

The Companies Act 1993  
**Constitution of**

Document Number

(for office use only)

Name Reservation Number

(for proposed company)

Company Number

(for existing company)

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**PART 1. THE SCHEDULE**

**1.1.** The schedule in this part 1 which is referred to later in this constitution is as follows:

**Appointment and removal of directors**

(1)(a) Directors may from time to time be appointed and removed from office in accordance with clause 19.1 [Appointment and removal of directors] by special resolution of the company; **or**

(b) The majority of votes required to appoint or remove from office the directors of the company in accordance with clause 19.1 [Appointment and removal of directors] must be at least ..... percent of the votes cast at a poll taken at a meeting of the company which is called for that purpose.

(c) If neither option (a) nor option (b) is deleted, or if option (a) is deleted but no percentage figure is inserted in option (b), then option (a) is deemed to apply.

**Quorum of shareholders of interest group**

(2) The number of members of an interest group which constitutes a quorum of an interest group in accordance with clause 4.4(2)(a) [Quorum of interest group] is: .....

**Quorum of shareholders**

(3) The number of shareholders which constitutes a quorum of shareholders in accordance with clause 17.4(2) [Quorum of shareholders] (holding the shares specified in that subclause) is: .....

**Quorum of directors**

(4) The number of directors which constitutes a quorum of directors in accordance with clause 25.4(1) [Quorum] is: .....

If no number is specified, then the quorum is a majority of directors.

**Issue of shares on registration or amalgamation**

(5) In accordance with clause 14.2(2) [Issue of shares on registration or amalgamation] the details of payment of initial shares on registration are:

Class of share set out below: 14.2(2)(a) Consideration set out below: 14.2(2)(b) Date payment due set out below:

14.2(2)(c) Place of payment:

Presented by		Account No.	
Postal Address		Telephone	
		Facsimile	

**PART 2. SPECIAL PROVISIONS**

**2.1.** The clauses in this part 2 [*Special Provisions*] are clauses paramount. Whenever these clauses paramount are inconsistent with clauses in the remainder of this constitution, these clauses paramount prevail, except to the extent to which the other clauses merely reflect statutory provisions which are mandatory.

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## CONTENTS

### PART 1. THE SCHEDULE

#### PART 2. SPECIAL PROVISIONS

##### PART 3. GENERAL

- 3.1. Interpretation
- 3.2. Capacity

##### PART 4. SHARES

#### 4. Share Capital and Variation of Rights

- 4.1. Rights and powers attaching to shares
- 4.2. Classes of shares
- 4.3. Redeemable shares
- 4.4. Alteration of shareholder rights
- 4.5. No notice of trusts
- 4.6. Personal representative may be registered
- 4.7. Statement of rights to be given to shareholders
- 4.8. Issue of share certificates
- 4.9. Duplicate share certificates
- 4.10. Share register
- 4.11. Evidence of legal title
- 4.12. Directors' duty
- 4.13. Liability of shareholders
- 4.14. Liability of former shareholders

#### 5. Company Holding its Own Shares

- 5.1. Company holding its own shares
- 5.2. Acquisition of company's own shares
- 5.3. Board may make offer to acquire shares
- 5.4. Special offers to acquire shares
- 5.5. Disclosure document
- 5.6. Cancellation of shares repurchased
- 5.7. Company may hold its own shares
- 5.8. Rights and obligations of shares company holds in itself suspended
- 5.9. Reissue of shares company holds in itself

#### 6. Assistance by Company in Purchase of Own Shares

- 6.1. Financial assistance
- 6.2. Solvency test
- 6.3. Special financial assistance
- 6.4. Disclosure document
- 6.5. Financial assistance not over 5 percent of shareholders' funds

#### 7. Calls on Shares

- 7.1. Power to make call
- 7.2. Time call made
- 7.3. Liability
- 7.4. Interest on calls in arrears
- 7.5. Extended meaning of call
- 7.6. Differentiation between shares
- 7.7. Calls in advance

#### 8. Suspension of Right to Dividends

- 8.1. Notice of suspension
- 8.2. Application of suspended dividends
- 8.3. Liability not discharged
- 8.4. Lifting of suspension

#### 9. Lien

- 9.1. Lien on shares
- 9.2. Power to sell
- 9.3. Authority to transfer
- 9.4. Proceeds of sale

#### 10. Transfer of Shares

- 10.1. Execution and registration
- 10.2. Form of transfer

- 10.3. Rights to refuse transfer
- 10.4. Where share certificate issued
- 10.5. Notice of refusal to register
- 11. Restriction upon Transfer of Shares**
  - 11.1. Proposing Transferor, Other Shareholders, Board Nominee
  - 11.2. Transfer Notice, Transferor's Valuation
  - 11.3. Expiry Date, Pre-emption Notice
  - 11.4. Fair Value
  - 11.5. Part acceptance not effective
  - 11.6. Revocation of Transfer Notice
  - 11.7. Board may execute transfer
  - 11.8. If no buyers
  - 11.9. Assignee to sell shares to shareholders
  - 11.10. Transfer by personal representatives
  - 11.11. Approval by all shareholders
  - 11.12. Permitted transfers

#### 12. Transmission of Shares

- 12.1. Recognition of title on death of shareholder
- 12.2. Election of registration
- 12.3. Upon election
- 12.4. Transfer of shares by operation of law
- 12.5. Entitlement to dividends and rights

#### 13. Forfeiture and Surrender of Shares

- 13.1. Failure to pay call or instalment
- 13.2. Notice of default
- 13.3. Forfeiture on non-compliance
- 13.4. Disposal of forfeited share
- 13.5. Liability in respect of forfeited shares
- 13.6. Notice of forfeiture
- 13.7. Declaration of forfeiture
- 13.8. Consideration for and transfer of forfeited share
- 13.9. Sums due other than calls

#### 14. Issue of New Shares

- 14.1. Time of issue of shares
- 14.2. Issue of shares on registration or amalgamation
- 14.3. Issue of other shares
- 14.4. Shareholder approval for issue of new shares
- 14.5. Same conditions apply to new shares
- 14.6. Entitlement to new shares
- 14.7. Consideration

### PART 5. SHAREHOLDERS

#### 15. Shareholder Powers

- 15.1. Powers reserved to shareholders
- 15.2. Ordinary resolutions
- 15.3. Special resolutions
- 15.4. Unanimous shareholder agreements
- 15.5. Solvency test
- 15.6. Management review by shareholders
- 15.7. Minority buy-out rights
- 15.8. Interest groups buy-out rights
- 15.9. Notice requiring purchase

#### 16. Meetings and Resolutions

- 16.1. Annual meeting of shareholders
- 16.2. Special meetings of shareholders
- 16.3. Resolution in lieu of meeting
- 16.4. Ascertaining shareholders

#### 17. Proceedings at Meetings of Shareholders

- 17.1. Chairperson
- 17.2. Notice of meetings
- 17.3. Methods of holding meetings
- 17.4. Quorum of shareholders
- 17.5. Voting

- 17.6. Proxies
- 17.7. Postal votes
- 17.8. Minutes
- 17.9. Shareholder proposals
- 17.10. Corporations may act by representatives
- 17.11. Votes of joint holders
- 17.12. Loss of voting rights if calls unpaid
- 17.13. Other proceedings
- 17.14. Vote before notice of revocation
- 17.15. Voting by mentally disordered and protected persons

**18. Distributions to Shareholders**

- 18.1. Solvency test
- 18.2. Dividends payable pari passu
- 18.3. Bonus shares in lieu of dividend
- 18.4. Declared according to amount paid up
- 18.5. Deduction of shareholders' debts
- 18.6. Mode of payment
- 18.7. Shareholder discounts

**PART 6. MANAGEMENT**

**19. Appointment and Removal of Directors**

- 19.1. Appointment and removal of directors
- 19.2. Qualification
- 19.3. Director's consent required

**20. Powers of Directors**

- 20.1. Management of company

**21. Self-Interest Transactions**

- 21.1. Restrictions on self-interest transactions
- 21.2. Meaning of "interested"
- 21.3. Disclosure of interest
- 21.4. Avoidance of transactions
- 21.5. Interested director may vote

**22. Duties of Directors**

- 22.1. Duty to act in good faith and in best interests of company
- 22.2. Subsidiary
- 22.3. Joint venture
- 22.4. Exercise of powers in relation to employees
- 22.5. Powers to be exercised for proper purpose
- 22.6. Directors to comply with Act and constitution
- 22.7. Reckless trading
- 22.8. Duty in relation to obligations
- 22.9. Director's duty of care
- 22.10. Keep minutes and records
- 22.11. Keep accounts
- 22.12. Annual return

**23. Directors Ceasing to Hold Office**

- 23.1. Director ceasing to hold office
- 23.2. Notice of change of directors

**24. Additional Directors**

- 24.1. Vary number of directors
- 24.2. Co-opt directors
- 24.3. Appointment of alternate directors

**25. Proceedings of Board of Directors**

- 25.1. Chairperson
- 25.2. Notice of meeting
- 25.3. Methods of holding meetings

- 25.4. Quorum
- 25.5. Voting
- 25.6. Minutes
- 25.7. Unanimous resolution
- 25.8. Other proceedings
- 25.9. Mediation or arbitration

**26. Managing Director**

- 26.1. Appointment
- 26.2. Powers
- 26.3. Remedy damages only

**27. Indemnity, Insurance, and Remuneration**

- 27.1. Indemnity and insurance
- 27.2. Remuneration and other benefits of directors

**PART 7. ADMINISTRATION**

**28. Authority to Bind Company**

- 28.1. Method of contracting

**29. Accounts**

- 29.1. Accounting records to be kept
- 29.2. Annual report
- 29.3. Annual report to shareholders
- 29.4. Shareholders may elect not to receive documents

**30. Inspection of Company Records**

- 30.1. Public inspection of company records
- 30.2. Inspection of company records by shareholders
- 30.3. Manner of inspection
- 30.4. Copies of documents
- 30.5. Information for shareholders
- 30.6. Inspection of records by directors
- 30.7. Company records

**31. Audit**

- 31.1. When no auditors required
- 31.2. When auditors required

**32. Notices**

- 32.1. Service
- 32.2. Joint holders
- 32.3. Mentally disordered or protected person, deceased or bankrupt estate
- 32.4. Notice of meeting
- 32.5. Service on director or shareholder
- 32.6. Time of service by facsimile
- 32.7. Time of service by post
- 32.8. Proof of service

**33. Address for Service**

- 33.1. Address for service
- 33.2. Change of address for service
- 33.3. No address supplied

**34. Secrets of Company**

- 34.1. Shareholders not entitled
- 34.2. Use of company information

**35. Secretary**

- 35.1. Appointment and removal

**36. Liquidation**

- 36.1. Surplus assets

**37. Removal from the New Zealand Register**

- 37.1. Request for removal

**Certification of constitution**

## PART 3. GENERAL

### Interpretation

**3.1.** (1) In this constitution, unless the context otherwise requires:

**The Act** — means the Companies Act 1993.

**Definitions in Act** — Words or expressions contained in this constitution bear the same meanings as in the Act (or any statutory modification of it) in force at the date on which this constitution becomes binding on the company.

**Exempt company** — means a company, other than an overseas company or an issuer, where, in the accounting period for which financial statements are required all of the following apply:

(a) At least two of the following paragraphs apply:

(i) As at the balance date the value of the total assets of the company did not exceed \$1,000,000 or such other amount as is, from time to time, prescribed by Order in Council for the purposes of the *Financial Reporting Act 1993*; or

(ii) The turnover of the company did not exceed \$2,000,000 or such other amount as is, from time to time, prescribed by Order in Council for the purposes of the *Financial Reporting Act 1993*; or

(iii) As at the balance date, the company has five or fewer full time equivalent employees.

(b) The company was not a subsidiary of another body corporate or association of persons; and

(c) The company did not have any subsidiaries.

[See section 2 of the *Financial Reporting Act 1993*.]

**Headings** — Headings and cross references to other clauses of this constitution and to legislation are inserted for convenience only and do not form part of this document for the purposes of interpretation.

**Masculine, feminine, and neuter** — Words which import any gender include the other genders.

**Month** — means calendar month.

**Person** — includes partnerships, associations, and corporations as well as individuals.

**Protection attorney** — means an attorney who is appointed and acting under the Protection of Personal and Property Rights Act 1988.

**Schedule** — means (where not otherwise defined) a schedule of the Companies Act 1993.

**Secretary** — means any person appointed to perform the duties of the secretary of the company.

**Section** — means (where not otherwise defined) a section of the Companies Act 1993.

**Singular and plural** — Words which import the singular include the plural number and words which import the plural include the singular number as the case may be.

**Subclause** — means (where not otherwise defined) a subclause within the same clause as the reference occurs.

**Writing** — References to writing (including written) include printing, typing, and other modes of representing words in visible form including electronic means.

(2) **Present tense applies to future time** — This constitution is always speaking. Whenever any matter or thing is expressed in the present tense, then the matter or thing is applied to the circumstances as they arise, so that effect may be given to this constitution and every part of it according to its spirit, true intent, and meaning.

### Capacity

**3.2.** Subject to the Act, any other enactment, and the general law, the company has, both inside and outside New Zealand:

(a) Full capacity to carry on or undertake any business or activity, do any act, or enter into any transaction; and

(b) For the purposes of paragraph (a), full rights, powers, and privileges.

[See section 16 [*Capacity and powers*].]

## PART 4. SHARES

### 4. SHARE CAPITAL AND VARIATION OF RIGHTS

#### Rights and powers attaching to shares

**4.1.** (1) Subject to subclause (2), a share confers on the holder:

(a) The right to 1 vote on a poll at a meeting of the company on any resolution, including any resolution to:

(i) Appoint or remove a director or auditor;

(ii) Adopt a constitution;

(iii) Alter this constitution;

(iv) Approve a major transaction;

(v) Approve an amalgamation under section 221 [*Approval of amalgamation proposal*];

(vi) Put the company into liquidation.

(b) Subject to clauses 8 [*Suspension of right to dividends*], 18.4 [*Declared according to amount paid up*] and 18.5 [*Deduction of shareholders' debts*], the right to an equal share in dividends authorised by the board.

(c) Subject to clause 36.1 [*Surplus assets*], the right to an equal share in the distribution of the surplus assets of the company.

[See section 36(1) [*Rights and powers attaching to shares*].]

(2) Subject to clause 18.2 [*Dividends payable pari passu*], the rights specified in subclause (1) may be negated, altered, or added to by this constitution, whether in part 2 [*Special Provisions*] or elsewhere, or in accordance with the terms on which the share is issued under clause 14.2(3) [*Amalgamated company*], or clause 14.3 [*Issue of other shares*], or clause 14.4 [*Shareholder approval for issue of new shares*].

[See section 36(2).]

#### Classes of shares

**4.2.** (1) Different classes of shares may be issued by the company.

(2) Without limiting subclause (1), shares may:

(a) Be redeemable within the meaning of clause 4.3 [*Redeemable shares*]; or

(b) Confer preferential rights to distributions of capital or income; or

(c) Confer special, limited, or conditional voting rights; or

(d) Not confer voting rights.

[See section 37 [*Types of shares*].]

#### Redeemable shares

**4.3.** Any shares may, with the sanction of a special resolution, be issued on the terms that they may be redeemed by the company:

(a) At the option of the company; or

(b) At the option of the holder of the share; or

(c) On a date specified in this constitution;

for a consideration that is:

(d) Specified; or

(e) To be calculated by reference to a formula; or

(f) Required to be fixed by a suitably qualified person who is not associated with or interested in the company.

[See section 68 [*Meaning of "redeemable"*].]

[For qualifications refer to section 69 [*Redemption at option of company*] to section 75 [*Redemption on fixed date*].]

#### Alteration of shareholder rights

##### Special resolution of interest group

**4.4.** (1) The company must not take action that affects the rights attached to shares unless that action has been approved by a special resolution of each interest group.

[See section 117(1) [*Alteration of shareholder rights*].]

##### Quorum of interest group

(1A) No business may be transacted at a meeting of an interest group if a quorum is not present. If a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is adjourned to the same day in the following week, at the same time and place, or to such other date, time, and place as the directors may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the members of the interest group present or their proxies are a quorum.

