solvency Test

The Board, if it is satisfied on reasonable grounds that the Company will immediately after a Distribution satisfy the Solvency Test, may (subject to this Clause 6 and to Clause 4.12) authorise a Distribution at a time, and of an amount, and in such form, and to any Shareholders as it determines.

6.2 Restriction on certain Dividends

- (a) The Board must not authorise a Dividend:
 - (i) in respect of some but not all the Shares in a Class; or
 - (ii) that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class, except as provided in Clause 6.2(b).
- (b) All Dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid, other than in advance of calls, on the Shares during any portion or portions of the period in respect of which the Dividend is paid. If any Share is issued on terms providing that it shall rank for Dividend as from a particular date, that Share shall rank for Dividend accordingly.

6.3 Persons to whom Distribution payable

A Distribution shall be payable to the person who is, on the Record Date, the registered holder of the Securities in respect of which the Distribution is made.

6.4 Dividends may be paid by automatic payment or by cheque

Unless otherwise directed by the Shareholder any Dividend may be paid by automatic payment to any bank nominated in writing by the Shareholder or person entitled or by cheque sent through the post to the Registered Address of the Shareholder or person entitled, or in the case of joint holders, to the bank nominated by or the Registered Address of that one whose name stands first on the Register in respect of the joint holding or to the person nominated in writing by all the joint holders. Every cheque so sent shall be made payable to the order of the person to whom it is sent. The Company shall not be liable for any loss arising from any mode of transmission referred to in this Clause.

6.5 No interest on Distributions

No Distribution shall bear interest against the Company.

6.6 Deductions from Distributions

The Board may deduct from any Distribution payable to a Shareholder all such money as may be due from that Shareholder to the Company on account of:

- (a) unpaid calls and instalments and any interest payable on such amounts, in respect of the Shares for which the Distribution is being paid; and
- (b) such amounts as the Company may be called upon by legislation to pay in respect of those Shares, including withholding and other taxes.

6.7 Unclaimed Distributions and other moneys

- (a) A Distribution unclaimed for one year after having become payable may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The

Company shall be entitled to mingle the Distribution with other money of the Company and shall not be required to hold it or regard it as being impressed with any trust.

- (b) A Distribution unclaimed for five years after having become payable shall at the expiry of such period be forfeited by the Board for the benefit of the Company, provided always that the Board may at any time after such forfeiture annul the same and pay such Distribution to the person producing evidence of entitlement. Any other moneys payable to any Shareholder or former Shareholder shall be disposed of in accordance with the Unclaimed Money Act 1971.

6.8 Shares in lieu of Dividends

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

6.9 Calls in advance do not carry right to participate

Where any Security is fully paid up in advance of calls, such payment, whether or not carrying interest, shall not confer a right to participate in Distributions to Shareholders.

6.10 Authorisation of Dividends

Subject to this Clause 6, the Board may from time to time authorise interim Dividends and may authorise a final Dividend and the Board may pay any preferential Dividends on Securities issued upon terms that the preferential Dividends thereon shall be paid on fixed dates. Provided the Board acts bona fide it shall not incur any liability to the holders of preference shares for any damage they may suffer by reason of the payment or satisfaction of a Dividend.

6.11 Transfer does not pass right to any Distribution declared after such transfer

A transfer of Securities shall not pass the right to any Distribution declared thereon after such transfer and before the registration of the transfer.

Part VII

7. Shareholders' Powers and Meetings

7.1 Exercise of powers reserved to Shareholders

7.1.1 **Powers reserved to Shareholders** - Powers reserved to Shareholders by the Act or by this Constitution may be exercised at an Annual Meeting or a Special Meeting. Unless otherwise specified in the Act or this Constitution, a power reserved to Shareholders may be exercised by an Ordinary Resolution.

7.1.2 **Alternative forms of meeting** - A meeting of Shareholders may be held either:

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by a number of Shareholders, who constitute a quorum, participating in the meeting by means of audio, audio and visual, or electronic communication; or
- (c) by a combination of both of the methods described in paragraphs (a) and (b).

7.1.3 **Management review by Shareholders** - A Shareholder may question, discuss, and comment on the management of the Company at a meeting of Shareholders. A meeting of Shareholders may pass a resolution relating to the management of the Company. Such a resolution is not binding on the Board.

7.1.4 **Shareholder proposals** - A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of Schedule 1 of the Act apply to any notice given pursuant to this Clause.

7.2 First Schedule

The provisions of the First Schedule of the Act shall apply, except where modified by this Clause 7.

7.3 Annual Meeting

The Board must call an Annual Meeting to be held:

- (a) once in each calendar year;
- (b) not later than 6 months after the Balance Date of the Company; and
- (c) not later than 15 months after the previous Annual Meeting.

7.4 Special Meetings

A Special Meeting of Shareholders entitled to vote on an issue:

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

7.5 Shareholders entitled to notice of meeting

7.5.1 **Right to attend general meetings and receive notices** - Shareholders of all Classes shall be entitled to attend general meetings, whether entitled to a Vote or not, and to receive copies of notices, reports and accounts issued generally by the Company.

