

# CONSTITUTION

## 1. INTERPRETATION

**1.1 Definitions:** In this Constitution unless the context otherwise requires the following initially capitalised terms shall have the meanings specified:

<b>Act</b>	Companies Act 1993.
<b>Company</b>	Freightways Limited.
<b>Constitution</b>	this Constitution as amended from time to time.
<b>Director</b>	the directors for the time being of the Company appointed in accordance with this Constitution.
<b>NZX</b>	New Zealand Exchange Limited and includes its successors and assigns and as the context permits includes any duly authorised delegate of NZX.
<b>Share</b>	a share issued by the Company.

**1.2** Any expression not defined in this Constitution but defined in the Act or the NZX Rules shall have the same meaning in this Constitution as in the Act or the NZX Rules.

**1.3** Words importing the singular number include the plural number and vice versa.

**1.4** Headings shall not affect the interpretation of this Constitution.

**1.5** References to clauses and paragraphs shall be deemed to be references to clauses and paragraphs in this Constitution or to clauses in the Schedules to this Constitution as the context requires.

## 2. GENERAL

**2.1 Companies Act 1993:** The Company, the Board, every Director and each Shareholder have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

**2.2 Compliance with NZX Rules:** For so long as the Company is a party to any listing agreement with NZX:

- (a) This Constitution is deemed to incorporate all provisions of the NZX Rules required under the NZX Rules to be contained or incorporated by reference in this Constitution, as those provisions apply from time to time (and as modified by any ruling relevant to the Company).
- (b) The Company shall comply with the NZX Rules, subject only to (i) the requirements of the Act and any other applicable legislative or regulatory requirements; and (ii) the terms of any applicable ruling; and
- (c) If a provision in this Constitution is inconsistent with the NZX Rules, the NZX Rules shall prevail.

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

**2.4 Exchange Ruling:** If NZX has granted a ruling in relation to the Company authorising any act or omission which in the absence of a ruling would be in contravention of the NZX Rules or this Constitution, that act or omission shall, unless a contrary intention appears in this Constitution, be deemed to be authorised by the NZX Rules and by this Constitution.

**2.5 Effect of Failure to Comply:** Failure to comply with any of the NZX 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 NZX Rules shall not be entitled to enforce that transaction or contract.

This clause does not affect the rights of any holder of any Securities of the Company against the Company or the Directors arising from failure to comply with the NZX Rules.

**2.6** If the NZX Rules are changed so that any act or omission by the Company, which was formerly prohibited by the relevant NZX Rules, is subsequently required or permitted by any such change to the NZX Rules, the act or omission is deemed to be authorised by this Constitution with effect from the date of such change in the NZX Rules, provided that this clause shall not negate the need to comply with whichever of the NZX Rules has not been so changed (subject to any waiver or NZX ruling relevant to the Company).

### 3. NAME AND ALTERATION OF THE CONSTITUTION

**3.1 Name:** The name of the Company shall be Freightways **Limited**. An application to change the name of the Company may be made in accordance with the Act by a Director with the approval of the Board.

### 4. SHARES

**4.1 Classes:** Shares of different classes may be issued in the Company, and without limiting the generality of this, Shares may be redeemable.

**4.2 Board need not comply with statutory pre-emptive rights:** Section 45 of the Act does not apply to the Company.

### 5. ISSUES CONSOLIDATION AND SUBDIVISION OF SHARES

**5.1 Issue by Board:** Subject to this Constitution and the NZX Rules, the board may issue Shares at any time, to any person, and in any number it determines. The consideration for such issue of Shares may take any form.

**5.2 Other Issues:** The board may issue Shares that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares. Any such issue will not be treated as an action affecting the rights attached to those existing Shares unless the terms of issue of those Shares expressly provide otherwise.

**5.3 Consolidation and Subdivision:** The board may:

- (a) Consolidate and divide the Shares or any class; and
  - (b) Subdivide the Shares or any class;
- in each case in proportion to those Shares or the Shares in that class.

**5.4 Sale of Minimum Holdings:** The board may, after giving not less than 3 months' prior notice to holders of securities of less than a minimum holding, sell such securities (through NZX or in some other manner approved by NZX) and account to the holders for the proceeds of sale after deduction of reasonable sale expenses.