(2) A quorum for a meeting of an interest group is present if members of that interest group or their proxies are present or have cast postal votes who between them:

- (a) Total the number specified in the schedule in clause 1.1; or
- (b) If no number is specified, then are able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

#### **Rights attached to shares**

(3) For the purposes of subclause (1) [*Special resolution of interest group*], the rights attached to shares include:

- (a) The rights, privileges, limitations, and conditions attached to the share by the Act or by this constitution, including voting rights and rights to distributions;
- (b) Pre-emptive rights arising under clause 14.6 [*Entitlement to new shares*] or elsewhere under this constitution;
- (c) The right to have the procedure in this clause, and any further procedure required elsewhere by this constitution for the amendment or alteration of rights, observed by the company; and
- (d) The right that a procedure required elsewhere by this constitution for the amendment or alteration of rights not be amended or altered.

[See section 117(2).]

#### **Issue of further shares**

(4) For the purposes of subclause (1), the issue of further shares ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions, is deemed to be action affecting the rights attached to the existing shares, unless:

- (a) This constitution elsewhere expressly permits the issue of further shares ranking equally with, or in priority to, those shares; or
- (b) The issue is made in accordance with the pre-emptive rights of shareholders under clause 14.6 [*Entitlement to new shares*] or elsewhere under this constitution.

[See section 117(3).]

[Refer to section 116 [*Meaning of "classes" and "interest groups"*] to section 119 [*Actions not invalid*].]

#### **No notice of trusts**

**4.5.** No notice of a trust, whether express, implied, or constructive, may be entered on the share register.

[See section 92 [*Trusts not to be entered on register*].]

#### **Personal representative may be registered**

**4.6.** (1) Notwithstanding clause 4.5 [*No notice of trusts*], a personal representative of a deceased person whose name is registered in the share register as holder of that share is entitled to be registered as the holder of that share as personal representative.

[See section 93(1) [*Personal representative may be registered*].]

#### **Beneficial entitlement where not registered**

(2) Notwithstanding clause 4.5 [*No notice of trusts*], a personal representative of a deceased person beneficially entitled to a share in the company (being a share registered in the share register) is, with the consent of the company and the registered holder of that share, entitled to be registered as the holder of that share as personal representative.

[See section 93(2).]

#### **No notice of trust**

(3) The registration of a trustee, executor, or administrator pursuant to this clause does not constitute notice of a trust.

[See section 93(3).]

#### **Statement of rights to be given to shareholders**

**4.7.** (1) The company must issue to a shareholder, on request, a statement that sets out:

- (a) The class of shares held by the shareholder, the total number of shares of that class issued by the company and the number of shares of that class held by the shareholder; and
- (b) The rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the shares held by the shareholder; and
- (c) The relationship of the shares held by the shareholder to other classes of shares.

[See section 83(1) [*Statement of rights to be given to shareholders*].]

#### **When no statement required**

(2) The company is not obliged to provide a shareholder with a statement if:

- (a) A statement has been provided within the previous 6 months; and
- (b) The shareholder has not acquired or disposed of shares since the previous statement was provided; and
- (c) The rights attached to shares of the company have not been altered since the previous statement was provided; and
- (d) There are special circumstances that make it reasonable for the company to refuse the request.

[See section 83(2).]

#### **Not evidence of title**

(3) The statement is not evidence of title to the shares or of any of the matters set out in it.

[See section 83(3).]

(4) The statement must state in a prominent place that it is not evidence of title to the shares or of the matters set out in it.

[See section 83(4).]

#### **Issue of share certificates**

**4.8.** (1) A shareholder may apply to the company for a certificate relating to some or all of his or her shares in the company.

[See section 95(3).]

(2) Subclause (1) does not apply if the company's shares can be transferred under the Securities Transfer Act 1991 without a share certificate.

[See section 95(2).]

#### **Duties of company**

(3) On receipt of an application for a share certificate, the company must within 20 working days after receiving the application:

- (a) If the application relates to some but not all of the shares, separate the shares shown in the register as owned by the applicant into separate parcels: one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares; and
- (b) In all cases, send to the shareholder a certificate stating:

- (i) The name of the company; and
- (ii) The class of shares held by the shareholder; and
- (iii) The number of shares held by the shareholder to which the certificate relates.

[See section 95(4).]

#### **Joint holding**

(4) In respect of shares held jointly by several persons the company need not issue more than 1 certificate. Delivery of a certificate for a share to one of several joint holders

is sufficient delivery to all holders.

#### **Duplicate share certificates**

**4.9.** If a share certificate is defaced, lost, or destroyed, then it may be renewed on whatever terms (if any) as to evidence and indemnity and the payment of out-of-pocket expenses of the company in investigating the evidence the board thinks fit.

#### **Share register**

**4.10.** (1) The company must maintain a share register that records the shares issued by the company and states:

(a) Whether, under this constitution or the terms of issue of the shares, there are any restrictions or limitations on their transfer; and

(b) Where any document that contains the restrictions or limitations may be inspected.

[See section 87(1) [Company to maintain share register].]

#### **Details required**

(2) The share register must state, with respect to each class of shares:

(a) The names, alphabetically arranged, and the latest known address of each person who is, or has within the last 10 years been, a shareholder; and

(b) The number of shares of that class held by each shareholder within the last 10 years; and

(c) The date of any:

(i) Issue of shares to; or

(ii) Repurchase or redemption of shares from; or

(iii) Transfer of shares by or to;

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

[See section 87(2).]

(3) An agent may maintain the share register.

[See section 87(3).]

#### **Evidence of legal title**

**4.11.** (1) Subject to section 91 [Power of Court to rectify share register], the entry of the name of a person in the share register as holder of a share is prima facie evidence that legal title to the share vests in that person.

[See section 89(1) [Share register as evidence of legal title].]

#### **Entitlement to rights**

(2) The company may treat the registered holder of a share as the only person entitled to:

(a) Exercise the right to vote attaching to the share; and

(b) Receive notices; and

(c) Receive a distribution in respect of the share; and

(d) Exercise the other rights and powers attaching to the share.

[See section 89(2).]

#### **Directors' duty**

**4.12.** It is the duty of each director to take reasonable steps to ensure that the share register is properly kept and that share transfers are promptly entered on it in accordance with clause 10 [Transfer of shares].

[See section 90 [Directors' duty to supervise share register].]

#### **Liability of shareholders**

**4.13.** (1) A shareholder is not liable for an obligation of the company by reason only of being a shareholder.

[See section 97(1) [Liability of shareholders].]

#### **Liability limited**

(2) The liability of a shareholder is limited to:

(a) Any amount unpaid on a share held by the shareholder;

(b) Any liability expressly provided for elsewhere in this constitution;

(c) Any liability under sections 131 to 137 that arises through section 126(2);

(d) Any liability to repay a distribution recoverable under section 56; and

(e) Any liability under section 100 of the Act.

[See section 97(2).]

#### **Liability of former shareholders**

**4.14.** (1) A former shareholder who ceased to be a shareholder during the specified period is liable to the company in respect of any amount unpaid on the shares held by that former shareholder or any liability provided for in this constitution for which that former shareholder was liable to the company, if the Court is satisfied that the shareholders of the company are unable to discharge any liability:

(a) For any amount unpaid on shares held by them; or

(b) Expressly provided for elsewhere in this constitution.

[See section 98(1) [Liability of former shareholders].]

#### **Debts contracted later**

(2) A former shareholder is not liable under subclause (1) for any debt or liability of the company which was contracted after ceasing to be a shareholder.

[See section 98(2).]

#### **Reregistered companies**

(3) Subclauses (1) and (2) apply, with whatever modifications are necessary, in relation to an existing company that has become reregistered in accordance with the Companies Reregistration Act 1993 and as if the reference to a former shareholder included a reference to a person who was a member of the company before the reregistration.

[See section 98(3).]

#### **Meaning of specified period**

(4) For the purposes of subclause (1), "specified period" has the meaning defined in section 98(6).

[Where limited liability becomes unlimited liability, refer to sections 98(4) and 98(5).]

## **5. COMPANY HOLDING ITS OWN SHARES**

### **Company holding its own shares**

**5.1.** (1) The company may, pursuant to clauses 5.2 [Acquisition of company's own shares] to 5.6 [Cancellation of shares repurchased], and sections 59 [Acquisition of company's own shares] to 66 [Cancellation of shares repurchased], clause 15.4 [Unanimous shareholder agreements], and sections 110 [Shareholder may require company to purchase shares] to 112 [Purchase by company], but not otherwise, hold its own shares.

[See section 58(1) [Company may acquire its own shares].]

### **Cancellation if non-compliance**

(2) Shares acquired by the company otherwise than in accordance with:

(a) Sections 59 [Acquisition of company's own shares] to 66 [Cancellation of shares repurchased]; and

(b) Sections 110 [Shareholder may require company to repurchase shares] to 112 [Purchase by company]; are deemed to be cancelled immediately on acquisition.

[See section 58(2).]

### **Notice to Registrar**

(3) Within 10 working days of the purchase or acquisition of the shares, the board must ensure that notice in the prescribed form of the purchase or acquisition is delivered to the Registrar for registration.

[See section 58(3).]

### **Acquisition of company's own shares**

**5.2.** (1) Subject to clause 18.1 [Solvency test], the company is expressly permitted to purchase or otherwise acquire shares issued by it.

[See section 59(1) [Acquisition of company's own shares].]

(2) The purchase or acquisition must be made in accordance with clause 5.3 [Board may make offer to acquire shares].

[See section 59(2).]

#### **Board may make offer to acquire shares**

**5.3.** (1) The board may make an offer to acquire shares issued by the company if the offer is:

(a) An offer to all shareholders to acquire a proportion of their shares, that:

(i) Would, if accepted, leave unaffected relative voting and distribution rights; and

(ii) Affords a reasonable opportunity to accept the offer; or

(b) An offer to 1 or more shareholders to acquire shares:

(i) To which all shareholders have consented in writing; or

(ii) That is expressly permitted elsewhere by this constitution, and is made in accordance with clause 5.4 [Special offers to acquire shares].

[See section 60(1) [Board may make offer to acquire shares].]

#### **Additional shares**

(2) Where an offer is made in accordance with subclause (1)(a):

(a) The offer may also permit the company to acquire additional shares from a shareholder to the extent that another shareholder does not accept the offer or accepts the offer only in part; and

(b) If the number of additional shares exceeds the number of shares that the company is entitled to acquire, the number of additional shares must be reduced rateably.

[See section 60(2).]

#### **Prior resolution**

(3) The board may make an offer under subclause (1) only if it has previously resolved:

(a) That the acquisition in question is in the best interests of the company; and

(b) That the terms of the offer and the consideration offered for the shares are fair and reasonable to the company; and

(c) That it is not aware of any information that will not be disclosed to shareholders:

(i) Which is material to an assessment of the value of the shares; and

(ii) As a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.

[See section 60(3).]

#### **Reasons for conclusions**

(4) The resolution must set out in full the reasons for the directors' conclusions.

[See section 60(4).]

#### **Certificate**

(5) The directors who vote in favour of a resolution required by subclause (3) [Prior resolution] must sign a certificate as to the matters set out in that subclause, and may combine it with the certificate required by clause 18.1 [Solvency test] and any certificate required under clause 5.4 [Special offers to acquire shares].

[See section 60(5).]

#### **Change in circumstances**

(6) The board must not make an offer under subclause (1) if, after the passing of a resolution under subclause (3) [Prior resolution] and before the making of the offer to acquire the shares:

(a) The board ceases to be satisfied that the acquisition in question is in the best interests of the company; or

(b) The board ceases to be satisfied that the terms of the offer and the consideration offered for the shares are fair and reasonable to the company; or

(c) The board becomes aware of any information that will not be disclosed to shareholders:

(i) Which is material to an assessment of the value of the shares; or

(ii) As a result of which the terms of the offer and the consideration offered for the shares would be unfair to shareholders accepting the offer.

[See section 60(6).]

#### **Special offers to acquire shares**

**5.4.** (1) The board may make an offer under clause 5.3(1)(b)(ii) [Board may make offer to acquire shares] only if it has previously resolved:

(a) That the acquisition is of benefit to the remaining shareholders; and

(b) That the terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.

[See section 61(1) [Special offers to acquire shares].]

#### **Reasons for conclusions**

(2) The resolution must set out in full the reasons for the directors' conclusions.

[See section 61(2).]

#### **Certificate**

(3) The directors who vote in favour of a resolution required by subclause (1) must sign a certificate as to the matters set out in that subclause.

[See section 61(3).]

#### **Change in circumstances**

(4) The board must not make an offer under clause 5.3(1)(b)(ii) [Board may make offer to acquire shares] if, after passing of a resolution under subclause (1) and before the making of the offer to acquire the shares, the board ceases to be satisfied that:

(a) The acquisition is of benefit to the remaining shareholders; or

(b) The terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.

[See section 61(4).]

#### **Disclosure**

(5) Before an offer is made pursuant to a resolution under subclause (1), the company must send out to each shareholder a disclosure document that complies with clause 5.5 [Disclosure document].

[See section 61(5).]

(6) The offer must be made not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder.

[See section 61(6).]

#### **Right to object**

(7) A shareholder or the company may apply to the Court for an order restraining the proposed acquisition on the grounds that:

(a) It is not in the best interests of the company and of benefit to remaining shareholders; or

(b) The terms of the offer and the consideration offered for the shares are not fair and reasonable to the company and remaining shareholders.

[See section 61(8).]

#### **Disclosure document**

**5.5.** For the purposes of clause 5.4 [Special offers to acquire shares], a disclosure document is a document that sets out:

(a) The nature and terms of the offer, and if made to specified shareholders, to whom it will be made; and

(b) The nature and extent of any relevant interest of any director in any shares the subject of the offer; and

(c) The text of the resolution required by clause 5.4 [Special offers to acquire shares], together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed acquisition.

[See section 62 [Disclosure document].]

#### **Cancellation of shares repurchased**

**5.6.** Subject to clauses 5.7 [*Company may hold its own shares*] to 5.9 [*Reissue of shares company holds in itself*], shares that are acquired by a company pursuant to clause 5.2 [*Acquisition of company's own shares*] or section 112 [*Purchase by company*] are deemed to be cancelled immediately on acquisition, but may be reissued in accordance with Part VI of the Act [*Shares*].

[*See section 66 [Cancellation of shares repurchased].*]

#### **Company may hold its own shares**

**5.7.** (1) Shares acquired by the company pursuant to clause 5.2 [*Acquisition of company's own shares*] or section 112 are not deemed to be cancelled under clause 5.6 [*Cancellation of shares repurchased*] if:

(a) The board resolves that the shares concerned shall not be cancelled on acquisition; and

(b) The number of shares acquired, when aggregated with shares of the same class held by the company pursuant to this clause at the time of the acquisition, does not exceed 5 percent of the shares of that class previously issued by the company, excluding shares previously deemed to be cancelled under clause 5.6.

[*See section 67A(1) [Company may hold its own shares].*]

#### **To be held by company in itself**

(2) Shares acquired by the company pursuant to clause 5.2 [*Acquisition of company's own shares*] or section 112 that, pursuant to this clause, are not deemed to be cancelled must be held by the company in itself.

[*See section 67A(2).*]

#### **Discretion to cancel**

(3) A share that the company holds in itself under subclause (2) [*To be held by company in itself*] may be cancelled by the board resolving that the share is cancelled; and the share is deemed to be cancelled on the making of the resolution.

[*See section 67A(3).*]

#### **Rights and obligations of shares company holds in itself suspended**

**5.8.** (1) The rights and obligations attaching to a share that the company holds in itself pursuant to clause 5.7 [*Company may hold its own shares*] shall not be exercised by or against the company while it holds the share.

[*See section 67B(1) [Rights and obligations of shares company holds in itself suspended].*]

#### **Suspension of voting rights and distributions**

(2) Without limiting subclause (1), while the company holds a share in itself pursuant to clause 5.7 [*Company may hold its own shares*], the company shall not:

(a) Exercise any voting rights attaching to the share; or

(b) Make or receive any distribution authorised or payable in respect of the share.

[*See section 67B(2).*]

#### **Reissue of shares company holds in itself**

**5.9.** (1) Subject to subclause (2) [*Electronic transfer of securities*], clause 14.7 [*Consideration*] applies to the transfer of a share held by the company in itself as if the transfer were the issue of the share under clause 14.3 [*Issue of other shares*] or clause 14.4 [*Shareholder approval for issue of new shares*].