7.5.2 **Entitlements** - The Shareholders entitled to receive notice of a meeting of Shareholders are those Shareholders:

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

7.5.3 **Notice** - A date fixed by the Board under Clause 7.5.2(a) must not precede by more than 30 Business Days nor less than 10 Business Days the date on which the meeting is to be held.

7.6 Notice of meeting

Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting, and to every Director and the Auditor, not less than 10 Business Days before the meeting.

7.7 Contents of notice

7.7.1 **Contents** - The notice referred to in Clause 7.6 must state:

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it including any other matter which is required to be contained in the notice as required by the Act, the Rules or any other law; and
- (b) the text of any Special Resolution to be submitted to the meeting.

7.7.2 **Shareholders not entitled to notices unless address given** - If a Shareholder has not supplied to the Company an address within or outside New Zealand for the giving of notices to such Shareholder, such Shareholder shall not be entitled to receive any notices from the Company and all proceedings taken without notice to any such Shareholder shall be as valid as if such Shareholder had due notice thereof.

7.7.3 **Service of notices outside New Zealand** - If a Shareholder has no Registered Address within New Zealand and has not supplied the Company with an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be given to the Shareholder at such address.

7.7.4 **How joint holders of Shares may be served** – All notices shall, with respect to any Shares to which persons are jointly entitled, be given to whichever of such persons is named first in the Register and notice so given shall be sufficient notice to all the holders of such Shares.

7.7.5 **Service on Personal Representatives** - A notice may be given by the Company to the Personal Representative of a member by sending it to them by name, or by the title of the Personal Representatives or by any like description, at the address, if any, supplied for the purposes by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving notice in any manner in which the same might have been given if the death or bankruptcy or other incapacity had not occurred.

7.8 Irregularities in notice

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

7.9 Proxies and corporate representatives

7.9.1 **Form of proxy** - A proxy form shall be sent with each notice of meeting of Shareholders and:

- (a) shall, as a minimum, (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting (for or against) on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote; and
- (b) shall not be sent with any name or office (such as Chairperson) filled in as proxy holder but the proxy may include a footnote to the effect that certain officers of the Company or other persons are willing to act as proxy if the Shareholder wishes to appoint them.

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

- 7.9.2 **Proxy may vote** - A proxy is entitled to attend and be heard at a meeting of Shareholders for which he or she is appointed as if the proxy were the Shareholder and may vote on all procedural matters including any resolution to amend any of the resolutions and to adjourn the meeting and vote on any resolution as amended.
- 7.9.3 **Proxy may demand a poll** - The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- 7.9.4 **Form of proxy** - A proxy must be appointed by notice in writing signed by the Shareholder, or by appointing a proxy online as per the Company's instructions in the notice of meeting, and the notice must state whether the appointment is for a particular meeting or a specified term.
- 7.9.5 **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 or in any manner specified for the purpose in the notice of meeting not later than 48 hours before the start of the meeting. If the written notice appointing a proxy is signed under power of attorney, a signed certificate of non-revocation of power of attorney must accompany that notice.
- 7.9.6 **When vote by proxy valid though authority revoked** - A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal, or revocation of the proxy, or transfer of the Share in respect of which the vote is given, provided no intimation in writing of the death, insanity, revocation or transfer shall have been received by the Company or by the Chairperson of the meeting before the vote is given.
- 7.9.7 **Corporate representatives** - Any corporation which is a Shareholder of the Company may by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or of any Class of Shareholders of the Company or at all such meetings and shall give notice of such appointment to the Company. Until notice of revocation of such authority shall have been given to the Company any person so authorised shall be entitled to exercise the same powers on behalf of the corporation which such person represents as that corporation could exercise if it were an individual Shareholder of the Company.
- 7.9.8 **Application of Clause** - The provisions of this Clause 7.9 shall also apply to meetings of holders of Securities other than Shares, with any necessary modifications.

7.10 Quorum

Five Shareholders present in person or by representative or proxy, holding not less than one-third of the issued share capital of the Company and entitled to vote, shall be a quorum for a general meeting, and (subject as hereinafter provided) no business shall be transacted at any general meeting unless the requisite quorum is present when the meeting proceeds to business. A Shareholder disqualified from voting under Clause 7.15.2 in respect of any or all items of business to be transacted at a general meeting shall nevertheless be a Shareholder entitled to vote for the purposes of this Clause 7.10.

7.11 Adjournments

- 7.11.1 **If quorum not present meeting adjourned or dissolved** - If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of Shareholders shall be dissolved; but in any other case it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day, time and place as the Directors may appoint. If at such adjourned meeting a quorum is not present, the Shareholders who are present in person or by proxy shall be a quorum and may transact the business for which the meeting was called. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 7.11.2 **Adjournment of meeting** - The Chairperson of a general meeting may, with the consent of the meeting (and shall if so directed by the meeting), adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 7.11.3 **Adjournment or dissolution of unruly meetings** - If any general meeting shall become so unruly or disorderly, whether or not accompanied by any violence or threats of violence, that in the opinion of the Chairperson the business of the meeting cannot be conducted in a proper and orderly manner, or if any general meeting shall in the opinion of the Chairperson become unduly protracted, the Chairperson may adjourn or dissolve the meeting in his or her sole and absolute discretion, and without giving any reason therefor.
- 7.11.4 **Dissolved meetings – unfinished business** - If the Chairperson proposes to dissolve a meeting pursuant to Clause 7.11.3, and there is any item for unfinished business of the meeting which in his or her opinion requires to be voted upon, then that item shall be dealt with by the Chairperson directing it to be put to the vote by a poll without further discussion, whereupon such poll shall be conducted immediately and the meeting deemed dissolved on conclusion of the taking of such poll.