**5.5 Unclaimed Proceeds:** Proceeds of any sale made under clause 5.4 unclaimed for 1 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 proceeds with other money of the Company and shall not be required to hold it or regard it as being impressed with any trust. Proceeds unclaimed for 5 years after having become payable may at the expiry of such period be forfeited by the board for the benefit of the Company, provided always that the board may, subject to compliance with the solvency test, at any time after such forfeiture annul the same and pay such proceeds to the person producing evidence of entitlement.

## 6. BUY BACKS OF EQUITY SECURITIES AND FINANCIAL ASSISTANCE

**6.1 Company may acquire and hold Shares:** Subject to this Constitution and the NZX Rules, the Company may:

- (a) Purchase or otherwise acquire Shares issued by the Company. Shares so acquired may be held by the Company as treasury stock; and
- (b) Make an offer to one or more holders of Shares issued by the Company in such numbers and in such proportions as it thinks fit,

in accordance with the Act and the NZX Rules.

## 7. CALL ON SHARES

**7.1 Power to Call:** The board may from time to time make calls in respect of all monies unpaid on Shares and which are not payable at fixed times. A call may be made payable by instalments. A call shall be deemed to have been made at the time when the resolution of the board making the call was passed. Each Shareholder shall pay the call so made to the Company or any person so appointed for the purpose, at the times and places appointed by the board.

**7.2 Cancellation of Unpaid Amounts:** No obligation to pay any amount which is unpaid on any Share shall be cancelled, reduced or deferred without the authority of an ordinary resolution.

**7.3 Revocation or Postponement:** A call may be revoked, reduced or postponed as the board determines.

**7.4 Joint Holders:** Joint Shareholders shall be jointly and severally liable to pay all calls in respect of Shares held by them.

**7.5 Interest:** Interest on a call shall be payable from the day appointed for payment to the day of actual payment at such rate as may be applicable under the terms of issue or as the board determines. The board may waive the payment of interest either in whole or in part.

**7.6 Term of Issue:** Any sum which by the terms of issue of a Share becomes payable on a particular day shall for the purposes of this Constitution be deemed to be a call duly made and payable on that day.

**7.7 Different Amounts:** The board may on the issue of Shares differentiate between Shareholders as to the amount of calls to be paid and the time of payment.

**7.8 Calls Paid in Advance:** The Board may receive from any Shareholder advances of all or part of the money uncalled and unpaid on any Shares held by that Shareholder. The board may pay interest on the money so advanced at such rate as the board determines. Distributions shall not be made on uncalled amounts paid in advance. The Company may at any time repay the amount so advanced.

## **8. LIEN AND FORFEITURE**

**8.1 Lien:** The Company shall have a first lien on the Shares registered in the name of each Shareholder and on the Distributions declared on such Shares for:

- (a) Unpaid calls and instalments and any interest payable on such amounts, in respect of those Shares; and
- (b) Such amounts as the Company may be called upon under any legislation to pay in respect of those Shares, including withholding and other taxes.

**8.2 Sale of Shares:** The Company may sell any Share on such terms as the board may determine, on which it has a lien if:

- (a) A sum in respect of which the lien exists is presently payable; and
  - (i) 14 days notice in writing requiring payment of such sum has been given to the Shareholder; and
  - (ii) The sum in respect of which the lien exists has not been received by the Company at the expiry of the said 14 day term.
- (b) To give effect to any such sale, a Director may execute a share transfer of the Shares to the transferee, and may receive the consideration from such transfer.
- (c) Upon registration of such transfer, the transferee shall be the Shareholder of such Shares discharged from all calls due prior to the date of sale.
- (d) The transferee shall not be bound to see the application of the purchase money, neither shall the transferee's title to the Shares be affected by any irregularity or invalidity of the sale.
- (e) The remedy of the former Shareholder, and of any person claiming under or through the former Shareholder, shall be against the Company exclusively and in damages only.
- (f) If Shares are sold to enforce a lien the proceeds of sale shall first be applied in payment of all costs and expenses of such sale and any attempted sale, and then in satisfaction of unpaid calls, instalments or other amounts and interest on such other amounts. Any residue shall be paid to the former Shareholder, or to the executors, administrators or assigns of the former Shareholder.
- (g) The registration of a transfer of Shares shall operate as a waiver of the lien by the Company but not as a release of any outstanding liability owed by any previous Shareholder.