[*See section 67C(1) [Reissue of shares company holds in itself].*]

#### **Electronic transfer of securities**

(2) Clause 14.7(2) [*Directors' certificate*] does not apply to the transfer of a share held by the company in itself if the share is transferred by a system approved under section 7 of the Securities Transfer Act 1991.

[*See section 67C(2).*]

#### **Share transfer not subject to Act or constitution**

(3) Subject to subclause (1), the transfer of a share by the company in itself is not subject to any provisions in the Act or in this constitution relating to the issue of shares, except to the extent that this constitution expressly applies those provisions.

[*See section 67C(3).*]

## **6. ASSISTANCE BY COMPANY IN PURCHASE OF OWN SHARES**

### **Financial assistance**

**6.1.** (1) The company may give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, or by its holding company, whether directly or indirectly, only if the financial assistance is given in accordance with subclause (2) [*Prior resolution*] and:

(a) All shareholders have consented in writing to the assistance; or

(b) Clause 6.3 [*Special financial assistance*] is followed; or

(c) The financial assistance is given in accordance with clause 6.5 [*Financial assistance not over 5 percent of shareholders' funds*].

[*See section 76(1) [Financial assistance].*]

### **Prior resolution**

(2) The company may give financial assistance under subclause (1) if the board has previously resolved that:

(a) The company should provide the assistance; and

(b) Giving the assistance is in the best interests of the company; and

(c) The terms and conditions under which the assistance is given are fair and reasonable to the company.

[*See section 76(2).*]

### **Reasons for conclusions**

(3) The resolution must set out in full the grounds for the directors' conclusions.

[*See section 76(3).*]

### **Certificate**

(4) The directors who vote in favour of a resolution under subclause (2) [*Prior resolution*] must sign a certificate as to the matters set out in that subclause and may combine that certificate with the certificate required under clause 6.2 [*Solvency test*] and any certificate required under clause 6.3 [*Special financial assistance*].

[*See section 76(4).*]

### **Change in circumstances**

(5) A company must not give financial assistance under subclause (1) if, after passing a resolution under subclause (2) [*Prior resolution*] and before the assistance is given, the board ceases to be satisfied that:

(a) The giving of the assistance is in the best interests of the company; or

(b) The terms and conditions under which the assistance is proposed are fair and reasonable to the company.

[*See section 76(5).*]

### **Loan, guarantee, and security**

(6) For the purposes of this clause "financial assistance" includes a loan, a guarantee, and the provision of a security.

[*See section 76(6).*]

### **Solvency test**

**6.2.** (1) The company must not give any financial assistance under clause 6.1 [*Financial assistance*] unless the board is satisfied on reasonable grounds that the company will, immediately after the giving of the financial assistance, satisfy the solvency test.

[*See section 77(1) [Company must satisfy solvency test].*]

### **Certificate**

(2) The directors who vote in favour of giving financial assistance must sign a certificate stating that, in their opinion, the company will, immediately after the financial assistance is given, satisfy the solvency test and the grounds for that opinion.

[*See section 77(2).*]

### **Change in circumstances**

(3) If, after a resolution is passed under subclause (1) and before the financial assistance is given, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the financial assistance is given, satisfy the solvency test, any financial assistance given by the company is deemed not to have been authorised.

[See section 77(3).]

#### **Assets and liabilities**

(4) In applying the solvency test for this clause, “assets” and “liabilities” have the meanings given by section 77(6).

[See section 77(6).]

#### **Special financial assistance**

**6.3.** (1) Financial assistance may be given under clause 6.1(1)(b) [*Financial assistance*] only if the board has previously resolved:

(a) That giving the assistance in question is of benefit to those shareholders not receiving assistance; and

(b) That the terms and conditions under which the assistance is given are fair and reasonable to those shareholders not receiving the assistance.

[See section 78(1) [*Special financial assistance*].]

#### **Reasons**

(2) The resolution must set out in full the reasons for the directors’ conclusions.

[See section 78(2).]

#### **Certificate**

(3) The directors who vote in favour of a resolution required by subclause (1) must sign a certificate as to the matters set out in that subclause.

[See section 78(3).]

#### **Change in circumstances**

(4) The company must not give financial assistance under clause 6.1(1)(b) [*Financial assistance*] if, after the passing of a resolution under subclause (1) and before the financial assistance is given, the board ceases to be satisfied that:

(a) The giving of the financial assistance is of benefit to those shareholders not receiving the assistance; or

(b) The terms and conditions under which the assistance is given are fair and reasonable to those shareholders not receiving it.

[See section 78(4).]

#### **Disclosure document**

(5) Before the financial assistance is given under clause 6.1(1)(b) [*Financial assistance*], the company must send to each shareholder a disclosure document that complies with clause 6.4 [*Disclosure document*].

[See section 78(5).]

#### **Time limit**

(6) The assistance may be given not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder.

[See section 78(6).]

#### **Right to object**

(7) A shareholder or the company may apply to the Court for an order restraining the proposed assistance being given on the ground that:

(a) It is not in the best interests of the company and of benefit to those shareholders not receiving the assistance; or

(b) The terms and conditions under which the assistance is to be given are not fair and reasonable to the company and to those shareholders not receiving the assistance.

[See section 78(7).]

#### **Disclosure document**

**6.4.** For the purposes of clause 6.3 [*Special financial assistance*], a disclosure document is a document that sets out:

(a) The nature and terms of the financial assistance to be given, and to whom it will be given; and

(b) If the financial assistance is to be given to a nominee for

another person, the name of that other person; and

(c) The text of the resolution required by clause 6.3(1), together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed transaction.

[See section 79 [*Disclosure document*].]

#### **Financial assistance not over 5 percent of shareholders’ funds**

Financial assistance may be given under clause 6.1(1)(c) [*Financial assistance*], only if:

#### **Amount**

(a) The amount of financial assistance, together with any other financial assistance given by the company pursuant to this paragraph, repayment of which remains outstanding, would not exceed 5 percent of the aggregate of amounts received by the company in respect of the issue of shares and reserves as disclosed in the most recent financial statements of the company that comply with section 10 of the Financial Reporting Act 1993, and the company receives fair value in connection with the assistance; and

#### **Notice**

(b) Within 10 working days of providing the financial assistance, the company sends to each shareholder a notice containing the following particulars:

(i) The class and number of shares in respect of which the financial assistance has been provided;

(ii) The consideration paid or payable for the shares in respect of which the financial assistance has been provided;

(iii) The identity of the person receiving the financial assistance and, if that person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner;

(iv) The nature and, if quantifiable, the amount of the financial assistance.

[See section 80(1) [*Financial assistance not exceeding 5 percent of shareholders’ funds*].]

## **7. CALLS ON SHARES**

#### **Power to make call**

**7.1.** (1) Subject to the terms of issue, the board may by resolution make calls upon the shareholders in respect of any money unpaid on their shares which is not (by the terms of issue of the shares) made payable at fixed times.

#### **Notice**

(2) Each shareholder must (subject to receiving at least 14 days’ notice specifying the time and place of payment) pay to the company (at the time and place specified) the amount which was called on that shareholder’s shares.

#### **Equal treatment**

(3) A call may be revoked or postponed as the board resolves. Subject to clause 7.6 [*Differentiation between shares*] and to the terms of issue of any class of shares, a call, postponement, or revocation applies to all the shareholders of the class equally.

#### **Time call made**

**7.2.** (1) Unless the board resolves to the contrary, a call is deemed to be made at the time when the resolution of the board authorising the call was passed.

(2) The board may resolve that a call is required to be paid by instalments.

#### **Liability**

#### **Prior holders not liable**

**7.3.** (1) Where a share renders its holder liable to calls, or otherwise imposes a liability on its holder, that liability attaches to the holder of the share for the time being, and not to the prior holder of the share, whether or not the

liability became enforceable before the share was registered in the name of the current holder.

[See section 100(1) [*Liability for calls*].]

#### **Subsequent holders not liable**

(2) Where:

(a) All or part of the consideration payable in respect of the issue of a share remains unsatisfied; and

(b) The person to whom the share was issued no longer holds that share;

liability in respect of that unsatisfied consideration does not attach to subsequent holders of the share, but remains the liability of the person to whom the share was issued, or of any other person who assumed that liability at the time of issue.

[See section 100(2).]

#### **Joint and several**

(3) The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

#### **Interest on calls in arrears**

**7.4.** (1) If a sum which is called in respect of a share is not paid before or on the day which is appointed for payment of the sum, then the person from whom the sum is due must pay interest on the sum (from the day appointed for payment of the sum to the time of payment) at the rate and at the time which the board resolves.

(2) The board may waive payment of that interest wholly or in part.

#### **Proof**

(3) At any trial or hearing for recovery of money due on a call, it is sufficient to prove:

(a) That the shareholder who is being sued is entered on the share register as holder (or as one of the holders) of the shares on which the debt is due; and

(b) That the resolution making that call is entered in the board's minute book; and

(c) That notice of the call was given to the shareholder in accordance with this constitution.

(4) Proof of those matters is conclusive evidence of the debt.

(5) No evidence is needed of the appointment or qualifications of the directors or of any other matter.

#### **Extended meaning of call**

**7.5.** (1) Any sum which, by the terms of issue of a share, becomes payable on allotment, or at any fixed date is, for the purposes of this constitution, deemed to be a call duly made and payable on the date on which, by the terms of issue, the sum becomes payable.

(2) If the sum is not paid, then all the relevant provisions of this constitution as to payment of interest and expenses, forfeiture, or otherwise, apply as if the sum had become payable by virtue of a call duly made and notified.

#### **Differentiation between shares**

**7.6.** The board may, on the issue of shares, by agreeing with the shareholders concerned, differentiate between the shareholders of the same class as to the amount of calls to be paid and the times of payment.

#### **Calls in advance**

**7.7.** (1) The board may if it thinks fit receive from any shareholder who is willing to advance the money all or any part of the money which is uncalled and unpaid upon any shares held by him or her.

#### **Interest**

(2) The board may, upon all or any part of the money so advanced (until the money would, but for the advance, become payable), pay interest at whatever rate is agreed upon between the board and the shareholder who pays the sum in advance.

#### **Repayment**

(3) The board may at any time repay the amount so advanced upon giving to the shareholder 3 months' notice

in writing.

#### **No right**

(4) No shareholder is entitled as of right to any payment on any amount paid in advance unless agreed in accordance with this clause. The board need not agree to pay interest or to allow participation.

## **8. SUSPENSION OF RIGHT TO DIVIDENDS**

#### **Notice of suspension**

**8.1.** (1) If a shareholder fails to pay any call or instalment of a call on the due date, then the board may, while any part of the call or instalment remains unpaid, serve a notice on the shareholder requiring payment of that part of the call or instalment which is unpaid together with any interest which has accrued and all expenses incurred by the company because of the non-payment.

(2) The notice must state:

(a) Another date (not earlier than 5 days from service of the notice) on or before which the payment required by the notice is to be made; and

(b) That, if payment is not made on or before the time appointed, then the right to dividends in respect of the shares subject to the call will be suspended.

#### **Application of suspended dividends**

**8.2.** (1) All dividends that would have been payable in respect of shares subject to a suspension of the right to dividends must be withheld by the company and applied to reduce the amount which is owing under the call.

(2) The amount owing under the call, for the purposes of this clause 8, may include any interest which has accrued and all expenses incurred by the company because of non-payment by the shareholder under the call.

#### **Liability not discharged**

**8.3.** A shareholder whose shares are the subject of a suspension of the right to dividends remains liable to the company for all money which is owing under the call. That liability is not extinguished by a transfer to a third party of the shares which are subject to the suspension.

#### **Lifting of suspension**

**8.4.** When the total dividends which have been withheld and applied under this clause 8 equal the total amount which is owing under the call (including amounts owing under clause 8.2(2) [*Application of suspended dividends*]) or when the shares are transferred to a third party, then the suspension of the right to dividends will be lifted and all rights to be paid dividends on the shares will resume.

## **9. LIEN**

#### **Lien on shares**

**9.1.** (1) The company has a first and paramount lien upon all the shares registered in the name of each shareholder:

(a) Whether solely or jointly with others for his or her debts, liabilities, and engagements solely or jointly with any other person to or with the company;

(b) Whether incurred before or after notice of any equitable interest in any person other than the registered holder;

(c) Whether the period for the repayment, fulfilment, or discharge of those debts, liabilities, or engagements has actually arrived or not.

(2) Such lien extends to all dividends or bonuses from time to time declared in respect of such shares.

(3) Unless otherwise agreed, the registration of a transfer of shares operates as a waiver of the company's lien, if any, on such shares.

#### **Power to sell**

**9.2.** (1) The company may sell (in whatever manner the board thinks fit) any shares on which the company has a lien.

(2) No sale may be made:

- (a) Unless a sum in respect of which the lien exists is presently payable; and
- (b) Until the expiration of 14 days commencing on the day a notice in writing, which states and demands payment of that part of the amount in respect of which the lien exists as is presently payable, has been given:
  - (i) To the registered holder of the share; or
  - (ii) To the person who is entitled to the share by reason of the holder's mental disorder, death, or bankruptcy.

**Authority to transfer**

- 9.3.** (1) To give effect to such a sale the board may authorise any person to transfer the shares sold to the purchaser of the share.
- (2) The purchaser must be registered as the holder of the shares comprised in such a transfer.
- (3) The purchaser need not see to the application of the purchase money, nor is his or her title to the shares affected by any irregularity or invalidity in the proceedings in reference to the sale.
- (4) The remedy of any person who is aggrieved by the sale is in damages only and lies only against the company.
- (5) If the share certificate is not delivered to the company, the board may issue a new certificate, and may distinguish it from the certificate not delivered.

**Proceeds of sale**

- 9.4.** (1) The proceeds of the sale must be received by the company and applied in payment of that part of the amount in respect of which the lien exists as is presently payable.
- (2) The residue, if any, must (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

**10. TRANSFER OF SHARES**

**Execution and registration**

- 10.1.** (1) Shares may be transferred by entry of the name of the transferee on the share register.  
[See section 84(1) [Transfer of shares].]
- (2) For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or by his or her personal representative must be delivered to:
- (a) The company; or
  - (b) An agent of the company who maintains the share register under clause 4.10 [Share register].  
[See section 84(2).]
- (3) The form of transfer must be signed by the transferee if registration as holder of the shares imposes on the transferee a liability to the company.  
[See section 84(3).]

**Form of transfer**

- 10.2.** Subject to such of the restrictions of this constitution as may be applicable, any shareholder may transfer all or any of his or her shares by instrument in writing in:
- (a) Any usual or common form; or
  - (b) Any other form of which the board may approve; or
  - (c) The form set out in the First Schedule to the Securities Transfer Act 1991.

**Rights to refuse transfer**

- 10.3.** The board may refuse to register any transfer of a share:
- (a) Where the company has a lien on the share; or
  - (b) Where the holder of the shares has failed to pay money owing to the company in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with this constitution; or  
[See section 84(5).]
  - (c) Where the board has notice of any agreement by the

- shareholder to transfer only to some specified person or persons or subject to some specified condition or conditions; or
- (d) Where the transferee is mentally disordered; or
- (e) Where the board believes effecting the transfer would be a breach of the law; or
- (f) Where the instrument of transfer is in respect of more than 1 class of share; or
- (g) The board considers that it would not be in the best interests of the company to register the transfer of the shares; or
- (h) Unless the instrument of transfer is accompanied by such other evidence as the board reasonably requires to show the right of the transferor to make the transfer.

**Where share certificate issued**

- 10.4.** (1) Notwithstanding clause 10.1 [Execution and registration] and section 84 [Transfer of shares], where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer is accompanied by the share certificate relating to the share, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board.  
[See section 95(5) [Share certificates].]
- (2) Where shares to which a share certificate relates are to be transferred, and the share certificate is sent to the company to enable the registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee.  
[See section 95(6).]

**Notice of refusal to register**

- 10.5.** (1) On receipt of a form of transfer in accordance with clause 10.1(2) [Execution and registration] and, if applicable, clause 10.1(3), the company must forthwith enter or cause to be entered the name of the transferee on the share register as a holder of the shares, unless:
- (a) The board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and
  - (b) Notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and
  - (c) The Act or this constitution expressly permits the board to refuse or delay registration for the reasons stated.  
[See section 84(4).]