7.12 Chairperson of meetings of Shareholders

- 7.12.1 **Chairperson** - If the Directors have elected a Chairperson and that Chairperson is present at a meeting of Shareholders he or she must chair the meeting. If the Chairperson is not present, the deputy Chairperson shall be entitled to take the chair.
- 7.12.2 **Absence** - If there is no Chairperson or deputy Chairperson present or if at any meeting such person is not present within 15 minutes after the appointed time for holding such meeting or is unwilling to act, the Directors present may choose a chairperson from one of their number.
- 7.12.3 **Chairperson from shareholders** - If no Chairperson has been elected by the Directors at any meeting of Shareholders, the Shareholders present may choose one of their number to chair the meeting.

7.13 Minutes

- 7.13.1 **Full and accurate** - The Board must ensure that full and accurate minutes are kept of all proceedings at meetings of Shareholders.
- 7.13.2 **Signed** - Minutes which have been signed correct by the Chairperson of the meeting are prima facie evidence of the proceedings.

7.14 Votes of Shareholders

- 7.14.1 **Voting at meeting in one place** - In the case of a meeting of Shareholders held under Clause 7.1.2(a), unless a poll is demanded in accordance with Clause 7.17.1, the Chairperson of the meeting shall determine whether voting will be by voice or by show of hands.
- 7.14.2 **Voting at audio/visual meeting** - In the case of a meeting of Shareholders held under Clause 7.1.2 (b) or (c), unless a poll is demanded in accordance with Clause 7.17.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 7.14.3 **Voting by electronic means** - The Company may allow Shareholders to vote by electronic means as provided in Clause 12.1(b).
- 7.14.4 **Postal votes** - If the Company permits postal voting at a meeting as notified to Shareholders in the notice of the meeting, the provisions of Clause 7 of Schedule 1 to the Act (relating to postal votes) shall apply, with such modifications (if any) as the Board thinks fit.
- 7.14.5 **Entitlement to vote** - A Shareholder may exercise the right to vote either in person or by Representative.
- 7.14.6 **Vote** - Subject to Clauses 7.15 and 7.16 and to any rights or restrictions for the time being attached to any Class or Classes of Shares every holder of Shares shall be entitled, in respect of each of their Shares on which no call is in arrears:
- (a) on a vote by voices or on a show of hands, to one Vote or such other number of Votes as are carried by the relevant Share; and
 - (b) on a poll, every holder of Shares shall have in respect of each Share which is:
 - (i) fully paid, one Vote; or
 - (ii) not fully paid, a fraction of the Vote which would be exercisable if such Share were fully paid, that fraction being equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call), provided that for the purposes of this Clause 7.14, a Share which is not fully paid is not of the same Class as a fully paid Share.

7.15 Voting restrictions

- 7.15.1 **No vote when amount owing on Share** - A Shareholder is not entitled to vote at any meeting of Shareholders in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.
- 7.15.2 **Voting restrictions** - Notwithstanding anything to the contrary in this Constitution or the Rules or the Act, a person is not entitled to cast a vote in favour of a resolution when that person is disqualified from doing so by virtue of the voting restrictions specified in the Rules.
- 7.15.3 **Exception** - On a resolution for the issue of Securities under Clause 4 a person to whom it is proposed to issue new Securities referred to in that resolution is not disqualified from voting if the new Securities are to be offered on the same basis to all holders of Securities of the same Class as the Securities held by that person.
- 7.15.4 **Disqualified person may act as proxy** - Clause 7.15.2 shall not prevent a person disqualified from voting under that Clause, who has been appointed as a proxy or voting representative by another person who is not disqualified from voting under that Clause, from voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.

7.15.5 **Discovery of disqualified persons** - The Company shall use reasonable endeavours to ascertain, no later than five Business Days before any meeting to consider a resolution referred to in Clause 7.15.2 the identity of holders of Securities who are disqualified from voting on that resolution pursuant to Clause 7.15.2 and on request shall supply a list of such holders to NZX and to any holder of Equity Securities of the Company.

7.15.6 **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 7.15.2, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of Clause 7.15.2. Any objection by a holder of Securities to the accuracy or completeness of any list provided pursuant to Clause 7.15.5 may be disregarded by the Company and the Chairperson of the relevant meeting if it is notified to the Company later than one full Business Day before the time fixed for commencement of the meeting.

7.16 **Votes of overseas protected persons or joint members and service of notices overseas**

7.16.1 **Shareholders outside New Zealand** - A Shareholder who is not living in New Zealand who is of unsound mind or in respect of whom an order has been made by any court having appropriate jurisdiction may vote whether on a vote on a show of hands or on a poll by such Shareholder's committee, curator bonis or other person in the nature of a committee or curator bonis appointed by that court.

