

Constitution

Botry-Zen Limited

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Table of contents

Interpretation and Relationship with Rules	1
1 Interpretation	1
2 Relationship with the Rules	2
Securities: Issue, transfer and voting	3
3 Issue of securities	3
4 Sales of less than minimum holdings	5
5 Rights and powers attaching to securities	5
6 Share register	5
Special powers relating to securities, indemnities and insurance	6
7 Acquisition of own securities	6
8 Acquisition of own securities other than pro rata	6
9 Redeemable securities	6
10 Redemption of securities other than pro rata	6
11 Financial assistance	7
12 Indemnity and insurance	7
Directors	9
13 Appointment and removal of directors	9
14 Directors' remuneration	10
15 Directors' meetings	10
16 Delegation by directors	10
Shareholders' meetings	12
17 Shareholders' meetings	12
Other Provisions	13
Other Provisions	13
18 Calls on securities	13
19 Forfeiture and lien	14
20 Distributions	16
21 Execution of Deeds	18

Schedule 1	Directors' meetings	19
1	Procedure	19
2	Notice	19
3	Meeting methods	20
4	Calling of meeting	21
5	Voting	21
6	Chairperson	21
7	Proceedings of committee	21
8	Defects	22
9	Resolution in writing	22
10	Minutes	22
Schedule 2	Shareholders' meetings	23
1	Chairperson	23
2	Quorum	23
3	Proxies	23
4	Adjournment	24
5	No voting if disqualified	24
6	Procedure	24

Interpretation and Relationship with Rules

1 Interpretation

1.1 Definitions

In this constitution, unless the context otherwise requires:

'Act' means the Companies Act 1993 as amended from time to time and any enactment passed in substitution or replacement therefor.

'Company' means Botry-Zen Limited.

'Rules' means the Listing Rules applying to the NZAX market (or any successor to that market) as altered from time to time by NZX.

'NZX' means NZX Limited, its successors and assigns and, as the context permits, includes any duly authorised delegate of NZX.

'Ordinary Resolution of the Company' has the same meaning as 'Ordinary Resolution of the Issuer' in the Rules.

1.2 Rules of Interpretation

In this constitution:

- a Terms used in this constitution which have defined meanings in the Act and/or the Securities Act 1978 shall have the same meanings in this constitution unless the context requires otherwise. Terms defined in the Rules shall, where used in this constitution, have the same meaning as is given to those terms in the Rules. Where a term is defined in both the Act and the Rules, or the Securities Act 1978 and the Rules, that term shall have the same meaning as given to the term in the Rules unless this constitution expressly provides otherwise.
- b Unless otherwise indicated references to section numbers are to sections of the Act.
- c Headings are for guidance only and shall not affect the interpretation of this constitution.
- d Clauses in this constitution which expressly refer to a section in the Act shall not prevent any other clause in this constitution from affecting or relating to that section.
- e References to any legislation or provision of any legislation are deemed to be references to that legislation or provision as amended, substituted or re-enacted and unless the context requires otherwise include any statutory instruments issued under that legislation or provision.
- f The singular includes the plural and vice versa, and words importing one gender include the other genders.
- g The schedules form part of this constitution.

2 Relationship with the Rules

2.1 Compliance with the Rules

So long as the Company is listed, the Company shall comply with the Rules, but this provision takes effect subject to the requirements of any law and to clause 2.4.

2.2 Incorporation of Rules

So long as the Company is Listed, those provisions of the Rules which are required to be contained or incorporated by reference in this constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this constitution and have the same effect as if they were set out in full with any necessary modification.

2.3 Effect of changes in Rules

Where any modifications made to the Rules by NZX would, but for clause 2.2, require a change in this constitution, those modifications will be deemed to be incorporated by reference in this constitution upon the date specified (either as a certain date or the date of expiry of any period of notice) by NZX as the date upon which such incorporation by reference is deemed to take effect.

2.4 Effect of rulings

If NZX has made a Ruling in relation to the Company authorising any act or omission which in the absence of such Ruling would be in contravention of the Rules or this constitution, that act or omission shall unless a contrary intention appears in this constitution, be deemed to be authorised by the Rules and by this constitution.

2.5 Rules to prevail

Nothing in this constitution will prohibit or restrict any action which is or may be expressly permitted by the Rules or NZX to be taken by the Company, the Board, each Director or the holders of Securities of the Company. In the event of any inconsistency between the Rules, as modified by any Ruling relevant to the Company, and this constitution, the Rules shall prevail.