**11. RESTRICTION UPON TRANSFER OF SHARES**

**Proposing Transferor, Other Shareholders, Board Nominee**

- 11.1.** (1) Clause 11 acknowledges the partnership nature of the company and aims to protect shareholders' relationships by giving them a right of pre-emption should any of their number wish to sell shares.
- (2) Clauses 11.1 [Proposing Transferor, Other Shareholders, Board Nominee] to 11.9 [Assignee to sell shares to shareholders] must be given a fair, large, and liberal interpretation so as to best attain the following objects:
- (a) If any shareholder, manager, protection attorney, or trustee in bankruptcy, or personal representative of any shareholder, desires to sell or to transfer any of the shares which are held by him or her (the "Proposing Transferor"), then he or she must first offer them for sale to the shareholders other than the Proposing Transferor (the "Other Shareholders") or to any other person nominated by the board ("Board Nominee") in accordance with clauses 11.1 to 11.9; and
  - (b) Any shares offered in accordance with paragraph (a)

must be offered for sale:

- (i) At the Transferor's Valuation in accordance with clause 11.2(2)(a) [*Transfer Notice, Transferor's Valuation*]; or
- (ii) At the Fair Value in accordance with clause 11.4 [*Fair Value*]; and
- (c) Any offer to sell made as provided in this clause may be withdrawn by the Proposing Transferor if the Fair Value is not acceptable to the Proposing Transferor.

#### **Transfer Notice, Transferor's Valuation**

**11.2.** (1) Except where the transfer is made pursuant to clause 11.10 [*Transfer by personal representatives*] or clause 11.11 [*Approval by all shareholders*] or clause 11.12 [*Permitted transfers*], the Proposing Transferor must serve notice (a "Transfer Notice") on the board that he or she desires to transfer the shares.

(2) The Transfer Notice:

- (a) Must specify the sum which the Proposing Transferor considers to be the value of the shares (the "Transferor's Valuation"); and
- (b) Deems the board (subject as is hereinafter provided) the Proposing Transferor's agent for the sale of shares to each of the Other Shareholders or to a Board Nominee at the Transferor's Valuation or (at the option of the purchaser) at the Fair Value.

#### **Expiry Date, Pre-emption Notice**

**11.3.** (1) The board must (forthwith upon receipt of the Transfer Notice) serve on each of the Other Shareholders a notice (a "Pre-emption Notice") which:

- (a) Advises the Other Shareholders of the number of shares for sale; and
- (b) Advises the Other Shareholders of the Transferor's Valuation; and
- (c) Names a date on which the option of the Other Shareholders to acquire all or any of the shares if not already exercised is deemed to be declined (the "Expiry Date"). The Expiry Date is the day 28 days from receipt by the board of the Transfer Notice.

#### **Allocation**

- (2) After the receipt of replies from all Other Shareholders or on the day after the Expiry Date (whichever is the earlier), the Board must allocate the shares to those Other Shareholders who are willing to purchase the shares at the Transferor's Valuation and, if more than one, then in proportion to their existing shareholding in that class.
- (3) Subject to clause 11.4(1) [*Fair Value*] if no Other Shareholder is willing to take all or any of the shares, then the shares which are not purchased by the Other Shareholders must be allocated by the board to Board Nominees who are willing to purchase them.

#### **Fair Value**

**11.4.** (1) Notwithstanding clause 11.3(3) [*Allocation*], if no Other Shareholder is willing to take all or any of the shares at the Transferor's Valuation but there is an Other Shareholder who is prepared to purchase the shares or the balance of the shares at a lesser figure than the Transferor's Valuation, then the Fair Value must be fixed on the application of either party:

- (a) By a person ("the Expert") to be nominated by the President of the New Zealand Institute of Chartered Accountants; or
- (b) If for any reason that president fails to make a nomination, then by a person ("the Expert") to be nominated by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.
- (2) The Expert in certifying the Fair Value of the shares is an expert and not an arbitrator. Accordingly the Arbitration Act 1996 does not apply. The value fixed by the Expert is the "Fair Value".
- (3) If the Fair Value needs to be fixed, then the Expiry Date

is the day 14 days from the date on which the Expert reported the Fair Value to the board.

- (4) The rights given to parties other than the Proposing Transferor by this clause 11 are options only and do not constitute obligations to purchase.
- (5) Forthwith upon fixing the Fair Value, the Expert must report it to the board.
- (6) Forthwith on receipt of the Fair Value from the Expert, the board must:
  - (a) Serve notice specifying the Fair Value on the Proposing Transferor; and
  - (b) Serve on each of the Other Shareholders an amended Pre-emption Notice stating the Fair Value and the amended Expiry Date.

#### **Part acceptance not effective**

**11.5.** (1) The offer of the Proposing Transferor may consist of all or part of the shares which are held by him or her.

(2) If the Transfer Notice includes several shares:

- (a) The Proposing Transferor need not sell or transfer part only of the shares specified in the Transfer Notice; and
- (b) The Proposing Transferor may revoke the Transfer Notice unless it is accepted in respect of all the shares which are offered by him or her.

#### **Revocation of Transfer Notice**

**11.6.** (1) If the Fair Value is less than the Transferor's Valuation, then the Proposing Transferor may revoke the Transfer Notice. The revocation must be in writing and served on the board not less than 7 days before the Expiry Date.

(2) If the Proposing Transferor fails to revoke the Transfer Notice within the time specified in subclause (1), then it remains in full force and effect and the Proposing Transferor is bound by it.

(3) Except as provided in this clause 11.6 and in clause 11.5 [*Part acceptance not effective*], the Transfer Notice is revocable only by resolution of the board.

#### **Settlement**

(4) Within 28 days commencing on the date the board allocated the shares (if at the Transferor's Valuation), or within 28 days commencing on the Expiry Date (if at the Fair Value), whichever occurs later:

- (a) The purchasers must tender the price of the shares to the Proposing Transferor; and
- (b) The Proposing Transferor must tender to the purchasers in return the signed share transfer and the relevant share certificate (if any).

#### **Board may execute transfer**

**11.7.** (1) If the Proposing Transferor, after becoming bound in accordance with clause 11.6(2) [*Revocation of Transfer Notice*], does not transfer the shares in accordance with clause 11.6(4)(b) [*Settlement*], then:

- (a) The board may execute transfers of the shares on behalf of the Proposing Transferor; and
- (b) The board may receive the purchase money.
- (2) Upon receipt of the purchase money the board:
  - (a) Must cause the names of the transferees to be entered in the share register as the holders; and
  - (b) Must hold the purchase money (subject to any lien in favour of the company) in trust for the Proposing Transferor.
- (3) The board's receipt is a good discharge to the transferees for the purchase price.
- (4) No question may be raised as to the title of the transferees to the shares after they are registered as the holders.

#### **If no buyers**

**11.8.** If the board does not, within a period of 28 days commencing on the Expiry Date, serve on the Proposing

Transferor notice that it has found an Other Shareholder or Board Nominee who is willing to purchase the shares, then the Proposing Transferor may (within 3 months commencing on the Expiry Date) sell and transfer the shares to any person at a price which is not lower than the lesser of:

- (a) The Transferor's Valuation; or
- (b) The Fair Value.

#### **Assignee to sell shares to shareholders**

**11.9.** If a shareholder is adjudicated bankrupt or any steps are taken to appoint a receiver or liquidator of the shareholder as the case may be, then that event deems the board the agent of the bankrupt shareholder (and of his or her estate in bankruptcy):

- (a) To serve on the board a Transfer Notice; and
- (b) To sell the shares at the Fair Value as provided in clauses 11.1 [*Proposing Transferor, Other Shareholders, Board Nominee*] to 11.8 [*If no buyers*].

#### **Transfer by personal representatives**

**11.10.** (1) Any share of a deceased shareholder may be transferred by his or her executors, administrators, or trustees to any child or other issue, adopted child, stepchild, son-in-law, daughter-in-law, widow, or widower of the deceased shareholder.

(2) The restrictions in clauses 11.1 [*Proposing Transferor, Other Shareholders, Board Nominee*] to 11.9 [*Assignee to sell shares to shareholders*] do not apply to any transfer under this clause.

#### **Approval by all shareholders**

**11.11.** (1) Any share may be transferred by a shareholder to any person if the instrument of transfer is approved, or if the proposed transferees are approved, in writing by all the shareholders.

(2) The restrictions in clauses 11.1 [*Proposing Transferor, Other Shareholders, Board Nominee*] to 11.9 [*Assignee to sell shares to shareholders*] do not apply to any transfer under this clause.

#### **Permitted transfers**

**11.12.** Any share may be transferred free of the restrictions in clauses 11.1 to 11.9 by any shareholder to any of the following:

- (a) A child, grandchild, wife or husband of the shareholder.
- (b) A trustee of any trust that in the opinion of the board is principally for the benefit of the shareholder or one or more of the above persons.
- (c) Another trustee of an above mentioned trust in the event of a change in trustees.

## **12. TRANSMISSION OF SHARES**

#### **Recognition of title on death of shareholder**

**12.1.** (1) If a shareholder dies, then the survivor(s) (where the deceased was a joint holder) and the legal personal representatives of the deceased (where he or she was a sole holder) are the only persons recognised by the company as having any title to his or her interest in the shares.

(2) This clause does not release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him or her with other persons or constitute a release of any lien which the company may have in respect of any share.

#### **Election of registration**

**12.2.** (1) Any person becoming entitled to a share in consequence of the death or bankruptcy of a shareholder may (upon whatever evidence being produced as is properly required by the board and subject to the following provisions) elect either:

- (a) To be registered him- or herself as holder of the share; or
- (b) To have some person nominated by him or her to be

registered as the transferee of the share.

(2) However the board, in either case, has the same right to decline or suspend registration as it would have had in the case of a transfer of the share by that shareholder before his or her death or bankruptcy.

#### **Upon election**

**12.3.** (1) If the person so becoming entitled elects to be registered him- or herself, then he or she must deliver or send to the company a notice in writing signed by him or her stating that he or she so elects.

(2) If he or she elects to have another person registered, then he or she must testify to his or her election by:

- (a) Executing in favour of that person a transfer of the share; and
- (b) Causing the transfer to be tendered to the board for registration.

#### **Provisions continue to apply**

(3) All the limitations, restrictions, and provisions of this constitution relating to the right to transfer and the registration of transfers of shares including the provisions of clauses 11.1 to 11.9 are applicable to any such notice or transfer as if:

- (a) The death or bankruptcy of the shareholder had not occurred; and
- (b) The notice were a transfer signed by that shareholder.

#### **Transfer of shares by operation of law**

**12.4.** Notwithstanding anything in this constitution, shares in the company may pass by operation of law.

[See section 86 [*Transfer of shares by operation of law*].]

#### **Entitlement to dividends and rights**

**12.5.** (1) Where the registered holder of any share dies or becomes bankrupt, then his or her personal representative or the assignee of his or her estate (upon the production of whatever evidence is properly required by the board) is entitled to:

- (a) The same dividends and other advantages; and
- (b) The same rights (whether in relation to meetings of the company, or to voting, or otherwise); as the registered holder would have been entitled to if he or she had not died or become bankrupt.

#### **Joint entitlement**

(2) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder they are, for the purposes of this constitution, deemed to be joint holders of the share.

## **13. FORFEITURE AND SURRENDER OF SHARES**

#### **Failure to pay call or instalment**

**13.1.** If a shareholder fails to pay any call (or instalment of a call) on the day which is appointed for payment of it, then the board may (at any time afterwards during the time any part of the call or instalment remains unpaid) serve a notice on the shareholder which requires payment of:

- (a) The amount of the call or instalment which is unpaid; and
- (b) Any interest which has accrued.

#### **Notice of default**

**13.2.** (1) The notice must name a further day (not earlier than the expiration of 14 days commencing on the date of service of the notice) on or before which the payment required by the notice is to be made.

(2) The notice must state that if the payment is not made at or before the time appointed, then the shares in respect of which the call was made will be liable to be forfeited.

#### **Forfeiture on non-compliance**

**13.3.** (1) If the requirements of the notice are not complied with, then any share in respect of which the notice has been given may (at any time afterwards, before

the payment required by the notice has been made) be forfeited by a resolution of the board to that effect.

(2) The forfeiture includes all dividends which are declared in respect of the forfeited shares and not paid before the forfeiture.

#### **Disposal of forfeited share**

**13.4.** (1) A forfeited share may be sold, or otherwise disposed of, on whatever terms and in whatever manner the board resolves.

(2) At any time before a sale or disposition the forfeiture may be cancelled on whatever terms the board resolves.

#### **Liability in respect of forfeited shares**

**13.5.** (1) A person whose shares have been forfeited ceases to be a shareholder in respect of the forfeited shares, but remains liable to pay to the company:

(a) All money which, at the date of forfeiture, was payable by him or her to the company in respect of the shares; and

(b) Costs and expenses incurred by the company in connection with:

(i) The forfeiture of the shares; and

(ii) The attempts to enforce payment of the calls or instalments.

(2) The board may waive all or part of the payment of the costs and expenses.

(3) Such liability ceases if and when the company receives payment in full of all the money which is specified in this clause in respect of the shares.

#### **Notice of forfeiture**

**13.6.** On the forfeiture of any share the board must:

(a) Cause a note of the forfeiture and of the date of the forfeiture to be entered in the share register; and

(b) Cause notice of the forfeiture and of the date of the forfeiture to be given to the shareholder in whose name the share stood in the share register immediately before the forfeiture; and

(c) Upon the disposal of any forfeited share, cause a note of the manner and of the date of the disposal to be similarly entered.

#### **Declaration of forfeiture**

**13.7.** A statutory declaration in writing that:

(a) The declarant is a director or the secretary of the company; and

(b) A share in the company has been duly forfeited on a date stated in the declaration;

is conclusive evidence of the facts stated in the declaration as against all persons who claim to be entitled to the share.

#### **Consideration for and transfer of forfeited share**

**13.8.** (1) The company may receive the consideration, if any, which is given for a forfeited share on any sale or other disposition of the share.

(2) The company may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(3) The company must thereupon register the transferee as the holder of the share.

(4) The transferee need not see to the application of the purchase money, if any.

(5) The transferee's title to the share is not affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

#### **Sums due other than calls**

**13.9.** These clauses as to forfeiture 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 sum had been payable by virtue of a call duly made and notified.

## **14. ISSUE OF NEW SHARES**

### **Time of issue of shares**

**14.1.** A share is issued when the name of the holder is entered on the share register.

[See section 51 [Time of issue of shares].]

### **Issue of shares on registration or amalgamation**

**14.2.** (1) The company must, forthwith after registration of the company, issue to the persons named in the application for registration as shareholders the number of shares specified in the application as being the number of shares to be issued to those persons.

[See section 41(a) [Issue of shares on registration and amalgamation].]

### **Details of payment**

(2) The details of payment are as follows:

(a) The consideration for each class of share is that specified in the schedule. If no consideration is so specified, then the consideration is \$1 per share.

(b) The date of payment of that consideration is that specified in the schedule. If no date of payment is so specified, then the consideration must be paid on the date for payment which is resolved by the board. The payment does not fall due until the board has given the shareholder not less than 7 days' notice (commencing on the day the shareholder is served) of the resolution.

(c) The place of payment is that specified in the schedule. If no place of payment is so specified, then the place of payment is the registered office of the company.

### **Amalgamated company**

(3) The company must, in the case of an amalgamated company, forthwith after the amalgamation is effective, issue to any person entitled to a share or shares under the amalgamation proposal the share or shares to which that person is entitled.

[See section 41(b).]

### **Issue of other shares**

**14.3.** Subject to the Act and approval by special resolution, the board may issue shares at any time and in any number if:

(a) The shares belong to a class provided for in this constitution; and

(b) The number of shares does not exceed the maximum number of shares that may, under this constitution, be issued in that class of shares; and

(c) The provisions of this constitution relating to the issue of shares are complied with.

[Refer to section 42 [Issue of other shares].]

### **Shareholder approval for issue of new shares**

**14.4.** (1) Notwithstanding clause 14.3 [Issue of other shares], if shares cannot be issued by reason of any limitation or restriction elsewhere in this constitution, then the board may issue shares if the board obtains the approval for the issue in the same manner as approval is required for an alteration to this constitution that would permit such an issue.

[See section 44(1) [Shareholder approval for issue of shares].]

(2) Subject to the terms of the approval, the shares may be issued at any time, to any person, and in any number the board thinks fit.