7.16.2 **Votes of joint holders** - Where there are joint registered holders of any Share, any one of such persons may vote at any meeting, either personally or by proxy, in respect of such Share as if such person were solely entitled thereto. If more than one of such joint holders is present at any meeting, personally or by proxy, that one of the said persons so present whose name stands first on the Register in respect of such Share shall alone be entitled to vote in respect thereof. Several executors or administrators of a deceased Shareholder in whose sole name any Share stands shall for the purposes of this Clause be deemed joint holders thereof.

7.16.3 **Service of notices overseas** – If the holder of a Share or other Quoted Security 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 or an electronic address then notices shall be posted to that holder at such physical address or sent electronically to such electronic address, and shall be deemed to have been received by that holder 24 hours after the time of posting.

7.17 **Polls**

7.17.1 **Poll may be demanded** - At a meeting of Shareholders, a poll may be demanded (before or on the declaration of the result of the vote):

- (a) by at least 5 Shareholders present in person or by proxy; or
- (b) by a Shareholder or Shareholders present in person or by proxy and representing not less than one-tenth of the total voting rights of all the Shareholders having the right to vote at the Meeting; or
- (c) by a Shareholder or Shareholders holding Shares in the Company conferring a right to vote at the meeting being Shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the Shares conferring that right; or
- (d) by the Chairperson of the meeting.

7.17.2 **When poll to be taken** - If a poll is demanded as aforesaid, it shall be taken in such manner and at such time and place as the Chairperson of the meeting directs and either at once or after an

interval or adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand of a poll may be withdrawn. In case of any dispute as to admission or rejection of a Vote, the Chairperson shall determine the same, and such determination made in good faith shall be final and conclusive.

7.17.3 Effect of poll on other business - The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. No poll shall be demanded on the election of a Chairperson of a meeting, and a poll demanded on a question of adjournment shall be taken forthwith unless in the opinion of the Chairperson the taking of a poll is impracticable in which case the meeting shall proceed or be adjourned as directed by the Chairperson.

7.18 Declaration by Chairperson to be conclusive evidence of fact

Unless a poll is so demanded, a declaration by the Chairperson that a resolution has on a show of hands or by voice been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect made in the book containing the minutes of the proceedings of general meetings of the Company, shall be conclusive evidence of the fact without proof of the number or proportion of the Votes recorded in favour of or against the resolution.

7.19 Equality of Votes – no casting vote

In the case of an equality of Votes whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands takes place or at which the poll is demanded, shall not be entitled to a second or casting vote and the resolution shall be declared to have been lost.

Part VIII

8. Directors

8.1 Directors' shareholding qualifications

There shall be no shareholding qualification for a Director.

8.2 Appointment and number of Directors

The number of Directors (other than Alternate Directors) shall not be fewer than three and there will be no maximum number. At least two Directors shall be ordinarily resident in New Zealand and the minimum number of Independent Directors on the Board shall be three. In addition, if there are eight or more Directors, one-third of the Directors must be Independent Directors (rounded down to the nearest whole number of Directors) provided that there must always be, at least, three Independent Directors.

8.3 Continue in office

The Directors in office at the date of this Constitution coming into force shall continue to hold office under the provisions herein contained.

8.4 Board to Confirm Independence

The Board must identify which Directors it has determined, in its view, to be Independent Directors.

8.5 Timing of Determination

The Board must make a determination under Clause 8.4:

- (a) no later than 10 Business Days following the Company's Annual Meeting and immediately after making such determination, the Company shall release to the market the names of those Directors determined by the Board to be Independent Directors; and
- (b) no later than 10 Business Days following appointment by the Board in respect of any Director appointed by the Board and immediately after making such determination, the Company shall release to the market whether the Board has determined that such Director is an Independent Director; and
- (c) prior to publication of its annual report to enable it to comply with Rule 10.5.5(1).

8.6 Company to obtain necessary information

It is the responsibility of the Company to make the necessary arrangements to require its Directors to provide sufficient information to the Board in order for the Board to make a determination under Clause 8.4.

8.7 Directors may be appointed in general meeting

The Company in general meeting may, subject to the provisions of this Constitution, from time to time appoint new Directors and may alter their qualifications.

8.8 Powers of Directors to fill casual vacancy or appoint additional Directors

The Board shall have power at any time, to appoint any other qualified person as a Director, either to fill a casual vacancy or as an addition to the Board. Any Director so appointed shall retire at the next Annual Meeting of the Company but shall be eligible for election at that meeting.

8.9 Rotation of Directors

8.9.1 **One third of Directors to retire at Annual Meeting** - Subject to Clauses 8.9.3 and 8.9.4, at the Annual Meeting in each year one third of the Directors for the time being or if their number is not 3 or a multiple of 3 then the number nearest one third shall retire from office.

8.9.2 **Senior Directors to retire** - The Directors to retire in each year shall be those who have been longest in office since they were last elected or deemed elected. As between two or more who have been in office an equal length of time the Director or Directors to retire shall in default of agreement between them be determined by lot. A retiring Director shall be eligible for re-election and shall act as a Director throughout the meeting at which such person retires.

8.9.3 **Exceptions to rotation** - The following Directors shall be exempt from the obligation to retire pursuant to Clause 8.9.1:

- (a) Directors appointed by the Board, who are offered for election pursuant to Clause 8.8; and
- (b) one Executive Director.