**8.3 Notice of Liability for Forfeiture:**

- (a) If on the day appointed for payment a Shareholder fails to pay any call (including any instalment) or any other sum which by the terms of issue of a Share becomes payable at a fixed time, on the day appointed for payment the board may serve a notice on the Shareholder requiring payment together with any interest which may have accrued and any expenses that may have been incurred by the Company by reason of such non-payment.

- (b) The notice shall specify the relevant Share and name a date (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made. The notice shall also state that in the event of non-payment the Share will be liable to be forfeited.

**8.4 Forfeiture:** If any notice issued pursuant to clause 8.3 is not complied with the Share may be forfeited by a resolution of the board. Such forfeiture shall include any distribution declared in respect of the forfeited Share and not made before the forfeiture.

**8.5 Disposal:** A forfeited Share may be disposed of in such manner as the board determines. The board may annul the forfeiture upon such terms as it determines.

**8.6 Ceasing to be a Shareholder:** A person whose Shares have been forfeited shall cease to have any rights in respect of the forfeited Shares, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable in respect of the Shares. The Shareholder's liability shall cease when the Company receives payment in full of all such money in respect of the forfeited Shares.

**8.7 Evidence of Forfeiture:** An entry in the share register that a Share has been forfeited on a date stated in the share register shall be conclusive evidence of those facts as against all persons claiming to be entitled to the Share.

**8.8 Sale of Forfeited Shares:** A forfeited Share may be disposed of in such manner as the board determines, and:

- (a) A Director may execute a transfer of forfeited Shares in favour of the person to whom the Shares are disposed of, and the Company may receive the consideration for such disposal.
- (b) Upon registration of such transfer the transferee shall be the Shareholder of such Shares discharged from all calls due prior to transfer.
- (c) The transferee shall not be bound to see to the application of the purchase money nor shall the transferee's title to the Shares be affected by any irregularity or invalidity in the forfeiture or disposal.
- (d) The remedy of the former Shareholder, and of any person claiming under or through the former Shareholder, shall be against the Company exclusively and in damages only.
- (e) If Shares are forfeited and sold, the proceeds of sale shall first be applied in payment of all costs and expenses of such sale and any attempted sale and then in satisfaction of unpaid calls, instalments or other amounts and interest on any such amounts. Any residue shall be paid to the former Shareholder, or to the executors, administrators or assigns of the former Shareholder.

## 9. DISTRIBUTIONS TO SHAREHOLDERS

**9.1 Solvency Test:** The board, if it is satisfied on reasonable grounds that the Company will immediately after the distribution, satisfy the solvency test, may authorise a distribution at a time, and of an amount, to any Shareholders it determines.

**9.2 No Interest:** No distribution shall bear interest against the Company.

**9.3 Deductions from Distribution:** 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 under any legislation to pay in respect of those Shares, including withholding and other taxes.

#### **9.4 Unclaimed Distribution:**

- (a) A distribution unclaimed for 1 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 5 years after having become payable may at the expiry of such period be forfeited by the board for the benefit of the Company, provided always that the board may, subject to compliance with the solvency test, at any time after such forfeiture annul the same and pay such distribution to the person producing evidence of entitlement.

### **10. TRANSFER OF SHARES AND OTHER SECURITIES**

**10.1 Power to Divide Share Register:** The share register may be divided into 2 or more registers kept in different places.

**10.2 Power to Refuse or Delay:** The board may refuse or delay the registration of a transfer of Shares:

- (a) If the Company has a lien over the Shares; or
- (b) If registration, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the transferor or the proposed transferee holding Shares of less than a minimum holding; or
- (c) Such action is permitted by the NZX Rules.

**10.3 Separate Share Parcels:** The Company may pursuant to section 95(4) of the Act separate any holding of Shares entered in the share register into separate parcels.