[See section 44(2).]

(3) Within 10 working days of approval being given under subclause (1), the board must ensure that notice of that approval in the prescribed form is delivered to the Registrar for registration.

[See section 44(3).]

(4) Nothing in this clause affects the need to obtain the approval of an interest group in accordance with clause 4.4 [Alteration of shareholder rights] if the issue affects the rights of that interest group.

[See section 44(4).]

### **Same conditions apply to new shares**

**14.5.** New shares are subject to the same provisions with reference to the payment of calls, liens, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

**Entitlement to new shares**

**14.6.** (1) Shares issued or proposed to be issued that rank or would rank as to voting or distribution rights (or both), equally with or prior to shares already issued by the company, must be offered for acquisition to the holders of the shares already issued in a manner and on terms that would, if accepted, maintain the existing voting or distribution rights (or both) of those holders.

[See section 45(1) [Pre-emptive rights].]

(2) The offer must be made by notice specifying the number of shares to which the shareholder is entitled and limiting a time within which the offer, if not accepted, is deemed to be declined.

(3) The offer must remain open for acceptance for a reasonable time.

[See section 45(2).]

**Offer not accepted**

(4) After the expiration of that time or on the receipt of an intimation from the shareholder to whom such notice is given that he or she declines to accept the shares offered, the board must offer those shares proportionately to the other then existing shareholders.

**Shares which cannot be reasonably offered**

(5) The board may dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of the new shares) cannot, in the opinion of the board, be reasonably offered under this clause.

**Payment for assets**

(6) Nothing contained in this clause prevents the board from issuing (either as fully paid up or partly paid up) any shares in payment or in part payment for the purchase of any assets or in satisfaction or part satisfaction of any obligation into which the company has entered or agreed to enter.

[Refer to section 46.]

**Consideration**

**14.7.** (1) Before the board issues shares under clause 14.3 [Issue of other shares] or clause 14.4 [Shareholder approval for issue of new shares], the board must:

(a) Decide the consideration for which the shares will be issued and the terms on which they will be issued; and

(b) If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and

(c) Resolve that, in its opinion, the consideration for and terms of issue are fair and reasonable to the company and to all existing shareholders; and

(d) If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

[See section 47(1) [Consideration to be decided by board].]

**Directors' certificate**

(2) The directors who vote in favour of a resolution under subclause (1) must sign a certificate:

(a) Stating the consideration for, and the terms of, the issue; and

(b) Describing the consideration in sufficient detail to identify it; and

(c) Where a present cash value has been determined in accordance with subclause (1)(b), stating that value and the basis for assessing it; and

(d) Stating that, in their opinion, the consideration for and

terms of issue are fair and reasonable to the company and to all existing shareholders; and

(e) If the shares are to be issued other than for cash, stating that, in their opinion, the present cash value of the consideration to be provided for the issue of the shares is not less than the amount to be credited for the issue of the shares.

[See section 47(2).]

**Present cash value resolution**

(3) Before shares that have already been issued are credited as fully or partly paid up other than for cash, the board must:

(a) Determine the reasonable present cash value of the consideration; and

(b) Resolve that, in its opinion, the present cash value of the consideration is:

(i) Fair and reasonable to the company and to all existing shareholders; and

(ii) Not less than the amount to be credited in respect of the shares.

[See section 47(3).]

**Directors' certificate**

(4) The directors who vote in favour of a resolution under subclause (3) [Present cash value resolution] must sign a certificate:

(a) Describing the consideration in sufficient detail to identify it; and

(b) Stating:

(i) The present cash value of the consideration and the basis for assessing it; and

(ii) That the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders; and

(iii) That the present cash value of the consideration is not less than the amount to be credited in respect of the shares.

[See section 47(4).]

**Certificate to Registrar**

(5) The board must deliver a copy of a certificate that complies with subclause (2) or subclause (4) to the Registrar for registration within 10 working days after it is given.

[See section 47(5).]

[For payments not in cash refer to section 47(6).]

## PART 5. SHAREHOLDERS

### 15. SHAREHOLDER POWERS

#### Powers reserved to shareholders

**15.1.** Powers reserved to the shareholders by the Act may be exercised only:

(a) At a meeting of shareholders pursuant to clause 16.1 [Annual meetings of shareholders] or clause 16.2 [Special meetings of shareholders]; or

(b) By a resolution in lieu of a meeting pursuant to clause 16.3 [Resolution in lieu of meeting].

[See section 104 [Exercise of powers reserved to shareholders].]

#### Ordinary resolutions

**15.2.** (1) Unless otherwise specified in the Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution.

(2) An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question.

[See section 105 [Exercise of powers by ordinary resolution].]

#### Special resolutions

**15.3.** (1) When shareholders exercise a power to:

- (a) Adopt a constitution, or alter or revoke the constitution;
  - (b) Approve a major transaction;
  - (c) Approve an amalgamation of the company under section 221 [*Approval of amalgamation proposal*];
  - (d) Put the company into liquidation;
- the power must be exercised by special resolution.
- (2) A special resolution pursuant to paragraphs (a), or (b), or (c) can be rescinded only by a special resolution.
  - (3) A special resolution pursuant to paragraph (d) cannot be rescinded.
- [See section 106 [*Powers exercised by special resolution*].]
- (4) A special resolution is a resolution approved by a majority of 75 percent of the votes of those shareholders entitled to vote and voting on the question.
- [See section 2 [*Interpretation*].]

#### **Unanimous shareholder agreements**

**15.4.** (1) Notwithstanding clause 18.1 [*Solvency test*] but subject to clause 15.5 [*Solvency test*], if all entitled persons have agreed or concur:

- (a) A dividend may be authorised otherwise than in accordance with clause 18.2 [*Dividends payable pari passu*];
  - (b) A discount scheme may be approved otherwise than in accordance with clause 18.7 [*Shareholder discounts*];
  - (c) Shares in the company may be acquired otherwise than in accordance with sections 58 [*Company may acquire its own shares*] to 65 [*Stock exchange acquisitions not subject to prior notice to shareholders*];
- [Refer to clauses 5.1 [*Company holding its own shares*] to 5.5 [*Disclosure document*].]
- (d) Shares in the company may be redeemed otherwise than in accordance with sections 69 [*Redemption at option of company*] to 72 [*Disclosure document*];
  - (e) Financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with sections 76 [*Financial assistance*] to 80 [*Financial assistance not exceeding 5 percent of shareholders' funds*];
  - (f) Any of the matters referred to in clause 27.2(1) [*Remuneration and other benefits of directors*] may be authorised otherwise than in accordance with that clause.
- [See section 107(1) [*Unanimous assent to certain types of action*].]

#### **Issue of shares**

(2) If all entitled persons have agreed or concur, shares may be issued otherwise than in accordance with clause 14.3 [*Issue of other shares*], or clause 14.4 [*Shareholder approval for issue of new shares*], or clause 14.6 [*Entitlement to new shares*].

[See section 107(2).]

#### **Director's interest**

(3) If all entitled persons have agreed to or concur in the company entering into a transaction in which a director is interested, nothing in clauses 21.3 [*Disclosure of interest*] and 21.4 [*Avoidance of transactions*] applies to that transaction.

[See section 107(3).]

#### **In writing**

(4) For the purposes of this clause, no agreement or concurrence of the entitled persons is valid or enforceable unless the agreement or concurrence is in writing.

[See section 107(4).]

#### **Particular or general**

(5) An agreement or concurrence may be:

- (a) A separate agreement to, or concurrence in, the particular exercise of the power referred to; or
- (b) An agreement to, or concurrence in, the exercise of the power generally or from time to time.

[See section 107(5).]

#### **Withdrawal**

(6) An entitled person may, at any time, by notice in writing to the company, withdraw from any agreement or concurrence referred to in subclause (5)(b) [*Particular or general*], and any such notice takes effect accordingly.

[See section 107(6).]

#### **Notice**

(7) Where a power is exercised pursuant to an agreement or concurrence referred to in subclause (5)(b) [*Particular or general*], the board must, within 10 working days of the exercise, send to every entitled person a notice in writing containing details of the exercise.

[See section 107(7).]

#### **Solvency test**

**15.5.** (1) A power referred to in clause 15.4(1) [*Unanimous shareholder agreements*] must not be exercised unless the board is satisfied on reasonable grounds that the company will, immediately after the exercise, satisfy the solvency test.

[See section 108(1) [*Company to satisfy solvency test*].]

#### **Certificate**

(2) The directors who vote in favour of the exercise must sign a certificate stating that, in their opinion, the company will, after the exercise, satisfy the solvency test.

[See section 108(2).]

#### **Change in circumstances**

(3) If, after a resolution is passed under subclause (1) and before the power is exercised, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the power is exercised, satisfy the solvency test, any exercise of the power is deemed not to have been authorised.

[See section 108(3).]

[In applying the solvency test for the purposes of clause 15.4(1)(e) [*Unanimous shareholder agreements*] refer to section 108(5) for definitions of "assets" and "liabilities".]

#### **Management review by shareholders**

**15.6.** (1) The chairperson of a meeting of shareholders must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management.

#### **Resolution**

(2) A meeting of shareholders may pass a resolution under this clause relating to the management.

#### **Not binding**

(3) Unless this constitution elsewhere provides, a resolution passed pursuant to subclause (2) [*Resolution*] is not binding on the board.

[See section 109 [*Management review by shareholders*].]

#### **Minority buy-out rights**

**15.7.** Where:

- (a) A shareholder is entitled to vote on the exercise of 1 or more of the powers in:
    - (i) Clause 15.3(1)(a) [*Special resolutions*], and the proposed alteration in the constitution imposes or removes a restriction on the activities of the company; or
    - (ii) Clause 15.3(1)(b) or clause 15.3(1)(c); and
  - (b) The shareholders resolved, pursuant to clause 15.3 [*Special resolutions*], to exercise the power; and
  - (c) The shareholder cast all the votes (attached to shares registered in the shareholder's name and having the same beneficial owner) against the exercise of the power; or
  - (d) The resolution was passed under clause 16.3 [*Resolution in lieu of meeting*] and the shareholder did not sign the resolution;
- that shareholder is entitled to require the company to purchase those shares in accordance with clause 15.9 [*Notice requiring purchase*].

[See section 110 [Shareholder may require company to purchase shares].]

#### **Interest groups buy-out rights**

**15.8.** Where:

(a) An interest group has, under clause 4.4 [Alteration of shareholder rights], approved, by special resolution, the taking of action that affects the rights attached to shares; and

(b) The company becomes entitled to take the action; and

(c) A shareholder who was a member of the interest group cast all the votes (attached to shares registered in that shareholder's name and having the same beneficial owner) against approving the action; or

(d) The resolution approving the taking of the action was passed under clause 16.3 [Resolution in lieu of meeting] and a shareholder who was a member of the interest group did not sign the resolution;

that shareholder is entitled to require the company to purchase those shares in accordance with clause 15.9 [Notice requiring purchase].

[See section 118 [Shareholder may require company to purchase shares].]

#### **Notice requiring purchase**

**15.9.** (1) A shareholder who is entitled to require the company to purchase shares by virtue of clause 15.7 [Minority buy-out rights] or clause 15.8 [Interest groups buy-out rights] may:

(a) Within 10 working days of the passing of the resolution at a meeting of shareholders; or

(b) Where the resolution was passed under clause 16.3 [Resolution in lieu of meeting], before the expiration of 10 working days after the date on which notice of the passing of the resolution is given to the shareholder;

give a written notice to the company requiring the company to purchase those shares.

[See section 111(1) [Notice requiring purchase].]

(2) Within 20 working days of receiving a notice under subclause (1), the board must comply with section 111(2).

[See section 111(2).]

## **16. MEETINGS AND RESOLUTIONS**

### **Annual meeting of shareholders**

#### **When held**

**16.1.** (1) The board must call an annual meeting of shareholders to be held:

(a) Either:

(i) In the case of an exempt company, if all the shareholders of the company agree, not later than 10 months after the balance date of the company; or

(ii) In the case of a company, not being a company to which subparagraph (i) applies, not later than 6 months after the balance date of the company; and

(b) Not later than 15 months after the previous annual meeting.

[See section 120(1) [Annual meeting of shareholders].]

(2) The company, if it is not a company that is reregistered under the Act, does not have to hold its first annual meeting in the calendar year of its registration, but must hold that meeting within 18 months of its registration.

[See section 120(2).]

(3) The company, if it is a company that is reregistered under the Act, does not have to hold its first annual meeting in the calendar year of its reregistration but must hold that meeting within 18 months of its registration under the Companies Act 1955.

[See section 120(3).]

(4) The company must hold the meeting on the date on which it is called to be held.

[See section 120(4).]

#### **Time and place**

(5) The annual meeting must be held at such time and place as the directors appoint.

#### **Special meetings of shareholders**

**16.2.** A special meeting of shareholders entitled to vote on an issue:

(a) May be called at any time by:

(i) The board; or

(ii) A person who is authorised by this constitution to call the meeting;

(b) Must be called by the board on the written request of shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

[See section 121 [Special meetings of shareholders].]

#### **Resolution in lieu of meeting**

**16.3.** (1) Subject to subclauses (2) [Required decision: shareholders entitled] and (3) [Which shareholders entitled], a resolution in writing signed by not less than:

(a) 75 percent; or

(b) Such other percentage as this constitution may require for passing a special resolution;

whichever is the greater, of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75 percent or, if a higher percentage is required by this constitution, that higher percentage, of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders.

[See section 122(1) [Resolution in lieu of meeting].]

#### **Required decision: shareholders entitled**

(2) A resolution in writing that:

(a) Relates to a matter that is required by the Act or by this constitution to be decided at a meeting of the shareholders of the company; and

(b) Is signed by all the shareholders specified in subclause (3) [Which shareholders entitled];

is made in accordance with the Act and this constitution.

[See section 122(2).]

#### **Which shareholders entitled**

(3) For the purposes of subclause (2)(b) [Required decision: shareholders entitled], the shareholders are:

(a) In the case of a resolution under clause 31.1(1) [When no auditors required], all the shareholders who are entitled to vote on the resolution;

(b) In any other case, the shareholders referred to in subclause (1).

[See section 122(3).]

(3A) For the purposes of subclause (2) [Required decision: shareholders entitled], any such resolution may consist of 1 or more documents in similar form (including letters, telegrams, cables, facsimiles, telex messages, electronic mail, or other similar means of communication) each signed or assented to by or on behalf of 1 or more of the shareholders specified in subclause (3).

#### **Resolution in lieu of annual meeting**

(4) The company need not hold an annual meeting of shareholders under clause 16.1 [Annual meeting of shareholders] if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with subclauses (2) [Required decision: shareholders entitled] and (3) [Which shareholders entitled].

[See section 122(4).]

#### **Copy to non-signatory**

(5) Within 5 working days of a resolution being passed under this clause, the company must send to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed:

- (a) a copy of the resolution; and
- (b) if the resolution was a special resolution required by section 106(1)(a) or (b), a statement setting out the rights of shareholders under section 110.

[See section 122(5).]

#### **Notice not required**

- (6) A resolution may be signed under subclauses (1) or (2) [Required decision: shareholders entitled] without any prior notice being given to shareholders.

[See section 122(6).]

#### **Ascertaining shareholders**

**16.4.** (1) The shareholders who are entitled to:

- (a) Receive distributions; or
- (b) Exercise pre-emptive rights to acquire shares in accordance with clause 14.6 [Entitlement to new shares]; or
- (c) Exercise any other right or receive any other benefit under the Act or this constitution;

are:

- (d) If the board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date;

- (e) If the board does not fix a date for the purpose, those shareholders whose names are registered in the share register on the day on which the board passes the resolution concerned.

[See section 125(1) [Shareholders entitled to receive distributions, attend meetings, and exercise rights].]

#### **Date under subclause (1)**

(2) A date must not be fixed under subclause (1) that precedes by more than 20 working days the date on which the proposed action will be taken.

[See section 125(2).]

#### **Notice required**

(3) The shareholders who are entitled to receive notice of a meeting of shareholders are:

- (a) If the board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date;

- (b) If the board does not fix a date for the purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.

[See section 125(3).]

#### **Date under subclause (3)**

(4) A date must not be fixed under subclause (3) [Notice required] that precedes by more than 30 working days or less than 10 working days the date on which the meeting is to be held.