8.9.4 **Calculation of number of Directors to rotate** - The Executive Director referred to in Clause 8.9.3(b) shall be included in the number of Directors upon which the calculation in Clause 8.9.1 is based. The Directors referred to in Clause 8.9.3(a) shall be excluded from that number.

8.9.5 **Office may be filled at meeting at which Directors retire** - Subject to Clause 8.13.1, the Company at any meeting at which any Directors retire in the manner aforesaid may fill up the vacated offices by electing a like number of persons to be Directors.

8.10 Directors may be removed by Ordinary Resolution

Any Director may be removed from office by an Ordinary Resolution passed at a meeting called for the purpose or for purposes that include the removal of the Director.

8.11 Office of a Director vacated in certain cases

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

- (a) becomes disqualified from being a Director by reason of Section 151(2) of the Act; or
- (b) becomes of unsound mind; or
- (c) resigns that person's office by notice in writing to the Company; or
- (d) is removed from office by a resolution passed under the provisions of Clause 8.10 or Section 156 of the Act; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (f) has for more than six months been absent without approval of the Board from all meetings of the Board held during that period.

8.12 Vacancies and reduction of numbers

The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the number fixed by Clauses 8.2 as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Company, but for no other purpose.

8.13 Nominations and voting

8.13.1 **Nomination of Director** - No person (other than a Director retiring at the meeting) shall be elected as a Director at a meeting of Shareholders of the Company unless that person has been nominated by a Shareholder entitled to attend and vote at the meeting. There shall be no restriction on the

persons who may be nominated as Directors nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this Clause 8.13.1. The closing date for nominations shall not be more than two months before the date of the Annual Meeting at which the election is to take place. The Company shall make an announcement to the market of the closing date for Director nominations and contact details for making nominations no less than 10 Business Days prior to the closing date for Director nominations. Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting and the Company shall specify in such notice the Board's view on whether or not the nominee would qualify as an Independent Director.

8.13.2 **Appointment voted on individually** - No resolution to appoint or elect a Director (including a resolution to re-elect any Director appointed under Clause 8.8) shall be put to 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 8.13.2 shall prevent the election of two or more Directors by ballot or poll.

8.13.3 **Consent to act** – The appointment of a Director shall not take effect until the consent so to act in writing of the person appointed is received by the Company.

8.14 Managing Director(s)

8.14.1 **Appointment and removal of Managing Director** - The Board may from time to time appoint one or more of their body to the office of Managing Director (by whatever name called) for such period not exceeding 5 years at any one time as the Board may think fit. Every Managing Director shall be liable to be dismissed or removed by a resolution passed by a simple majority of the Board. The Board may enter into any agreement on behalf of the Company with any person who is, or is about to become, a Managing Director, with regard to the terms and conditions of such person's employment, but so that the remedy of any such person for any breach of the agreement shall be in damages only, and such person shall have no right to claim to continue in such office contrary to the will of the Board. Any Managing Director shall immediately cease to be a Managing Director if he or she ceases to hold office as a Director for any reason.

8.14.2 **Remuneration of Managing Director(s)** - The remuneration of a Managing Director shall from time to time be fixed by the Board and notwithstanding Clause 8.14, may be by way of fixed salary or commission on profits of the Company or any other company in which the Company is interested, or by participation in any such profits, or by any, or all of those modes.

8.14.3 **Board may confer on Managing Director(s) such powers as they think fit** - Subject to the Act, the Board may from time to time entrust to and confer upon a Managing Director for the time being such of the powers exercisable under this Constitution by the Board as it thinks fit, and may confer such powers for such terms and conditions and with such restrictions as it thinks expedient; and they may confer such powers, either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers of the Board in that behalf, and may from time to time revoke, withdraw, alter or vary all or any of such powers.

8.15 Alternate Directors

8.15.1 **Appointment and removal** - Any Director may, at any time appoint any person not being an existing Director, who is approved by a majority of his or her co-Directors, as an Alternate Director of the Company and the Director appointing, or a majority of his or her co-Directors, may at any time remove from office any Alternate Director so appointed. No Director shall

appoint a deputy or agent otherwise than by way of appointment of an Alternate Director. An Alternate Director shall not be entitled to receive any remuneration from the Company.

- 8.15.2 **Notices of and attendance at Board meetings** - An Alternate Director shall (subject to such person giving to the Company an address at which notices may be served upon such person) be entitled to receive notices of all meetings of the Board, and to attend and vote as a Director at any meeting at which the Director appointing such person is not personally present (subject always to Clause 8.18) and generally to perform all the functions of such person's appointor as a Director in such person's absence.
- 8.15.3 **Other rights and powers** - Unless otherwise provided by the terms of such person's appointment, an Alternate Director shall have the same rights, powers and privileges (excluding the right to be elected as Chairperson and the power to appoint an alternate Director under this Clause) and shall discharge all the duties of, and be subject to the same provisions as, the Director in whose place such person acts.
- 8.15.4 **Cessation of Office** - An Alternate Director shall cease to be an Alternate Director if such person's appointor ceases for any reason to be a Director otherwise than by retiring and being re-elected at the same meeting.
- 8.15.5 **Notice to Company** - All appointments and removals of Alternate Directors shall be effected by notice in writing to the Company, such notice to be left at the Office.