### **11. MEETINGS OF SHAREHOLDERS**

**11.1 Proceedings at Meetings:** The provisions of Schedule 1 to this Constitution govern proceedings at meetings of Shareholders and, with any necessary modification, proceedings at meetings of Interest Groups.

### **12. POWERS OF THE BOARD**

#### **12.1 Management by Board:**

- (a) The business and affairs of the Company shall be managed by, or under the direction or supervision of the board.
- (b) Subject to the Act and to this Constitution the board has all the powers necessary for managing and for directing and supervising the management of the business and affairs of the Company.
- (c) The board may delegate its power in accordance with the Act.

## 13. APPOINTMENT AND REMOVAL OF DIRECTORS

### 13.1 Election of Directors:

- (a) Directors may be elected by ordinary resolution. The Directors in office at the date of adoption of the Constitution shall be deemed to be Directors appointed pursuant to the Constitution.
- (b) 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.
- (c) The opening date (if any) for nominations, shall not be less than 3 Months, and the closing date for nominations shall not be more than 2 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 no less than 3 months prior to the date of the proposed annual meeting of Shareholders advising of the opening date for Director nominations and the closing date for Director nominations.
- (d) 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. The Company shall specify in such notice the board's view of whether or not the nominee would qualify as an independent Director.
- (e) No resolution to appoint or elect a Director (including a resolution to re-elect any Director under clause 13.2(b)) shall be put to holders of Shares unless:
  - (i) The resolution is for the appointment of 1 Director; or
  - (ii) The resolution is a single resolution for the appointment of 2 or more Directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.
- (f) Nothing in clause 13.1(e) prevents the election of 2 or more Directors by ballot or poll.
- (g) Apart from the restrictions in the Act, there is no restriction on the persons who may be nominated as directors, nor is there any precondition to the nomination of a Director other than compliance with the time limits in accordance with this clause.

### 13.2 Board May Appoint Directors:

- (a) The board may at any time appoint a person who is not disqualified under the Act to be a Director.
- (b) A person who is appointed as a Director by the board shall retire from office at the next annual meeting of the Company, but shall be eligible for re-election at that meeting.

### 13.3 Rotation:

- (a) At least one third of the Directors or, if their number is not a multiple of 3, then the number nearest to one third, shall retire from office at each annual meeting, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected. As between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

- (b) The following Directors shall be exempt from the obligation to retire pursuant to clause 13.3(a):
  - (i) Directors appointed by the board, who are subject to re-election pursuant to clause 13.2; and
  - (ii) one executive Director.
- (c) The executive Director referred to in clause 13.3(b)(ii) shall be included in the number of Directors upon which the calculation in clause 13.3(a) is based. The Directors referred to in clause 13.3(b)(i) shall be excluded from that number.

**13.4 Removal of Directors:**

- (a) A Director may be removed from office by ordinary resolution of which notice of the intention to so remove the Director has been given under the Act.
- (b) The office of Director is vacated if the person holding that office:
  - (i) Resigns; or
  - (ii) Is removed from office in accordance with the Act or clause 13.4(a); or
  - (iii) Becomes disqualified from being a Director pursuant to the Act; or
  - (iv) Dies; or
  - (v) Is absent from meetings of the board for more than 3 Months without the board's permission, and the board resolves that the office be vacated.

**14. ALTERNATE DIRECTORS**

**14.1 Appointment:**

- (a) Subject to clause 14.1(b), any Director may by notice to the Company appoint a person, not being a Director and not disqualified under the Act, to be the alternate of that Director.
- (b) No Director may appoint another person to act as alternate Director for him or her, except with the consent of a majority of the other Directors.
- (c) No Director shall appoint a deputy or agent otherwise than by way of appointment of an alternate.

**14.2 Powers:** Each alternate shall:

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

**14.3 No Agency:** An alternate shall not be deemed to be the agent of the appointing Director, and shall alone be responsible to the Company for his or her own acts and defaults.