2.6 Transactions not affected

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

2.7 Pre Break Announcements

The Company is permitted to use the Pre Break announcement procedure provided for by the Rules.

Securities: Issue, transfer and voting

3 Issue of securities

3.1 Issues must comply with Rules

While the Company is listed, the Board may issue new Equity Securities and other securities in the Company provided it does so in a manner permitted by the Rules, the Act, and this constitution.

3.2 Types of equity securities

Subject to clause 3.1, any Security in the Company may be issued with such preferred, deferred, or other special rights or such restrictions (whether in regard to dividends, voting, return of capital or otherwise) as the Board may from time determine, and in particular, Securities in the Company may:

- a be issued as Securities that are redeemable:
 - i at the option of the Company where the option is exercised in relation to all holders of the same class of Securities of the Company and in a manner that will leave unaffected relative voting rights;
 - ii at the option of the Company where the option is exercised in relation to one or more holders of Securities of the Company and the procedure set out in section 71 (which relates to special redemption of shares) is complied with;
 - iii at the option of the holder of the Securities; or
 - iv on a date specified in the terms of issue of the Securities for a consideration that is:
 - A specified;
 - B to be calculated in accordance with a formula; or
 - C required to be fixed by a suitably qualified person who is not associated with or interested in the Company; or
- b be Convertible Securities with such rights or such restrictions (including as to transfer in conjunction with Securities) as the Board may from time to time determine; or
- c confer preferential rights to distributions of capital or income; or
- d confer special, limited, or conditional voting rights; or
- e not confer voting rights; or
- f have limitations or restrictions on transferability (subject to the Rules).

3.3 Consolidation and subdivision of Shares

Subject to compliance with the Rules the Board may:

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

3.4 **Bonus issues**

Subject to compliance with the Rules, the Board may resolve to apply any amount which is available for Distribution either:

- a in paying up in full Shares or other Securities of the Company to be issued credited as fully paid to:
 - i the Shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
 - ii if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of such Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the Shareholders, or at some later time, in accordance with their respective entitlements; or
- b in paying up any amount which is unpaid on any Shares held by the Shareholders referred to in sub-clause (a)(i);

or partly in one way and partly in the other.

3.5 **Bonus Shares in lieu of dividend**

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 relative voting or distribution rights, or both, would be maintained if all Shareholders elected to receive the Shares in lieu of the proposed dividend; 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 agree to receive the Shares; and
- e the provisions of the Rules and section 47 of the Act are complied with by the Board.

The Board may vary, suspend or terminate any plan to issue Shares in lieu of Dividends.

3.6 **Pre-emptive right on issue**

The requirements of section 45 shall not apply provided the relevant issue of Equity Securities complies with this clause 3 and the Rules.

3.7 Further issue not an alteration of rights

For the purposes of section 117(3) the issue of further shares ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions, is permitted provided such issue is made in accordance with this constitution.

4 Sales of less than minimum holdings

4.1 Procedure

The Board may at any time give notice to any person holding less than a Minimum Holding of listed Securities of any Class that if at the expiration of three months after the date the notice is given the holder still holds listed Securities which are less than a Minimum Holding, the Board may exercise the power of sale of those Securities set out in this clause. If that power of sale becomes exercisable:

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

5 Rights and powers attaching to securities

5.1 Shareholders' rights

The rights specified in section 36(1) are subject to the provisions of the Rules.

6 Share register

6.1 Place of share register

The share register may be divided into two or more registers kept in different places.

Special powers relating to securities, indemnities and insurance

7 Acquisition of own securities

7.1 Company may acquire its own securities

Subject to the Rules, the Company is permitted to purchase or otherwise acquire Securities issued by it, and it may also hold its own Securities, in accordance with the Act.

8 Acquisition of own securities other than pro rata

8.1 Company may acquire own securities other than pro rata

Subject to the Rules, the Company may make an offer to one or more holders of Securities of the Company to purchase or otherwise acquire Securities issued by the Company other than on a pro rata basis, in accordance with the Act.

9 Redeemable securities

9.1 Company may redeem securities

The Company may redeem Securities (which by their terms of issue fixed in accordance with clause 3.2 are redeemable) in accordance with the Act and any applicable provisions of the Rules:

- a at its option; or
- b at the option of the holder of the Security if permitted by the terms of issue; or
- c on a date specified in this constitution or the terms of issue of the Security,

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified and independent person as provided in section 68.