8.16 Directors' remuneration

- 8.16.1 **Authorisation** - No remuneration shall be paid to a Director in his or her capacity as a director of the Company or any Subsidiary of the Company, other than a Subsidiary which is Listed (including any remuneration paid to that Director by a Subsidiary of the Company, other than a Subsidiary which is also Listed) unless that remuneration has been authorised by an Ordinary Resolution. Each such resolution shall express Directors' remuneration as either:
- (a) a monetary sum per annum payable to all Directors taken together; or
 - (b) a monetary sum per annum payable to any person who from time to time holds office as a Director.

Such a resolution may expressly provide that remuneration may be payable either in part or in whole by way of an issue of Equity Securities, provided that issue occurs in compliance with Rule 7.3.8.

If remuneration is expressed in accordance with paragraph (a) of this Clause 8.16.1, 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 Chairperson) of the Company.

- 8.16.2 **Increases** - No resolution which increases the amount of Directors' remuneration fixed pursuant to a previous resolution shall be approved at a general meeting of the Company unless notice of the amount of increase has been given in the notice of meeting.
- 8.16.3 **Executives** - Nothing in Clauses 8.16.1 and 8.16.2 shall affect the remuneration of Executive Directors in their capacity as executives.
- 8.16.4 **Expenses** – Notwithstanding Clauses 8.16.1 and 8.16.2, the Directors shall be entitled to be paid by the Company all travelling, hotel and other expenses incurred by them in and about the business of the Company, including their expenses of travelling to and from Board or committee meetings.

8.16.5 **Additional work** – Subject to obtaining Shareholder approval, the Directors may award special remuneration out of the funds of the Company by fixed sum or salary but not by way of a commission or percentage of revenue or any category thereof or Dividends nor (except in the case of an Executive Director) of profits, to any Director rendering any special service in going abroad or otherwise for any of the purposes of or in the interests of the Company or for undertaking any work additional to that required of directors of a company similar to the Company.

8.16.6 **Work not in a capacity of a Director** – Remuneration to a Director for work not in the capacity of a Director of the Company or a Subsidiary of the Company may be approved by the Directors without Shareholder approval, subject to any provision of the Rules or the Act that may be applicable.

8.17 Transactions involving Directors' self interest

8.17.1 **"Interested"** - For the purposes of Clauses 8.17.2 to 8.17.6 inclusive and 8.18.1 "interested" bears the meaning assigned to that term in Section 139 of the Act on the basis that the reference to the 'company' in that Section shall be read as a reference to the Company.

8.17.2 **Disclosure** - A Director who is in any way interested in a transaction or proposed transaction with the Company shall forthwith after becoming aware of that fact disclose to the Board:

- (a) if the monetary value of the Director's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) if the monetary value of the Director's interest cannot be quantified, the nature and extent of that interest.

For the purposes of this Clause, a general notice entered in the interests register or disclosed to the Board to the effect that a Director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction. A failure by a Director to comply with the provisions of this Clause 8.17.2 does not affect the validity of a transaction entered into by the Company or the Director.

8.17.3 **No voting by interested Director** - A Director shall not vote on a Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum in any meeting to consider the matter, except that a Director may vote in respect of, and be counted in the quorum for the Board for the purposes of, a matter in which he or she is interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to Section 162 of the Act.

8.17.4 **Exceptions** – Nothing in Clauses 8.17.2 and 8.17.3 applies in relation to the matters referred to in Section 143 of the Act.

8.17.5 **Holding Office or place of profit** - A Director may hold any other office or place of profit under the Company (other than the office of Auditor) in conjunction with the office of Director for such period and on such terms (as to remuneration and otherwise) as the Board may determine and no Director or intending Director shall thereby be disqualified from contracting with the Company either with regard to tenure of any such other office or place of profit or as vendor, purchaser, or otherwise, nor shall any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested be liable to be avoided nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason of the Director holding that office or of the fiduciary relationship thereby established.

8.17.6 **Appointment** - A Director notwithstanding such Director's interest may be counted in the quorum present at any meeting whereat such Director or any other Director is appointed to hold any such office or place of profit under the Company or whereat the terms of any such appointment are arranged and such Director may vote on any such appointment or arrangement other than such Director's own appointment or the arrangement of the terms thereof.

8.17.7 **Professional capacity** - Any Director may act personally or as a member of a firm in a professional capacity for the Company and such Director or such Director's firm shall be entitled to remuneration for professional services as if such person were not a Director provided that nothing herein contained shall authorise a Director or firm to act as Auditor of the Company.

8.18 Proceedings of Directors

8.18.1 **Meetings of Directors and quorum** - The Directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit, and may determine the quorum necessary for the transaction of business. Unless otherwise determined the quorum shall be a majority of Directors, except that where, in respect of any matter, there is such a number of Directors who are interested therein that there is not a number of disinterested Directors present able to form a quorum, then the quorum shall be the number of Directors present who are not interested in that matter, but the quorum shall not in any event be less than three Directors.

8.18.2 **Directors may call meeting of Board** - A Director may at any time, and the Company upon the request of the Director shall, convene a meeting of the Board.