[See section 125(4).]

## **17. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

[See First Schedule.]

### **Chairperson**

**17.1.** (1) If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of shareholders, then he or she must chair the meeting.

#### **If chairperson not present**

(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, then:

- (a) The directors who are present must elect 1 of their number to be chairperson of the meeting;

- (b) If no director is present within 15 minutes of the time appointed for the commencement of the meeting, then the shareholders present may choose 1 of their number to be chairperson of the meeting.

### **Notice of meetings**

**17.2.** (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 an auditor of the company not less than 10 working days before the meeting.

### **Contents**

(2) The notice must state:

- (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and

- (b) The text of any special resolution to be submitted to the meeting.

### **Waiver**

(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.

### **Adjournment**

(4) The chairperson may (and if so directed by the meeting must) adjourn the meeting from time to time and from place to place. No business may be transacted at any adjourned meeting except the business which was left unfinished at the meeting which was adjourned. If a meeting is adjourned for 30 days or more, then notice of the adjourned meeting must be given in the same way as for an original meeting. Except as above, it is not necessary to give notice of an adjournment or of the business which is to be transacted at an adjourned meeting.

### **Omission of notice**

(5) The proceedings of a meeting are not invalidated by the accidental omission to give notice of the meeting to a person who is entitled to receive notice of it, or by non-receipt of the notice by such a person.

### **Methods of holding meetings**

**17.3.** A meeting of shareholders may be held either:

- (a) By a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

- (b) By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum can simultaneously hear each other throughout the meeting.

### **Quorum of shareholders**

**17.4.** (1) Subject to subclause (3) [If no quorum], no business may be transacted at a meeting of shareholders if a quorum is not present.

(2) A quorum for a meeting of shareholders is present if shareholders or their proxies are present or have cast postal votes who between them:

- (a) Total the number specified in the schedule in clause 1.1; or

- (b) If no number is specified, then are able to exercise a majority of the votes to be cast on the business to be transacted by the meeting.

### **If no quorum**

(3) If a quorum is not present within 30 minutes after the time appointed for the meeting:

- (a) In the case of a meeting called under clause 16.2(b) [Special meetings of shareholders] (section 121(b) [Special meetings of shareholders]), the meeting is dissolved;

- (b) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the directors may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the

shareholders present or their proxies are a quorum.

#### **Voting**

**17.5.** (1) In the case of a meeting of shareholders held under clause 17.3(a) [*Methods of holding meetings*], 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:

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

(2) In the case of a meeting of shareholders held under clause 17.3(b) [*Methods of holding meetings*], unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.

#### **Chairperson's declaration conclusive**

(3) 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 subclause (4) [*Right to poll*].

#### **Right to poll**

(4) At a meeting of shareholders a poll may be demanded by:

- (a) Not less than 5 shareholders having the right to vote at the meeting; or
- (b) A shareholder or shareholders representing not less than 10 percent of the total voting rights of all shareholders having the right to vote at the meeting; or
- (c) By 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 percent of the total amount paid up on all shares that confer that right; or
- (d) The chairman of the meeting.

(5) A poll may be demanded either before or after the vote is taken on a resolution.

(6) If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.

#### **No casting vote**

(7) The chairperson of a shareholders' meeting is not entitled to a casting vote.

#### **Right of proxy**

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

#### **One vote**

(9) Subject to any rights or restrictions attached to any class of shares, every shareholder who is present in person or by proxy, and who votes by voice or show of hands, has 1 vote.

#### **Poll**

(10) The chairperson may demand a poll on a resolution, either before or after a vote on it, whether by voice or by show of hands.

(11) The demand for a poll may be withdrawn.

(12) Save as in subclause (13), should a poll be demanded, it must be taken in the manner in which the chairperson directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded.

(13) A poll which is demanded upon the election of a chairperson or upon a question of adjournment must be taken forthwith. A poll which is demanded upon any other question must be taken at whatever time and place the chairperson directs. Any business except that on which a poll has been demanded may proceed pending the poll being taken.

#### **Proxies**

**17.6.** (1) A shareholder may exercise the right to vote either

by being present in person or by proxy.

(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.

(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.

(4) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.

#### **Proxy with notice of meeting**

(5) With the notice of meeting the board must include the form of proxy in subclause (6)(c) [*Form of proxy*].

#### **Form of proxy**

(6) The instrument which appoints a proxy may be:

- (a) In any usual or common form; or
- (b) In any form which the directors approve; or
- (c) In the following form:

..... Limited

I/We, .....

of .....

being a shareholder/shareholders of the above-named company, hereby appoint .....

of ..... or failing him or her, .....

of .....

as my/our proxy to vote for me/us on my/our behalf:

(a) at the [annual or special, *as the case may be*] meeting of the shareholders to be held on the ..... day of ..... [year] and at any adjournment of the meeting; or

(b) For a term of .....

commencing on the ..... day of ..... [year].

Signed this ..... day of ..... [year]

\*This form is to be used \*\*in favour of/against the resolution. [*Specify each resolution*]

\*Unless otherwise instructed, the proxy will vote as he or she thinks fit.

\*\*Strike out whichever is not desired.

#### **Postal votes**

**17.7.** (1) A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with this clause.

#### **Notice to state right**

(2) The notice of a meeting at which shareholders are entitled to cast a postal vote must state:

(a) That a shareholder may exercise the right to vote at a meeting by casting a postal vote; and

(b) The name of the person authorised by the board to receive and count postal votes at that meeting.

(3) If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, then every director is deemed to be so authorised.

(4) A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.

#### **Duty of counting**

(5) It is the duty of a person authorised to receive and count postal votes at a meeting:

(a) To collect together all postal votes received by him or her, or by the company; and

(b) In relation to each resolution to be voted on at the meeting, to count:

(i) The number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and

- (ii) The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
- (c) To sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) of this subclause and which sets out the results of the counts required by paragraph (b) of this subclause; and
- (d) To ensure that the certificate required by paragraph (c) of this subclause is presented to the chairperson of the meeting.

**Chairperson's duty**

- (6) If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
  - (a) On a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution;
  - (b) On a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.
- (7) The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes where he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- (8) The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

**Minutes**

- 17.8. (1) The board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- (2) Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

**Shareholder proposals**

- 17.9. (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.

**Notice not less than 20 working days**

- (2) If the notice is received by the board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, then 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.

**Notice between 5 and 20 working days**

- (3) If the notice is received by the board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, then 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.

**Notice less than 5 working days**

- (4) If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, then the board must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

**Shareholder's statement**

- (5) If the directors intend that shareholders may vote on the proposal by proxy or by postal vote, then they must give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1,000 words prepared by the proposing shareholder in support of the proposal, together with the name and address

of the proposing shareholder.

- (6) The board is not required to include in or with the notice given by the board:
  - (a) Any part of a statement prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or
  - (b) Any part of a proposal or resolution prepared by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).

**If costs payable**

- (7) Where the costs of giving notice of the shareholder proposal and the text of the proposed resolution are required to be met by the proposing shareholder, then 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.

**Corporations may act by representatives**

- 17.10. A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

**Votes of joint holders**

- 17.11. 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.

**Loss of voting rights if calls unpaid**

- 17.12. Subject as provided elsewhere in this constitution, if a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than a meeting of an interest group.

**Other proceedings**

- 17.13. Except as provided in this clause 17 and as elsewhere provided in this constitution, a meeting of shareholders may regulate its own procedure.

**Vote before notice of revocation**

- 17.14. A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding:
  - (a) The previous death or insanity of the principal; or
  - (b) A revocation of the proxy or of the authority under which the proxy was executed; or
  - (c) The transfer of the share in respect of which the proxy is given;
 if no notice in writing of the death, insanity, revocation, or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the proxy is used, or is presented at the meeting or adjourned meeting before the vote is given.

**Voting by mentally disordered and protected persons**

**Shareholder living in New Zealand**

- 17.15. (1) A shareholder who is a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992 may vote by his or her manager or other person who has authority to administer his or her estate.
- (2) Subject to the provisions of a protection order which is made under the Protection of Personal and Property Rights Act 1988, a shareholder may vote in respect of any shares that are subject to the protection order by the manager appointed in that protection order.
- (3) A shareholder may vote by his or her protection attorney.
- (4) The manager, or other person with authority, may vote either on a show of hands or on a poll, and, on a poll, may vote by proxy.

**Shareholder living outside New Zealand**

- (5) Subclauses (6) and (7) apply in respect of

shareholders who are not living in New Zealand and to whom subclauses (1) to (4) accordingly do not apply.

(6) Every shareholder who is mentally disordered, or in respect of whom an order has been made by any court which has jurisdiction in mental disorder, may vote, whether on a show of hands or on a poll, by his or her committee, protection attorney, manager, receiver, curator bonis, or other person in the nature of a committee, protection attorney, manager, receiver, or curator bonis appointed by that Court.

(7) The committee, protection attorney, manager, receiver, curator bonis, or other person may, on a poll, vote by proxy.

## **18. DISTRIBUTIONS TO SHAREHOLDERS**

### **Solvency test**

**18.1.** (1) The board may (if it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test) subject to clause 18.2 [*Dividends payable pari passu*] and subject to any restrictions in this constitution, authorise a distribution by the company at a time, and of an amount, and to any shareholders it thinks fit.

[See section 52(1) [*Board may authorise distributions*].]

### **Certificate**

(2) The directors who vote in favour of a distribution must sign a certificate stating that, in their opinion, the company will, immediately after the distribution, satisfy the solvency test and the grounds for that opinion.

[See section 52(2).]

### **Change in circumstances**

(3) If, after a distribution is authorised and before it is made, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the distribution is made, satisfy the solvency test, any distribution made by the company is deemed not to have been authorised.

[See section 52(3).]

### **Debts and liabilities**

(4) In applying the solvency test for the purposes of this clause “debts” and “liabilities” have the meanings given in section 52(4).

### **Dividends payable pari passu**

**18.2.** (1) A dividend is a distribution other than a distribution to which clause 5.2 [*Acquisition of company's own shares*] or clause 6.1 [*Financial assistance*] applies.

[See section 53(1) [*Dividends*].]

(2) The board must not authorise a dividend:

- (a) In respect of some but not all the shares in a class; or
- (b) That is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class;

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under this constitution or under the terms of issue of the share or is required, for a portfolio tax rate entity, as a result of, section HL 7 of the Income Tax Act 2004. [Note: This reference reflects what is in the Companies Act 1993. However, the statutory cross-referencing is outdated and should refer to a multi-rate PIE in place of the current reference to a portfolio tax entity, and the reference should be to section HM 48 of the Income Tax Act 2007 instead of to section HL 7 of the Income Tax Act 2004.]

[See section 53(2).]

(3) Notwithstanding subclause (2), a shareholder may waive his or her entitlement to receive a dividend by notice in writing to the company signed by or on behalf of the shareholder.

[See section 53(3).]

### **Bonus shares in lieu of dividend**

**18.3.** Subject as may be provided elsewhere in this constitution, the board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if:

(a) The right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future dividends has been offered to all shareholders of the same class on the same terms; and

(b) If all shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained; and

(c) The shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and

(d) The shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agreed to receive the shares; and

(e) The provisions of clause 14.7 [*Consideration*] are complied with by the board.

[See section 54 [*Shares in lieu of dividends*].]

### **Declared according to amount paid up**

**18.4.** (1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends must be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.

(2) No amount paid or credited as paid on a share in advance of calls may be treated for the purposes of this clause as paid on the share.

(3) All dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portions of the period in respect of which the dividend is paid. If any share is issued on terms providing that it ranks for dividend as from a particular date, then that share ranks for dividend accordingly.

### **Deduction of shareholders' debts**

**18.5.** The board may deduct from any dividend payable to any shareholder all sums of money, if any, presently payable by him or her to the company on account of calls or otherwise in relation to the shares of the company.

[Refer to clause 8 [*Suspension of right to dividends*].]

### **Mode of payment**

**18.6.** (1) Any dividend, interest, or other money payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to:

- (a) The registered address of the holder; or
- (b) In the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of shareholders; or
- (c) To such person and to such address as the holder or joint holders may in writing direct.

### **Payable to order**

(2) Every such cheque or warrant must be made payable to the order of the person to whom it is sent.

### **Joint holders**

(3) Any one of 2 or more joint holders may give effectual receipts for any dividends, bonuses, or other money payable in respect of the shares held by them as joint holders.

### **Shareholder discounts**

**18.7.** (1) The board may resolve that the company offer shareholders discounts in respect of some or all of the goods sold or services provided by the company.

[See section 55(1) [*Shareholder discounts*].]

### **Prior resolution**

(2) The board may approve a discount scheme under subclause (1) only if it has previously resolved that the

proposed discounts are:

- (a) Fair and reasonable to the company and to all shareholders; and
- (b) To be available to all shareholders or all shareholders of the same class on the same terms.

[See section 55(2).]

#### **Solvency test**

(3) A discount scheme may not be approved or continued by the board unless it is satisfied on reasonable grounds that the company satisfies the solvency test.

[See section 55(3).]

#### **Not distribution**

(4) Subject to subclause (5) [*Change in circumstances*], a discount accepted by a shareholder under a discount scheme approved under this clause is not a distribution for the purposes of the Act.

[See section 55(4).]

#### **Change in circumstances**

(5) Where:

- (a) A discount is accepted by a shareholder under a scheme approved or continued by the board; and
- (b) At the time the scheme was approved or the discount was offered, the board ceased to be satisfied on reasonable grounds that the company would satisfy the solvency test; section 56 [*Recovery of distributions*] applies in relation to the discount, with such modifications as may be necessary, as if the discount were a distribution that is deemed not to have been authorised.

[See section 55(5).]

## **PART 6. MANAGEMENT**

### **19. APPOINTMENT AND REMOVAL OF DIRECTORS**

#### **Appointment and removal of directors**

**19.1.** (1) Directors may be appointed and removed in the manner specified in the schedule in part 1 or as otherwise provided by this constitution.

#### **Appointment need not be voted on individually**

(2) The resolution to appoint directors need not be for the appointment of 1 director.

[Refer to section 155.]

#### **Qualification**

**19.2.** (1) There is no shareholding qualification for directors.

(2) A natural person who is not disqualified by subsection (2) of section 151 [*Qualifications of directors*] may be appointed as a director of the company.

[See section 151(1).]

(3) The following are disqualified from being appointed or holding office as a director:

- (a) A body corporate;
- (b) A person who is under 18 years of age;
- (c) A person who is an undischarged bankrupt;
- (d) A person who is subject to a property order under section 30 or section 31 of the Protection of Personal and Property Rights Act 1988.
- (e) Any other person disqualified under section 151 of the Act.

[Refer to section 151(2) and (3).]

#### **Director's consent required**

**19.3.** A person must not be appointed a director unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office.

[See section 152 [*Director's consent required*].]

### **20. POWERS OF DIRECTORS**

#### **Management of company**

**20.1.** (1) The business and affairs of the company must be

managed by, or under the direction or supervision of, the board.

(2) The board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.

(3) Subclauses (1) and (2) are subject to any modifications, exceptions, or limitations contained in the Act or elsewhere in this constitution.

[See section 128 [*Management of company*].]

### **21. SELF-INTEREST TRANSACTIONS**

#### **Restrictions on self-interest transactions**

**21.1.** The directors must comply with sections 139 [*Meaning of "interested"*] to 149 [*Restrictions on share dealing by directors*].

#### **Meaning of "interested"**

**21.2.** (1) Subject to subclause (2) [*Security with no connection to director*], a director is "interested" in a transaction to which the company is a party if, and only if, the director:

- (a) Is a party to, or will or may derive a material financial benefit from, the transaction; or
- (b) Has a material financial interest in another party to the transaction; or

#### **Director, officer, or trustee**

(c) Is a director, officer, or trustee of another party to, or person who will or may derive a material financial benefit from, the transaction, not being a party or person that is:

- (i) The company's holding company being a holding company of which the company is a wholly-owned subsidiary; or
- (ii) A wholly-owned subsidiary of the company; or
- (iii) A wholly-owned subsidiary of a holding company of which the company is also a wholly-owned subsidiary; or

#### **Parent, child, or spouse**

(d) Is the parent, child, spouse, civil union partner, or de facto partner of another party to, or person who will or may derive a material financial benefit from, the transaction; or

#### **Material interest**

(e) Is otherwise directly or indirectly materially interested in the transaction.