10 Redemption of securities other than pro rata

10.1 Company may redeem securities other than pro rata

Subject to the Rules, the Company may exercise an option to redeem Securities issued by the Company in relation to one or more holders of Securities of the Company other than on a pro rata basis, in accordance with the Act.

11 Financial assistance

11.1 Company may provide financial assistance

The Company may give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Company provided that it is given in accordance with the Act and is permitted by the Rules.

12 Indemnity and insurance

12.1 Indemnity of directors

Subject to clause 12.3, the Company must indemnify every Director or Employee of the Company:

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

12.2 Other indemnities

Subject to clause 12.3, the Company may, with the prior approval of the Board, indemnify a Director or Employee of a related company:

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

12.3 Exceptions

An indemnity conferred by clause 12.1(b), or given pursuant to clause 12.2(b), shall not apply in respect of:

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

12.4 **Insurance**

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

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

12.5 **Extended meanings of certain terms**

In this clause 12 words given extended meanings in section 162(9) of the Act have those extended meanings.

Directors

13 Appointment and removal of directors

13.1 Sections 153 and 156(2)

The provisions of section 153 and 156(2) shall be read subject to this clause 13 and to the provisions of the Rules which govern the appointment and removal of Directors.

13.2 Directors' appointments

The Directors shall have power at any time, and from time to time, to appoint any person to be a Director, either to fill a vacancy or as an addition to the existing Directors. The Company shall not have more than eight directors **provided that** this limitation shall not preclude the appointment of one or more additional directors to satisfy any independent director requirements of the Rules.

13.3 Alternate directors

Subject to the requirements of the Rules, a Director may by notice in writing to the Company appoint another person to be an alternate Director during his or her absence or inability to act as Director. A person holding office as an alternate Director shall be entitled to all notices of meetings of the Directors and any paper minutes or documents sent to Directors and to attend and vote at any meetings of Directors but shall not vote at that meeting except in the place of the Director for whom he or she is an alternate and he or she shall not require any share qualification and shall not be entitled to be remunerated otherwise than out of the remuneration of the Director appointing him or her. Any appointment so made may be revoked at any time by the appointer. Any appointment or revocation under this clause shall be effected by notice in writing to the Company.

13.4 Removal from office

The office of Director is vacated if the person holding that office:

- a resigns; or
- b being an employee of the Company, ceases such employment. A person who ceases to be a Director by reason of ceasing employment may be reappointed as a Director pursuant and subject to the provisions of clause 13.2; or
- c is removed from office in accordance with the Act or the Rules; or
- d becomes disqualified from being a Director pursuant to the Act; or
- e dies or becomes of unsound mind; or
- f is absent from meetings of the Board for more than six months without the Board's permission, and the Board resolves that the office be vacated.

14 Directors' remuneration

14.1 Expenses and special remuneration

Notwithstanding the Rules governing Directors' remuneration:

- a each Director and alternate Director is entitled to be paid or reimbursed for all reasonable travelling, accommodation and other expenses incurred by the Director or alternate Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business; and
- b subject to those Rules governing transactions with Related Parties (if applicable), the Board may authorise, without the approval of holders of Securities of the Company, the payment of special remuneration to any Director who is or has been engaged by the Company to carry out work or perform any services which are not in the capacity of a Director.

15 Directors' meetings

15.1 Compliance with Schedule 1

Meetings of Directors of the Company shall be conducted in accordance with Schedule 1 attached to and forming part of this constitution.

16 Delegation by directors

16.1 Delegation by directors

Without limiting section 130 but excluding from any such delegation any of the matters set out in the Second Schedule to the Act:

- a the Directors may from time to time appoint one or more of their body to the office of Managing Director or Managing Directors of the Company for a fixed term not exceeding five years. The Directors may fix his, her or their remuneration (except his, her, or their remuneration in his, her or their capacity as a Director or Directors) which may be in addition to his, her or their remuneration as an ordinary Director or Directors and may be either by way of salary, commission on profits earned or participation in the profits of the Company or any Security scheme or by a combination of two or more of those modes;
- b one Managing Director while he or she continues to hold that office shall not be liable to retire by rotation under the Rules but he or she shall be taken into account in determining the number of other Directors to retire by rotation, and he or she shall be subject to the same provisions as regards resignation, removal and disqualification as the other Directors of the Company, and if he or she ceases to hold the office of Director for any cause he or she shall ipso facto cease to be a Managing Director. The Managing Director shall be exempted from the requirement in the Rules to retire by rotation provided that where there are two or more Managing Directors the Board shall nominate which Managing Director shall be exempt from the requirement to retire by rotation;
- c the Directors may entrust to and confer upon a Managing Director any of the powers exercisable by the Directors (except the power to make calls, forfeit Securities, borrow

money or issue debentures) upon such terms and conditions and with such restrictions as they may think fit and either collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers;