8.18.3 **Notice of meeting** - The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings):

- (a) Not less than two Business Days' notice of a meeting of the Board shall be sent to each Director in all circumstances, unless:
 - (i) the Director waives that right; or
 - (ii) a shorter period of notice is required to enable the Board to comply with its obligations under the Listing Rules; or
 - (iii) the issue which is to be the subject of the meeting is, in the reasonable opinion of a majority of the Directors, a matter of urgency, in which event such notice as is practicable in the circumstances shall be still sought to be given to each such Director.
- (b) Notice to a Director of a meeting of the Board may be:
 - (i) given to the Director in person by telephone or other oral communication;
 - (ii) delivered to the Director;
 - (iii) posted to the address given by the Director to the Company for such purpose;
 - (iv) sent by email to the email address given by the Director to the Company for such purpose;
 - (v) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
 - (vi) sent by another form of communications equipment in accordance with any request made by the Director from time to time for such purpose.
- (c) A notice of meeting shall specify:
 - (i) the date, time and place of the meeting;

- (ii) the nature of the business to be transacted at the meeting in sufficient detail to enable a Director to give due consideration to it; and
 - (iii) in the case of a meeting by means of conference telephone or by another form of communications equipment, the manner in which each Director may participate in the proceedings of the meeting.
- (d) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
- (i) in the case of oral communication, at the time of notification;
 - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
 - (iii) in the case of posting, at the time of receipt (which in the absence of proof to the contrary shall be considered to be three days after it is posted);
 - (iv) in the case of email, at the time of receipt as set out in Clause 12.2;
 - (v) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
 - (vi) in the case of another form of communications equipment, at the time of transmission.

8.18.4 Waiver of notice irregularity - A Director may at any time (including at the meeting to which a notice of meeting relates) protest as to any irregularity in a notice of meeting (including if the business transacted at the meeting was not specified, or was not specified in sufficient detail, in the notice for that meeting). An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during, or after the meeting) to the waiver.

8.18.5 Voting at Board meeting - Questions arising at any Board meeting shall be decided by a majority of votes. In case of an equality of votes the Chairperson of such meeting shall not have a second or casting vote.

8.18.6 Board may elect Chairperson and deputy Chairperson - The Board may elect a Chairperson and, if thought fit, a deputy Chairperson of their meetings and determine the periods for which they are to hold office, except the Chairperson or deputy Chairperson shall not also be the Managing Director. The Chairperson shall preside at meetings of the Board and failing the Chairperson, the deputy Chairperson shall so preside, but if no such Chairperson or deputy Chairperson is elected or if at any meeting neither the Chairperson nor the deputy Chairperson is present within five minutes of the time appointed for holding any meeting the Directors present shall choose someone of their number to be chairperson at such meeting.

8.18.7 Board may delegate powers to committees - Subject to the Act, the Board may delegate any of its powers to committees consisting of such member or members of its body as it thinks fit and may from time to time revoke such delegation. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed upon it by the Board. The meetings and proceedings of any such committee consisting of two or more members shall be governed by the provisions of this Constitution regulating the meetings and proceedings of the Board so far as the same are applicable thereto.

8.18.8 All acts done by Directors to be valid - All acts done at any meeting of the Board, or of a committee of Directors, or by any person acting as a Director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Director or person

acting as aforesaid or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

8.18.9 Resolution in writing - A resolution in writing signed by all the Directors or their duly appointed Alternate Directors shall be as valid and effectual 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 email or facsimile or other similar means of communication) in like form each signed by one or more Directors and signed copies of the resolution shall be entered in the minute book. Any such document sent by a Director by email, facsimile or other similar means of communications shall be deemed to be in writing and signed by such Director.

8.18.10 Meeting of Board using an instantaneous communication device - For the purpose of this Clause 8.18 the contemporaneous linking together by instantaneous communication device of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Board or of a committee of the Board and all the provisions of this Clause 8.18 as to meetings of the Board shall apply to such meetings by instantaneous communication device so long as the following conditions are met:

- (a) all the Directors for the time being entitled to receive notice of a Board meeting (including any Alternate Director) shall be entitled to notice of a meeting by instantaneous communication device and to be linked by instantaneous communication device for the purposes of such meeting. Notice of any such meeting may be given on the instantaneous communication device;
- (b) each of the Directors taking part in the meeting by instantaneous communication device must be able to hear each of the other Directors taking part at the commencement of the meeting;
- (c) at the commencement of the meeting each Director must acknowledge such person's presence for the purpose of a meeting of the Board to all the other Directors taking part;
- (d) a Director may not leave the meeting by disconnecting such person's instantaneous communication device unless such person has previously obtained the express consent of the Chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by instantaneous communication device unless such person has previously obtained the express consent of the Chairperson of the meeting to leave the meeting as aforesaid;
- (e) a minute of the proceedings at such meeting by instantaneous communication device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting; and
- (f) for the purposes of this Clause 8.18 'instantaneous communication device' shall include telephone, television or any other audio or visual device which permits instantaneous communication.

8.18.11 Minutes to be made and when signed by Chairperson prima facie evidence - The Board shall cause minutes to be duly executed in Books provided for the purpose:

- (a) of all appointments removals and resignations of the Directors, Alternate Directors and the Auditor of the Company;
- (b) of the names of the Directors present at each meeting of the Board and of any committee of Directors;
- (c) of all resolutions and proceedings of general meetings and of meetings of the Board and committees of Directors.