[See section 139(1) [*Meaning of "interested"*].]

#### **Security with no connection to director**

(2) A director is not interested in a transaction to which the company is a party if the transaction comprises only the giving by the company of security to a third party which has no connection with the director, at the request of the third party, in respect of a debt or obligation of the company for which the director or another person has personally assumed responsibility in whole or in part under a guarantee, indemnity, or by the deposit of a security.

[See section 139(2).]

#### **Disclosure of interest**

**21.3.** (1) A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than 1 director, 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.

[See section 140(1) [*Disclosure of interest*].]

#### **Shareholder, director, officer, or trustee**

(2) For the purposes of subclause (1), 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 entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.

[See section 140(2).]

#### **Failure to comply**

(3) A failure by a director to comply with subclause (1) does not affect the validity of a transaction entered into by the company or the director.

[See section 140(3).]

#### **Avoidance of transactions**

**21.4.** (1) A transaction entered into by the company in which a director is interested may be avoided by the company within 3 months of the transaction being disclosed to all the shareholders (whether by means of the company's annual report or otherwise).

[See section 141(1) [Avoidance of transactions].]

(2) A transaction cannot be avoided if the company receives fair value under it.

[See section 141(2).]

[Refer to section 143 which excludes clauses 21.3 [Disclosure of interest] and 21.4 [Avoidance of transactions] where clause 27.1 [Indemnity and insurance] applies.]

#### **Interested director may vote**

**21.5.** A director who is interested in a transaction entered into, or to be entered into, by the company, may:

- (a) Vote on a matter relating to the transaction; and
- (b) Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum; and
- (c) Sign a document relating to the transaction on behalf of the company; and
- (d) Do any other thing in his or her capacity as a director in relation to the transaction;

as if the director was not interested in the transaction.

[See section 144 [Interested director may vote].]

## **22. DUTIES OF DIRECTORS**

### **Duty to act in good faith and in best interests of company**

**22.1.** A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.

[See section 131(1) [Duty of directors to act in good faith and in best interests of company].]

### **Subsidiary**

#### **Wholly-owned subsidiary**

**22.2.** (1) If the company is a wholly-owned subsidiary, a director may, when exercising powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.

[See section 131(2).]

#### **Not wholly-owned subsidiary**

(2) If the company is a subsidiary (but not a wholly-owned subsidiary), a director may, when exercising powers or performing duties as a director, with the prior agreement of the shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.

[See section 131(3).]

### **Joint venture**

**22.3.** If the company is carrying out a joint venture between its shareholders, a director may, when exercising powers or

performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company.

[See section 131(4).]

### **Exercise of powers in relation to employees**

**22.4.** Nothing in clause 22.1 [Duty to act in good faith and in best interests of company], clause 22.2 [Subsidiary], or clause 22.3 [Joint venture] limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business.

[See section 132 [Exercise of powers in relation to employees].]

### **Powers to be exercised for proper purpose**

**22.5.** A director must exercise a power for a proper purpose.

[See section 133 [Powers to be exercised for proper purpose].]

### **Directors to comply with Act and constitution**

**22.6.** A director must not act, or agree to the company acting, in a manner that contravenes the Act or this constitution.

[See section 134 [Directors to comply with Act and constitution].]

### **Reckless trading**

**22.7.** A director must not:

- (a) Agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors; or
- (b) Cause or allow the business of the company to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.

[See section 135 [Reckless trading].]

### **Duty in relation to obligations**

**22.8.** A director must not agree to the company incurring an obligation unless the director believes at that time on reasonable grounds that the company will be able to perform the obligation when it is required to do so.

[See section 136 [Duty in relation to obligations].]

### **Director's duty of care**

**22.9.** A director, when exercising powers or performing duties as a director, must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances, taking into account, but without limitation:

- (a) The nature of the company; and
- (b) The nature of the decision; and
- (c) The position of the director and the nature of the responsibilities undertaken by him or her.

[See section 137 [Director's duty of care].]

### **Keep minutes and records**

**22.10.** (1) The board must cause minutes of all resolutions and proceedings of all meetings of the company and of the board to be duly entered in books to be from time to time provided for the purpose and, in particular, must cause to be recorded in such minutes:

- (a) The names of the directors present at each meeting of the board; and
- (b) All resolutions of the board and of any meeting of the company; and
- (c) All appointments of officers of the company; and
- (d) All bills, notes, debentures, mortgages, and charges authorised to be drawn, accepted, made, given, or executed and all instruments which, if entered into by a natural person, would, by law, be required to be by deed.

(2) Similar minutes must be made and entered of all

resolutions and proceedings of any committee.

(3) The minutes of any meeting of the company or of the board or of any committee (if purporting to be signed by the chairman of such meeting or of the next succeeding meeting) are receivable in all Courts and by any person authorised to take evidence as prima facie evidence of the matters stated in such minutes.

#### **Keep accounts**

**22.11.** The board must keep books of account in the manner and to the extent required by sections 194 [*Accounting records to be kept*] and 195 [*Place accounting records to be kept*] of the Act.

#### **Annual return**

**22.12.** (1) The board must ensure that the Registrar receives each year, during the month allocated to the company for the purpose, an annual return in the prescribed form.

(2) The annual return must be dated as at a day within the month during which the return is required to be received by the Registrar. The information in it must be compiled as at that date.

[Refer to section 214 [*Annual return*].]

### **23. DIRECTORS CEASING TO HOLD OFFICE**

#### **Director ceasing to hold office**

**23.1.** (1) The office of director of the company is vacated if the person holding that office:

(a) Resigns in accordance with subclause (2) [*Resignation*]; or

(b) Is removed from office in accordance with the Act or this constitution; or

(c) Becomes disqualified from being a director in accordance with section 151 [*Qualifications of directors*]; or

(d) Dies; or

(e) Otherwise vacates office in accordance with this constitution.

[See section 157(1) [*Director ceasing to hold office*].]

#### **Resignation**

(2) A director may resign office by signing a written notice of resignation and delivering it to the address for service of the company. The notice is effective when it is received at that address or at a later time specified in the notice.

[See section 157(2).]

#### **Remains liable**

(3) Notwithstanding the vacation of office, a person who held office as a director remains liable under the provisions of the Act which impose liabilities on directors in relation to acts and omissions and decisions made while that person was a director.

[See section 157(3).]

#### **Notice of change of directors**

**23.2.** The board must ensure that, within 20 working days of a change in the directors, or in their residential address, or of the company first becoming aware of the change, notice of the change, in the prescribed form, is received by the Registrar.

[Refer to section 159 [*Notice of change of directors*].]

### **24. ADDITIONAL DIRECTORS**

#### **Vary number of directors**

**24.1.** The company may by special resolution of shareholders determine the maximum or minimum number of directors at any time.

#### **Co-opt directors**

**24.2.** (1) The directors have power at any time, and from time to time, to appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors.

#### **Duration of appointment**

(2) Any director so appointed holds office only until the next following annual meeting.

#### **Appointment of alternate directors**

**24.3.** (1) Any director may appoint any person other than an existing director (who has been approved for that purpose by a majority of the other directors or alternate or substituted directors) to be an alternate or substituted director.

(2) The appointee, while he or she holds office as an alternate or substituted director:

(a) Is entitled to notice of meetings of the directors and to attend and vote at the meetings as a director in the absence of their appointing director; and

(b) Does not require any shareholding qualification; and

(c) In the absence of their appointing director, perform all the functions and exercise all the powers, of the director; and

(d) Is not entitled to be remunerated by the company otherwise than out of the remuneration of the director appointing him or her.

#### **May be cancelled**

(3) Any appointment so made may be cancelled at any time by the appointor and any appointment or cancellation under this clause must be effected by notice in writing to be delivered to the company. Any such appointment will be deemed to be cancelled on the appointing director ceasing to be a director.

#### **Proxy**

(4) Any director or alternate director may attend and vote by proxy at any meeting of the directors, provided that the proxy is a director or alternate director and has been appointed in writing under the hand of the appointor.

#### **Particular meetings only except with consent**

(5) Every such appointment must be for a particular meeting or meetings, but with the consent of the board may be general.

### **25. PROCEEDINGS OF BOARD OF DIRECTORS**

[See *Third Schedule*.]

#### **Chairperson**

**25.1.** (1) The directors may elect 1 of their number as chairperson of the board.

(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.

(3) If no chairperson is elected or if, at any 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 1 of their number to be chairperson of the meeting.

#### **Notice of meeting**

**25.2.** (1) A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with this clause.

(2) Not less than 4 working days' notice of a meeting of the board must be sent to every director who is in New Zealand, and the notice must include the date, time, and place of the meeting and the matters to be discussed.

(3) An irregularity in the 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.

#### **Methods of holding meetings**

**25.3.** A meeting of the board may be held either:

(a) By a number of the directors who constitute a quorum being assembled together at the place, date, and time appointed for the meeting; or

(b) At any director's option, by means of audio, or audio

and visual, communication by which all directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

#### **Quorum**

**25.4.** (1) A quorum for a meeting of the board is the number specified in the schedule in part 1.

(2) No business may be transacted at a meeting of directors if a quorum is not present.

#### **Voting**

**25.5.** (1) Every director has 1 vote.

#### **No casting vote**

(2) The chairperson does not have a casting vote.

#### **Majority vote**

(3) 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 it are in favour of it.

#### **May abstain**

(4)(a) Clause 5(4) of the Third Schedule does not apply.

(b) A director present at a meeting of the board may abstain from voting. An abstaining director is not presumed to have agreed to, and to have voted in favour of, a resolution of the board.

#### **Minutes**

**25.6.** The board must ensure that minutes are kept of all proceedings of the board.

#### **Unanimous resolution**

**25.7.** (1) A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

(2) Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by 1 or more directors.

(3) A copy of any such resolution must be entered in the minute book of board proceedings.

#### **Other proceedings**

**25.8.** Except as provided in this clause 25 [*Proceedings of board of directors*], the board may regulate its own procedure.

#### **Mediation or arbitration**

##### ***Dispute between directors decided by shareholders***

**25.9.** (1) If any dispute arises between the directors in connection with any of the relationships created by or recorded in this constitution, and if a complete or temporary deadlock in the management by the board of the affairs of the company is created by that dispute, then the matter in dispute must be immediately referred by the board to the shareholders of the company at a special meeting to be called by the board for the purpose.

##### ***Mediation or arbitration if shareholders cannot agree***

(2) If at the special meeting there is a deadlock between the shareholders, then the dispute which is causing the deadlock must be referred to:

(a) A sole mediator, if the shareholders agree upon one;

(b) If the shareholders fail to agree upon a mediator, or if the mediation process fails to resolve the dispute within 20 working days of the dispute being referred to mediation, then to a sole arbitrator, if the shareholders agree upon one.

##### ***Failure to agree on arbitrator***

(3) If they do not agree upon an arbitrator, then the arbitrator will be nominated (on the application of any shareholder, at any time):

(a) By (or on behalf of) the President of the Arbitrators' and Mediators' Institute of New Zealand Inc; or

(b) If the President fails to make the nomination within a reasonable time, then by (or on behalf of) the President of the New Zealand Law Society.

##### ***Substitute arbitrator***

(4) If the arbitrator dies, declines to act, or becomes incapable of acting, then the respective president may appoint another.

#### ***Jurisdiction of arbitrator***

(4A) The sole arbitrator must decide the dispute:

(a) If the parties expressly authorise the arbitrator (in accordance with Article 28(3) of the First Schedule of the Arbitration Act 1996) ex aequo et bono (in accordance with considerations of general justice and fairness); but failing such authorisation;

(b) According to the substantive law of New Zealand.

#### ***Power of arbitrator***

(5) Upon any such reference the arbitrator has power:

(a) To take the opinion of any counsel he or she thinks fit upon any question of law that arises and to adopt (at his or her discretion) any opinion taken; and

(b) To obtain the assistance of any expert he or she thinks fit and to act (at his or her discretion) upon any statement of accounts, survey, valuation, or other expert assistance thus obtained.

#### ***Observe arbitrator's decision***

(6) Each of the parties must do all things and execute all instruments to give effect to the award by the arbitrator.

## **26. MANAGING DIRECTOR**

### **Appointment**

**26.1.** (1) The board may, from time to time, appoint 1 or more of their body to the office of managing director for such period and on such terms as the board thinks fit, and, subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.

### **Termination**

(2) The appointment of a director so appointed is automatically determined if he or she ceases from any cause to be a director.

### **Powers**

**26.2.** Subject to section 130 [*Delegation of powers*], the board may entrust to and confer upon a managing director any of the powers exercisable by the board upon such terms and conditions and with such restrictions as the board may think fit, and either collaterally with or to the exclusion of the board's powers, and may from time to time revoke, withdraw, alter, or vary all or any of those powers.

### **Remedy in damages only**

**26.3.** (1) The board may agree on behalf of the company with anyone who is or is about to become a managing director as to the length and terms of the managing director's employment, on the basis that the remedy of that person for any breach of the agreement will be in damages only.

(2) The managing director does not have a right or claim to continue in office as managing director contrary to the will of the board.

## **27. INDEMNITY, INSURANCE, AND REMUNERATION**

### **Indemnity and insurance**

**27.1.** (1) Except as provided in this clause, the company must not indemnify, or directly or indirectly effect insurance for, a director or employee of the company or a related company in respect of:

(a) 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.

[See section 162(1) [Indemnity and insurance].]

(2) An indemnity given in breach of this clause is void.

[See section 162(2).]

**Indemnify a director or employee for costs where acquittal or discontinuance**

(3) The company may indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding:

(a) That relates to liability for any act or omission in his or her capacity as a director or employee; and

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

[See section 162(3).]

**Indemnify a director or employee for liability other than to company or related company**

(4) The company may indemnify a director or employee of the company or a related company in respect of:

(a) Liability to any person other than the company or a related company for any act or omission in his or her capacity as a director or employee; or

(b) Costs incurred by 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 clauses 22.1 [Duty to act in good faith and in best interests of company] to 22.3 [Joint venture] or, in the case of an employee, of any fiduciary duty owed to the company or related company.

[See section 162(4).]

**Insurance for a director or employee**

(5) 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 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 proceedings relating to any such liability; or

(c) Costs incurred by that director or employee in defending any criminal proceedings:

(i) That have been brought against the director or employee in relation to any act or omission in his or her capacity as a director or employee; and

(ii) In which he or she is acquitted.

[See section 162(5).]

**Directors' certificate**

(6) The directors who vote in favour of authorisation of insurance under subclause (5) [Insurance for a director or employee] must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.

[See section 162(6).]

**Interests register**

(7) The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or related company are forthwith entered in the interests register.

[See section 162(7).]

**Definitions**

(8) The definitions of "director", "effect insurance", "employee", and "indemnify" are in section 162(9).

[See section 162(9).]

**Remuneration and other benefits of directors**

**27.2.** (1) The board, subject to the approval by ordinary resolution of shareholders, may authorise:

(a) The payment of remuneration or the provision of other benefits by the company to a director for services as a

director or in any other capacity; and

(b) The payment by the company to a director or former director of compensation for loss of office; and

(c) The making of loans by the company to a director; and

(d) The giving of guarantees by the company for debts incurred by a director; and

(e) The entering into a contract to do any of the things set out in paragraphs (a), (b), (c), and (d);

if the board is satisfied that to do so is fair to the company.

[See section 161(1) [Remuneration and other benefits].]

**Interests register**

(2) The board must ensure that forthwith after authorising the making of the payment, or the provision of the benefit, or the making of the loan, or the giving of the guarantee, or the entering into of the contract, as the case may be, particulars of the payment, or benefit, or loan, or guarantee, or contract are entered in the interests register.

[See section 161(2).]

**Directors' certificate**

(3) Directors who vote in favour of authorising a payment, benefit, loan, guarantee, or contract under subclause (1) must sign a certificate stating that, in their opinion, the making of the payment, or the provision of the benefit, or the making of the loan, or the giving of the guarantee, or the entering into of the contract is fair to the company, and the grounds for that opinion.

[See section 161(4).]

**PART 7. ADMINISTRATION**

**28. AUTHORITY TO BIND COMPANY**

**Method of contracting**

**28.1.** (1) A contract or other enforceable obligation may be entered into by the company as follows:

**Deeds**

(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) If there is only 1 director, by that director, whose signature must be witnessed; or

(iii) If this constitution elsewhere so provides, a director or other person or class of persons, whose signature or signatures must be witnessed; or

(iv) One or more attorneys appointed by the company in accordance with section 181 [Attorneys].