**14.4 Cessation of Appointment:**

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

**15. MANAGING DIRECTOR**

**15.1 Appointment:** The board may appoint one of the Directors to the office of managing Director (by whatever name called) for a term not exceeding 5 years and on other such terms as the board thinks fit. A managing Director may be re-appointed at any time within 3 months before expiry of a term of appointment for a further period not exceeding 5 years, and may be re-appointed for a further term of 5 years in the same manner. Subject to the terms of any agreement entered into between the board and the Director concerned, the board may revoke the appointment. The appointment of a managing Director shall terminate automatically if he or she ceases to be a Director.

**15.2 Remuneration:** A managing Director will receive, in addition to remuneration for services as a Director, such remuneration and benefits as the board may determine.

**15.3 Powers:** Subject to the restrictions on delegation in the Act, the board may:

- (a) confer on a managing Director any of the powers exercisable by the board; and
- (b) without affecting the powers of a managing Director to act as a member of the board, impose such terms and conditions and such restrictions as the board thinks fit; and
- (c) alter or revoke any of the powers it confers under this clause.

**15.4 No power to appoint alternate:** The power to appoint alternate director conferred on Directors by this constitution does not confer on any managing Director the power to appoint an alternate managing Director.

**16. MEETINGS OF DIRECTORS**

**16.1 Proceedings at Meetings:**

- (a) The provisions of Schedule 2 to this Constitution govern the proceedings of the Board.
- (b) The Third Schedule to the Act shall not apply to the Company.

**17. REMUNERATION OF DIRECTORS**

**17.1 Fixing Remuneration:**

- (a) No remuneration shall be paid to a Director in his or her capacity as a Director of the Company or any subsidiary, unless that remuneration has been authorised by an ordinary resolution of Shareholders.

- (b) Each such resolution shall express Directors' remuneration as either:
  - (i) A monetary sum per annum payable to all directors of the Company taken together (which shall be distributed as the board determines); or
  - (ii) A monetary sum per annum payable to any person who from time to time holds office as a Director of the Company.
- (c) No resolution which increases the amount 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.
- (d) Nothing in this clause 17.1 shall affect the remuneration of executive directors in their capacity as executives.

#### **17.2 Expenses and Special Remuneration:**

- (a) Notwithstanding the provisions of clause 17.1:
  - (i) The Directors shall be entitled to be paid reasonable travelling accommodation and other expenses incurred in relation to the management of the Company; and
  - (ii) The board may approve remuneration for work not in the capacity of a director of the Company or a subsidiary.

#### **17.3 Payments Upon Cessation of Office:**

- (a) The Company may make a payment to a Director or former Director of the Company, or his or her dependants, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if the amount of the payment, or the method of calculation of the amount of that payment, is authorised by an ordinary resolution.
- (b) Nothing in this clause 17.3 shall affect any amount payable to an executive Director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

### **18. INDEMNITY AND INSURANCE**

**18.1 Indemnity to Maximum Extent Permitted by Law:** The Company shall indemnify every Director and employee of the Company and every wholly owned subsidiary (and may indemnify any Director or employee of a related company) in respect of:

- (a) Any costs incurred by him or her in any proceeding:
  - (i) That relates to liability for any act or omission in his or her capacity as a Director or employee; and
  - (ii) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued; and
- (b) Liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee and 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 related company.

**18.2 Insurance against Liability:** The Company may, with the prior approval of the board, effect insurance for a Director or employee of the Company or a related company in respect of:

- (a) Liability, not being criminal liability, for any act or omission in any Director's or employee's capacity as Director or employee;
- (b) Costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability;
- (c) Costs incurred by that Director or employee in defending any criminal proceedings in which he or she is acquitted.

## 19. GENERAL

**19.1 Manner of execution of deeds:** 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 a Director, or any other person authorised by the Board, whose signature must be witnessed, or as otherwise permitted by the Act.

**19.2 Distribution of surplus assets in kind:** If the Company is liquidated the liquidator may, with the approval of shareholders by special resolution, but subject to any other sanction required by the Act:

- (a) divide among the shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may;
- (b) fix such values for surplus assets as the liquidator considers to be appropriate; and
- (c) determine how the division will be carried out as between shareholders or different classes of shareholder;

and vest the whole or any part of any such surplus assets in trustees upon such trusts for the benefit of such of those shareholders as the liquidator thinks fit, but so that no shareholder is compelled to accept any shares or other securities on which there is any liability.