Any such minutes of a meeting of the Board or of a committee of Directors, if purporting to be signed by the Chairperson of such meeting, or by the Chairperson of the next succeeding meeting shall be receivable as prima facie evidence of the matters stated in such minutes.

8.18.12 **Third Schedule not to apply** - The provisions of the Third Schedule of the Act shall not apply to the proceedings of the Board.

Part IX

9. Indemnity and Insurance

9.1 Indemnity for Directors and Employees for costs

The Company shall indemnify every Director (and may indemnify Employees) of the Company or a Related Company out of the assets of the Company for any costs incurred by such Director or Employee in any proceeding:

- (a) that relates to liability for any act or omission in his or her capacity as a Director or Employee; and
- (b) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

9.2 Indemnity for Directors and Employees for liability

The Company shall indemnify every Director (and may indemnify Employees) of the Company or a Related Company in respect of:

- (a) liability to any person other than the Company or Related Company for any act or omission in his or her capacity as a Director or Employee; or
- (b) costs incurred by that Director or Employee in defending or settling any claim or proceeding relating to any such liability,

not being criminal liability or liability in respect of a breach, in the case of a Director, of the duty specified in Section 131 of the Act or, in the case of an Employee, of any fiduciary duty owed to the Company or a Related Company, or any liability in respect of which an indemnity is prohibited by legislation.

9.3 Insurance

The Company may, with the prior approval of the Board, effect insurance for any Director or Employee of the Company or a Related Company in respect of:

- (a) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or Employee; or
- (b) costs incurred by that Director or Employee in defending or settling any claim or proceeding relating to any such liability; or
- (c) costs incurred by that Director or Employee in defending any criminal proceedings in which he or she is acquitted,

provided that the Directors who vote in favour of authorising the effecting of insurance under this Clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

9.4 Liability

Where any insurance is effected for a Director or Employee of the Company or a Related Company and:

- (a) the provisions of Clause 9.3 have not been complied with; or
- (b) reasonable grounds did not exist for the opinion set out in the certificate of the Directors given under that Clause,

the Director or Employee is personally liable to the Company for the cost of effecting the insurance except to the extent that he or she proves that it was fair to the Company at the time the insurance was effected.

9.5 Definition

For the purposes of this Clause 9:

'Director' includes a former director of the Company;

'effect insurance' includes pay, whether directly or indirectly, the costs of the insurance;

'Employee' includes a former employee;

'indemnify' includes relieve or excuse from liability, whether before or after the liability arises; and **'indemnity'** has a corresponding meaning.

Part X

10. Contracting by the Company

10.1 Method of contracting

The Company may enter into a contract or other enforceable obligation as follows:

- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:
 - (i) two or more directors of the Company; or
 - (ii) one or more persons or classes of persons designated in writing by the Board as authorised to execute such an obligation and whose signature must be witnessed; or
 - (iii) one or more attorneys appointed by the Company in accordance with the Act;
- (b) an obligation, which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- (c) an obligation, which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

10.2 Governing law

Clause 10.1 applies to a contract or other obligation:

- (a) whether or not that contract or obligation was entered into in New Zealand; and
- (b) whether or not the law governing the contract or obligation is the law of New Zealand.

Part XI

11. Accounts

11.1 Accounts to be kept

The Board shall cause accounting records to be kept which comply with the Act and the Financial Reporting Act 1993. The books of account shall subject to the Act be kept at such place or places as the Board shall think fit, and shall always be open to the inspection of any of the Directors and, to the extent required by the Act or authorised by the Board, by the Company in general meeting.

11.2 Financial Statements etc to be made out yearly

Once at least in every year the Board shall cause to be prepared and laid before the Company in general meeting such financial statements and reports as are required by law.

11.3 Appointment of Auditors

Auditors shall be appointed and their duties regulated in accordance with the Act.

Part XII

12. Electronic Communications

12.1 Electronic Communications

To the extent permitted by the Act and the Rules and notwithstanding any other provision of this Constitution:

- (a) all communications from the Company to Shareholders (including notices of meeting, notices of dividends, voting forms, proxy forms, annual reports or notices in lieu thereof and including the service of notices outside New Zealand and the service of notices on deceased or bankrupt Shareholders) may be sent by electronic means;
- (b) the Company may allow Shareholders to use electronic means to appoint proxies or representatives, cast postal votes and cast votes on resolutions at meetings of Shareholders (or of other groups). The procedures in relation to such electronic appointment or electronic voting shall be those required by law (if any) in conjunction with any other procedures determined by the Board;
- (c) notices of meetings and other communications under this Constitution to and between Directors and the Company may be made by electronic means.

12.2 Receipt of Electronic Communications

For the purposes of section 11 of the Electronic Transactions Act 2002, a document under this Constitution which is sent in electronic form and via an electronic communication is taken to be received:

- (a) if sent by the Company, on the Business Day it is sent or the next Business Day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication;
- (b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or at such other time as the sender and the Company may agree.

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

Part XIII

13. Liquidation

13.1 Liquidation of the Company

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

13.2 Assets may be distributed

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

13.3 Definition

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

13.4 Commissions to be ratified by Shareholders

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