[See section 180(1)(a) [Method of contracting].]

**If writing required**

(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.

[See section 180(1)(b).]

**If writing not required**

(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.

[See section 180(1)(c).]

**Common seal**

(2) The company may, in addition to complying with subclause (1), affix its common seal, if it has one, to the contract or document containing the enforceable obligation.

[See section 180(1A).]

### ***Also applies outside New Zealand***

- (3) Subclause (1) applies to a contract or other obligation:
- (a) Whether or not the 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.
- [See section 180(2).]

## **29. ACCOUNTS**

### **Accounting records to be kept**

**29.1.** (1) The board must cause accounting records to be kept that:

- (a) Correctly record and explain the transactions of the company; and
- (b) Will at any time enable the financial position of the company to be determined with reasonable accuracy; and
- (c) Will enable the directors to ensure that the financial statements of the company comply with section 10 [*Obligation to prepare financial statements*] of the Financial Reporting Act 1993 and any group financial statements comply with section 13 [*Obligation to prepare group financial statements*] of that Act; and
- (d) Will enable the financial statements of the company to be readily and properly audited.

[See section 194(1) [*Accounting records to be kept*].]

### **Contents of records**

(2) Without limiting subclause (1), the accounting records must contain:

- (a) Entries of money received and spent each day and the matters to which it relates;
- (b) A record of the assets and liabilities of the company;
- (c) If the company's business involves dealing in goods:
  - (i) A record of goods bought and sold, except goods sold for cash in the ordinary course of carrying on a retail business, that identifies both the goods and buyers and sellers and relevant invoices;
  - (ii) A record of stock held at the end of the financial year, together with records of any stocktakings during the year;
- (d) If the company's business involves providing services, a record of the services provided and the relevant invoices.

[See section 194(2).]

### ***In English or convertible into English***

(3) The accounting services must be kept:

- (a) In written form and in English; or
- (b) In a form and manner in which they are easily accessible and convertible into written form in English.

[See section 194(3).]

### **Annual report**

**29.2.** (1) Subject to subclause (2), the board must, within 5 months after the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date.

(2) If clause 16.1(1)(b)(i) [*Annual meeting of shareholders*] applies, the board must, within 9 months after the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date.

[See section 208 [*Obligation to prepare annual report*].]

### **Annual report to shareholders**

**29.3.** (1) Subject to clause 29.4, the board must cause a copy of the annual report or a notice containing the statements specified in section 209(3) to be sent to every shareholder not less than 20 working days before the date fixed for holding the annual meeting of shareholders.

[See section 209(1) [*Obligation to make annual report available to shareholders*].]

(2) If the board sends a notice in accordance with subclause (1) and the shareholder, within 15 working days of receiving that notice, makes a request to the company to

receive a copy of the annual report, the board must, as soon as practicable, send to the shareholder, free of charge, a copy of that annual report.

(3) If a shareholder makes a request under subsection (2), the request must be treated as a request by the shareholder to receive a copy of the annual report each year until that request is revoked by notice to the company.

### **Shareholders may elect not to receive documents**

**29.4.** A shareholder may elect, by written notice to the company, to waive the right to receive all or any documents from the company. The shareholder may revoke the waiver in the same manner. While the waiver is in effect, the company need not send to the shareholder the documents to which the waiver relates. However, if a shareholder purports to waive the right to receive both a copy of the annual report and the notice referred to in clause 29.3(1), the purported waiver is invalid and the board must send the shareholder a copy of the annual report or notice.

[See section 212 [*Shareholders may elect not to receive documents*].]

## **30. INSPECTION OF COMPANY RECORDS**

### **Public inspection of company records**

**30.1.** The company must keep the following records available for inspection in the manner prescribed in clause 30.3 [*Manner of inspection*] by a person who serves on the company written notice of intention to inspect:

- (a) The certificate of incorporation or registration;
- (b) This constitution;
- (c) The share register;
- (d) The full names and residential addresses of the directors;
- (e) The registered office and address for service of the company.

[See section 215 [*Public inspection of company records*].]

### **Inspection of company records by shareholders**

**30.2.** The company must keep the following records available for inspection in the manner prescribed by clause 30.3 [*Manner of inspection*] by a shareholder of the company, or by a person authorised in writing by a shareholder for the purpose, who serves on the company written notice of intention to inspect:

- (a) Minutes of all meetings and resolutions of shareholders;
- (b) Copies of all written communications to all shareholders or to all holders of a class of shares during the preceding 10 years, including annual reports, financial statements, summary financial statements (if any) and group financial statements;
- (c) Certificates given by directors under the Act;
- (d) The interests register.

[See section 216 [*Inspection of company records by shareholders*].]

### **Manner of inspection**

**30.3.** (1) Documents which may be inspected under clause 30.1 [*Public inspection of company records*] or clause 30.2 [*Inspection of company records by shareholders*] must be available for inspection at the place at which the company's records are kept between 9.00 am and 5.00 pm on each working day during the inspection period.

[See section 217(1) [*Manner of inspection*].]

### **Inspection period**

(2) "Inspection period" means the period commencing on the third working day after the day on which notice of intention to inspect is served on the company by the person or shareholder concerned and ending with the

eighth working day after the day of service.

[See section 217(2).]

#### **Copies of documents**

**30.4.** A person may require a copy of, or extract from, a document which is available for inspection by him or her under clause 30.1 [*Public inspection of company records*] or clause 30.2 [*Inspection of company records by shareholders*] to be sent to him or her:

- (a) Within 5 working days after he or she has made a request in writing for the copy or extract; and
- (b) If he or she has paid a reasonable copying and administration fee prescribed by the company.

[See section 218 [*Copies of documents*].]

#### **Information for shareholders**

**30.5.** Subject to the restrictions contained in section 178, a shareholder may at any time make a written request for information held by the company.

[Refer to section 178 [*Information for shareholders*].]

#### **Inspection of records by directors**

**30.6.** (1) Subject to subclause (2), every director is entitled, on giving reasonable notice, to inspect the records of the company:

- (a) In written form; and
- (b) Without charge; and
- (c) At a reasonable time specified by the director.

(2) The Court may, on the application by the company, if it is satisfied that:

- (a) It would not be in the company's interests for a director to inspect the records; or
- (b) The proposed inspection is for a purpose that is not properly connected with the director's duties; direct that the records need not be made available for inspection or limit the inspection of them in any manner it thinks fit.

[See section 191 [*Inspection of records by directors*].]

#### **Company records**

**30.7.** (1) Subject to subclause (3) [*Notice to Registrar*], the company must keep the following documents at its registered office:

- (a) This constitution;
- (b) Minutes of all meetings and resolutions of shareholders within the last 7 years;
- (c) An interests register;
- (d) Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
- (e) Certificates given by directors under the Act within the last 7 years;
- (f) The full names and addresses of the current directors;
- (g) Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years, including annual reports made under clause 29.2 [*Annual report*];
- (h) Copies of all financial statements and group financial statements required to be completed by the Act or the Financial Reporting Act 1993 for the last 7 completed accounting periods of the company;
- (i) The accounting records required by clause 29.1 [*Accounting records to be kept*] for the current accounting period and for the last 7 completed accounting periods of the company;
- (j) The share register.

[See section 189(1) [*Company records*].]

(2) The references in paragraphs (b), (d), (e), and (g) of subclause (1) to 7 years and the references in paragraphs (h) and (i) of that subclause to 7 completed accounting periods include such lesser periods as the Registrar may approve by notice in writing to the company.

[See section 189(2).]

#### **Notice to Registrar**

(3) The records referred to in paragraphs (a) to (i) of

subclause (1) may be kept at a place in New Zealand, notice of which is given to the Registrar in accordance with subclause (4).

[See section 189(3).]

(4) If any records are not kept at the registered office of the company, or the place at which they are kept is changed, the company must ensure that within 10 working days of their first being kept elsewhere or moved, as the case may be, notice is given to the Registrar for registration of the places where the records are kept.

[See section 189(4).]

## **31. AUDIT**

### **When no auditors required**

**31.1.** (1) The company need not appoint an auditor in accordance with clause 31.2 [*When auditors required*] if, at or before the meeting, a unanimous resolution is passed by all the shareholders who would be entitled to vote on that resolution at a meeting of shareholders that no auditor be appointed. Such resolution ceases to have effect at the commencement of the next annual meeting.

[See section 196(2).]

### **Where exemption does not apply: overseas interests or "issuer"**

(2) The exemption in subclause (1) does not apply if the company:

- (a) Is a subsidiary of a company or body corporate incorporated outside New Zealand; or
- (b) Has shares that in aggregate carry the right to exercise or control the exercise of 25 percent or more of the voting power at a meeting of the company which are held by:
  - (i) A subsidiary of a company or body corporate incorporated outside New Zealand;
  - (ii) A company or body corporate incorporated outside New Zealand;
  - (iii) A person not ordinarily resident in New Zealand; or
- (c) Is an issuer within the meaning of section 4 of the Financial Reporting Act 1993.

[See section 196(3).]

### **When auditors required**

**31.2.** If the exemption in clause 31.1(1) [*When no auditors required*] does not apply, then the company must, at each annual meeting, appoint an auditor to:

- (a) Hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and
- (b) Audit the financial statements of the company and, if the company is required to complete group annual statements, those group annual statements, for the accounting period next after the meeting.

[See section 196(1) [*Appointment of auditors*].]

## **32. NOTICES**

### **Service**

**32.1.** Documents may be served in accordance with the following sections of the Act:

- (a) 387 [*Service of documents on companies in legal proceedings*];
- (b) 388 [*Service of other documents on companies*];
- (c) 391 [*Service of documents on shareholders and creditors*].

### **Joint holders**

**32.2.** A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of shareholders in respect of the share.

### **Mentally disordered or protected person, deceased or bankrupt estate**

**32.3.** A notice may be given by the company to the

persons who are entitled to a share in consequence of the mental disorder, protection order, death, or bankruptcy of a shareholder by sending the notice through the post in a prepaid letter addressed to him by name, or by the title of the manager, protection attorney, representatives of the deceased, or assignee of the bankrupt, or by any like description:

(a) At the address, if any, supplied for the purpose by the persons claiming to be entitled; or

(b) Until such an address has been supplied, by giving the notice in any manner in which the notice might have been given if the mental disorder, death, or bankruptcy had not occurred.

#### **Notice of meeting**

**32.4.** (1) Notice of every meeting must be given to:

(a) Every shareholder except those shareholders who (having no registered address within New Zealand) have not supplied to the company an address within New Zealand for the giving of notices to them; and

(b) Every person upon whom the ownership of a share devolves by reason of his or her being a legal personal representative or an assignee in bankruptcy of a shareholder where the shareholder but for his or her death or bankruptcy would be entitled to receive notice of the meeting; and

(c) The auditor (if any) for the time being of the company.

(2) No other person is entitled to receive notices of meetings.

#### **Service on director or shareholder**

**32.5.** The company may serve a notice upon any director or shareholder either:

(a) Personally; or

(b) By posting it by Fast Post in a prepaid envelope or package addressed to that director or shareholder at that person's last known address; or

(c) By delivery to a document exchange; or

(d) By facsimile to the facsimile telephone number of that director or shareholder.

#### **Time of service by facsimile**

**32.6.** A notice served by facsimile is deemed to be served on the day after completion of transmission.

#### **Time of service by post**

**32.7.** A notice which is sent by post or delivered to a document exchange is deemed to be served:

(a) On a person whose last known address is in New Zealand, at the expiry of 48 hours after the envelope or package which contained it was posted or delivered in New Zealand; and

(b) On a person whose last known address is outside New Zealand, at the expiry of 7 days after the envelope or package which contained it was posted by Fast Post in New Zealand.

#### **Proof of service**

**32.8.** (1) To prove service by post or delivery to a document exchange it is sufficient to prove that the envelope or package which contained the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid.

(2) To prove service by facsimile, it is sufficient to prove that the document was properly addressed and sent by facsimile.

### **33. ADDRESS FOR SERVICE**

#### **Address for service**

**33.1.** (1) The company must have an address for service in New Zealand.

(2) The address for service may be the company's registered office or another place, but it must not be at a postal centre or document exchange.

(3) A company's address for service at any particular time

is the address that is described as its address for service in the New Zealand register at that time.

(4) The description of the address for service must state that it is at the registered office of the company, or if it is at another place, must:

(a) State the address of that place; and

(b) If the address for service is at the offices of any firm of chartered accountants, barristers and solicitors, or any other person, state:

(i) That the address for service of the company is at the offices of that firm or person; and

(ii) Particulars of the location in any building of those offices; or

(c) If the address for service is not at the offices of any such firm or person but is located in a building occupied by persons other than the company, state particulars of its location in the building.

[See section 192 [Address for service].]

#### **Change of address for service**

**33.2.** (1) Subject as provided elsewhere in this constitution, the board may change the address for service at any time.

(2) Notice in the prescribed form of the change must be given to the Registrar for registration.

(3) A change of address for service takes effect on a date stated in the notice, not being a date that is earlier than 5 working days after the notice is registered.

[See section 193 [Change of address for service].]

#### **No address supplied**

**33.3.** If a shareholder has no registered address, and if the shareholder has not supplied to the company an address for the giving of notices to him or her:

(a) The shareholder is not entitled to have any notices sent to him or her from the company; and

(b) The company's registered office is deemed to be the registered address for the shareholder for all purposes; and

(c) All proceedings which are taken without notice to that shareholder are as valid as if he or she had due notice.

### **34. SECRETS OF COMPANY**

#### **Shareholders not entitled**

**34.1.** (1) No shareholder is entitled to require or receive any information concerning the company's business, trading, or customers, or any trade secret or secret process of or used by the company, beyond such information as to the accounts and businesses of the company as is by this constitution or by statute directed to be disclosed to shareholders.

(2) No shareholder is entitled to inspection of any of the books, papers, correspondence, or documents of the company, except so far as such inspection is expressly authorised by statute.

#### **Use of company information**

**34.2.** (1) A director who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person, or use or act on the information, except:

(a) For the purposes of the company; or

(b) As required by law; or

(c) In accordance with subclause (2) [Disclosure permitted] or subclause (3) [Requirements for disclosure]; or

(d) In complying with clause 21.3 [Disclosure of interest].

[See section 145(1) [Use of company information].]

#### **Disclosure permitted**

(2) A director may, unless prohibited by the board,

disclose information to:

- (a) A person whose interests the director represents; or
- (b) A person in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register.

[See section 145(2).]

**Requirements for disclosure**

(3) A director may disclose, make use of, or act on the information if:

- (a) Particulars of the disclosure, use, or the act in question are entered in the interests register; and
- (b) The director is first authorised to do so by the board; and
- (c) The disclosure, use, or act in question will not, or will not be likely to, prejudice the company.

[See section 145(3).]

**35. SECRETARY**

**Appointment and removal**

**35.1.** (1) A secretary may be appointed by the board for the term, at the remuneration, and upon the conditions that the board thinks fit.

(2) Any secretary so appointed may be removed by the board.

**36. LIQUIDATION**

**Surplus assets**

**36.1.** (1) When the company is liquidated the surplus assets must be distributed to the shareholders proportionately to their shareholdings.

(2) The holders of shares which have not been paid up in full must receive only a proportionate share. That share is proportionate to the amount paid to the company in satisfaction of the shareholder's liability to the company in respect of those shares, whether pursuant to the constitution or pursuant to the terms of issue.

[Refer to section 313 and clause 4.1(c) [Rights and powers attaching to shares].]

**37. REMOVAL FROM NEW ZEALAND REGISTER**

**Request for removal**

**37.1.** Those shareholders entitled to vote and voting on the question by special resolution may, in the prescribed form, apply to the Registrar to remove the company from the New Zealand Register on the grounds:

(a) That the company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this constitution and the Act; or

(b) That the company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 [Commencement of liquidation] for an order putting the company into liquidation.

[Refer to sections 318(1)(d)(i) and 318(2).]

**CERTIFICATION OF CONSTITUTION**

The undersigned applicants for registration hereby certify that the above documentation is the constitution of:  
(insert name of company)

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*Signature of applicant:*

*Full name of applicant:*

*Date:*

DRAFT