## Schedule 1

### Proceedings at Meetings of Shareholders

#### 1. Chairperson

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

#### 2. Notice of Meetings

- 2.1 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.
- 2.2 The notice must comply with the requirements of the NZX Rules and must state:
  - 2.2.1 The nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and
  - 2.2.2 The text of any special resolution to be submitted to the meeting.
- 2.3 An irregularity in a notice of a meeting is waived if all the Shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Shareholders agree to the waiver.
- 2.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Shareholder does not invalidate the proceedings at a meeting.

#### 3. Methods of Holding Meetings

- 3.1 A meeting of Shareholders may be held either:
  - 3.1.1 By a number of Shareholders who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - 3.1.2 By means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

#### 4. Quorum

- 4.1 Subject to clause **4.3** no business may be transacted at a meeting of Shareholders if a quorum is not present.

- 4.2 A quorum for a meeting of Shareholders is present if 3 Shareholders are present in person or by proxy or by representative, or if Shareholders or their proxies or their representatives are present who are between them able to exercise 1 per cent or more of the votes to be cast on the business to be transacted by the Company. For the purposes of determining whether a quorum is present a person who holds proxies for more than 1 Shareholder or who has been appointed as a representative by more than 1 Shareholder shall be counted not as proxy or representative for 1 Shareholder but according to the number of proxies or appointments held.
- 4.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- 4.3.1 In the case of a meeting called under section 121(b) of the Act, the meeting shall be dissolved; and
- 4.3.2 In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the Directors may appoint and, if at the adjourned meeting, a quorum is not present within 15 minutes after the time appointed for the meeting, the Shareholders or their proxies present are a quorum.

## 5. Adjournment

- 5.1 A meeting of Shareholders or any business being considered or remaining to be considered at which a quorum is present may be adjourned if:
- 5.1.1 The chairperson of the meeting in his or her sole discretion so determines; or
- 5.1.2 The chairperson of the meeting is directed by the meeting (in which case the meeting shall be adjourned).
- 5.2 No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. If a meeting of Shareholders is adjourned for less than 30 days, it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.
- 5.3 Without limiting clause **5.1**, a meeting of Shareholders or any business being considered or remaining to be considered may be adjourned indefinitely, if the meeting becomes so disorderly or protracted that in the opinion of the chairperson in his or her sole discretion the business of the meeting cannot be conducted in a proper and orderly manner.
- 5.4 If any meeting is adjourned pursuant to clauses **5.1** or **5.3**, then with respect to any unfinished business if such meeting:
- 5.4.1 A resolution not voted upon concerning the remuneration of the auditors will be deemed to have been withdrawn and a resolution authorising the board to fix the remuneration of the Auditors will be deemed to have been passed; and
- 5.4.2 The chairperson may direct that any other item of business uncompleted at the original meeting (of which notice was given in the notice convening the original meeting) be put to the Vote on a poll without further discussion.

## 6. Voting

- 6.1 In the case of a meeting of Shareholders held under clause **3.1.1**, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- 6.1.1 Voting by voice; or
  - 6.1.2 Voting by show of hands.
- 6.2 In the case of a meeting of Shareholders held under clause **3.1.2**, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 6.3 Subject to the terms of issue of any Share, and to clause **6.11**, each Shareholder present in person or by proxy or representative shall have 1 vote on a Vote by voices or by show of hands.
- 6.4 Subject to the terms of issue of any Share, and to clause **6.11**, a Share confers the right to 1 vote on a poll at a meeting of Shareholders.
- 6.5 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause **6.6**.
- 6.6 At a meeting of Shareholders a poll may be demanded by:
- 6.6.1 Not less than 5 Shareholders having the right to vote at the meeting; or
  - 6.6.2 A Shareholder or Shareholders representing not less than 10 per cent of the total voting rights of all Shareholders having the right to vote at the meeting; or
  - 6.6.3 A Shareholder or Shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 per cent of the total amount paid up on all Shares that confer that right; or
  - 6.6.4 The chairperson of the meeting.
- 6.7 A proxy notice appointing a proxy confers authority to demand or join in demanding a poll. A demand by a proxy has the same effect as a demand by the Shareholder appointing the proxy.
- 6.8 A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 6.9 The poll shall be taken at the time and in the manner determined by the chairperson of the meeting. Any other business may be proceeded with pending the taking of the poll.
- 6.10 If a poll is taken:
- 6.10.1 Votes must be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy or representative and Voting;
  - 6.10.2 The scrutineer shall be the Auditor unless the Auditor is unable or unwilling to act or unless the chairperson directs to the contrary in which the case the scrutineer shall be appointed by the chairperson;

6.10.3 The chairperson of the meeting shall finally determine in good faith the admission or rejection of any Vote;

6.10.4 The chairperson may declare the result of a poll when its outcome is known regardless of whether all Votes have been counted;

6.10.5 The chairperson may declare the result of the poll at or after the meeting.

6.11 Where there are Shares of the same class, some of which are fully paid and some of which are not fully paid, each Share which is not fully paid shall carry only a proportion of the vote which would be exercisable if the Share were fully paid, equivalent to the portion of the total issue price of that Share which has been paid (disregarding any amounts credited and amounts paid in advance of a call).

## 7. Proxies

7.1 A Shareholder may exercise the right to vote either by being present in person or by proxy.

7.2 A proxy for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy were the Shareholder.

7.3 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 Months.

7.4 A proxy form shall be sent with every notice of a meeting of quoted security holders and:

7.4.1 Shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the quoted security holder to instruct the proxy as to the casting of the vote; and

7.4.2 Shall not be sent with any name or office (e.g. chairperson of Directors) filled in as proxy holder (though 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.

7.5 No proxy is effective in relation to a meeting unless the proxy form is received at the place nominated in the notice of meeting not later than 48 hours before the start of the meeting.

7.6 A proxy is effective in relation to a meeting notwithstanding the previous:

7.6.1 Death of the principal; or

7.6.2 Insanity of the principal; or

7.6.3 Revocation of the proxy; or

7.6.4 Transfer of the Shares in respect of which the proxy is given;

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

## 8. Minutes

- 8.1 The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.
- 8.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## 9. Shareholder Proposals

- 9.1 A Shareholder may give written notice to the board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.
- 9.2 If the notice is received by the board not less than 20 business days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the board, the board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 9.3 If the notice is received by the board not less than 5 business days and not more than 20 business days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the board, the board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 9.4 If the notice is received by the board less than 5 business days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the board, the board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.
- 9.5 The board must give the proposing Shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.
- 9.6 The board is not required to include in or with the notice given by the board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous or vexatious.
- 9.7 Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

## 10. Corporations may Act by Representatives

- 10.1 Any corporation whether a company within the meaning of the Act or not and whether incorporated, registered or resident in New Zealand or in any other country which is a Shareholder may appoint a representative to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

## 11. Votes of Joint Holders

- 11.1 Where 2 or more persons are registered as the holder of a Share, the vote of the person named first in the Share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

**12. Postal Voting**

- 12.1 Postal voting shall only be permitted at any particular meeting if the board designates such meeting as one at which postal votes may be cast and so identifies the meeting in the relevant notice of meeting given to Shareholders. Where the Board has authorised postal voting then the procedures set out in the First Schedule to the Act shall apply.

**13. Other Proceedings**

- 13.1 Except as provided in this Schedule 1 the chairperson of a meeting of Shareholders may regulate the procedure at that meeting.

## Schedule 2

### Proceedings of the Board

#### 1. Chairperson

- 1.1 The Directors may elect one of their number as chairperson of the board.
- 1.2 The Director elected as chairperson holds that office until he or she dies or resigns or the Directors elect a chairperson in his or her place. The chairperson shall resign as chairperson effective from the commencement of the first Board meeting following the annual meeting and the Directors may elect a chairperson for the ensuing year. The chairperson so resigning shall be eligible for re-election as chairperson.
- 1.3 If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

#### 2. Notice of Meeting

- 2.1 A Director, or if requested by a Director to do so, an employee of the Company may convene a meeting of the board.
- 2.2 Reasonable notice of a meeting of the board must be given to all directors at their nominated postal, facsimile or other communication address or number. The notice must include the date, time, and place of the meeting and the matters to be discussed. The notice need not be in writing.
- 2.3 An irregularity in the giving of notice of a meeting is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

#### 3. Methods of Holding Meetings

- 3.1 A meeting of the board may be held either:
  - 3.1.1 By a number of the Directors who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
  - 3.1.2 By alternative means of communication pursuant to clause **3.2**.
- 3.2 The contemporaneous linking together by any audio or audio and visual communication, which enables instantaneous communication, of a number of the Directors not less than the quorum, whether or not any 1 or more of the directors is out of New Zealand, shall be deemed to constitute a meeting of the Directors. The following conditions shall be met in relation to such a meeting:
  - 3.2.1 Notice of any such meeting may be given by telephone, facsimile or email; and
  - 3.2.2 If all reasonable efforts are made to contact a Director or alternate Director to give notice of a meeting, including by telephone, and the Director or alternate Director cannot be contacted, notice of the meeting shall be deemed to have been given; and

- 3.2.3 Each of the Directors participating in the meeting by telephone must be able to hear each of the other Directors participating in the meeting; and
- 3.2.4 At the commencement of the meeting and at or about the closure of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Directors to all the other Directors participating; and
- 3.2.5 A Director may not leave the meeting unless he or she has previously obtained the express consent of the chairperson of the meeting. A director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously obtained the express consent of the chairperson to leave the meeting; and
- 3.2.6 A minute of the proceedings at such meeting 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.
- 3.3 The board may grant leave of absence to a Director in respect of the attendance at specified meetings of the board or for a specified time. For the duration of such leave notice of meetings of the board shall not need to be given to the relevant director pursuant to clauses **2.2** and **3.2** and such director shall, for the purposes of clause **7.1**, not be taken into account in determining a majority.

#### **4. Quorum**

- 4.1 A quorum for a meeting of the board is 3 of the Directors.
- 4.2 No business may be transacted at a meeting of Directors if a quorum is not present.
- 4.3 If notice of a meeting of the board has been properly given under clause **2** of this Schedule 2 and a quorum is not present within 30 minutes after the time appointed for the meeting any Director may by not less than 2 days notice to every Director convene a further meeting of the board. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any director present is a quorum.

#### **5. Voting**

- 5.1 Subject to clause **5.2** every Director has 1 vote.
- 5.2 A resolution of the board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on the resolution are in favour of it.
- 5.3 In the case of an equality of votes the chairperson shall have a second and casting vote, provided that if at any time the Constitution or Act enable 2 directors to form a quorum, the chairperson of a meeting at which only 2 Directors are present shall not have a casting vote.
- 5.4 Any Director who abstains from voting shall not be deemed to have voted for or against the proposal or issue being voted on, and accordingly shall not be required to sign any director's certificates required under the Act.

#### **6. Minutes**

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

- 6.2 Minutes that have been signed correct by the chairperson of the meeting, or by the chairperson of the next meeting, are prima facie evidence of the proceedings.
- 6.3 A copy of any written resolution under clause **7** shall be entered in the minute book of board proceedings.
7. Written Resolution
- 7.1 A resolution in writing, signed or assented to by a majority of the Directors then entitled to receive notice of a board meeting is as valid and effective as if it had been passed at a meeting of the board duly convened and held provided that notice of the proposed form of such resolution has been given to all directors at their nominated postal, facsimile or other communication address or number.
- 7.2 A resolution in writing may consist of 1 or more documents in like form, each signed by 1 or more Directors and a copy, facsimile transmission or other electronic reproduction of any such document signed or assented to by 1 or more Directors shall be conclusive evidence of the execution of the original document by those Directors.
8. Committees
- 8.1 The proceedings of committees of Directors shall be governed by this Schedule 2 with any necessary modifications.
9. Interested Directors
- 9.1 Subject to clause **9.2**, a Director shall not vote on any board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term interested bears the meaning assigned to that term in section 139 of the Act.
- 9.2 Notwithstanding clause **9.1**, a Director may vote in respect of and be counted in the quorum for the board for the purposes of a matter in which that Director is interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.
10. Other Proceedings
- 10.1 Except as provided in this Schedule 2, the board may regulate its own procedure.