- d the Directors may delegate any of their powers to committees consisting of such persons as they think fit and may from time to time remove such delegation;
- e any Managing Director appointed under this clause 16 is an executive Director and the Rules shall be construed accordingly.

Shareholders' meetings

17 Shareholders' meetings

17.1 Compliance with Schedule 2

Meetings of shareholders of the Company shall be conducted in accordance with Schedule 2 attached to and forming part of this constitution.

Other Provisions

18 Calls on securities

18.1 Ability to call

18.2 The Directors may from time to time make calls upon the holders of Securities in respect of any money which is unpaid on their Securities and which is not by the conditions of allotment thereof made payable at a fixed time or times. Subject to receiving at least 21 days' notice specifying the time or times and place of payment each holder of Securities shall pay to the Company at the time or times and place so specified the amount called on their Securities. Subject to Rule 8.4 a call may be reduced, revoked or postponed as the Directors may determine. Notice of a call is not required to be given to a subsequent holder.

18.3 Call deemed made

A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments.

18.4 Joint holders' liability

The joint holders of a Security shall be jointly and severally liable to pay all calls in respect thereof.

18.5 Interest and expenses

Subject to Rule 8.4, if a sum called in respect of a Security is not paid before or on the day appointed for payment thereof the person from whom the sum is due shall pay interest on the sum from the day appointed for payment thereof to the time of actual payment at such rate as the Directors (acting reasonably) may determine, together with all expenses the Company has incurred or may incur by reason of the non-payment, but the Directors shall be at liberty to waive payments of that interest or those expenses wholly or in part.

18.6 Payment on allotment

Any sum which by the terms of issue of a Security becomes payable on allotment or at any fixed date shall for the purposes of this constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable and in case of non-payment all the relevant provisions of this constitution as to payment of interest and expenses, forfeiture or otherwise shall apply as if the sum had become payable by virtue of a call duly made and notified.

18.7 Proof of holding

On the trial or hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that the name of the holder of the Security sued is entered in the Register of the Company as the holder or one of the holders of the Securities in respect of which such debt accrued, that the resolution making the call is duly recorded in the records of the Company and that notice of such call was duly given to the holder sued in pursuance of this constitution; and it shall not be necessary to prove the appointment or qualification of the Directors who made such call nor any other matter whatsoever; and the proof of the matters aforesaid shall be conclusive evidence of the debt.

18.8 Directors' discretion to differentiate

The Directors may on the issue of Securities, differentiate between the holders as to the amounts to be paid and the times of any calls or payment.

18.9 Payments in advance

The Directors may if they think fit receive from any holder of Securities willing to advance the same all or any part of the money uncalled and unpaid upon any Securities held by that holder and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate as may be agreed upon between the Directors and the holder of Securities paying the sum in advance; but no holder shall be entitled as of right to any interest on any money so paid in advance and the Directors may decline to pay any interest. The Directors may at any time repay the amount so advanced upon giving to the holder of Securities three months' notice in writing.

19 Forfeiture and lien

19.1 Notice from directors

If a holder of a Security fails to pay any call or instalment on the day appointed for payment thereof the Directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid together with any interest which may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment.

19.2 Due date specified

The notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made and shall state that in the event of non-payment at or before the time appointed the Securities in respect of which the call was made will be liable to be forfeited.

19.3 Directors' resolution

If the requirements of any such notice as aforesaid are not complied with, any Security in respect of which the notice has been given may at any time thereafter before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited Securities and not actually paid before the forfeiture.

19.4 Note on register

When any Security shall have been so forfeited notice of the resolution shall be given to the holder in whose name it stood immediately prior to the forfeiture; and an entry of the forfeiture, with the date thereof, shall forthwith be made in the Register, and any certificate of any Securities so forfeited as aforesaid shall be immediately cancelled by the Company and the holder in whose name such cancelled Security stood immediately prior to such cancellation shall return the certificate for such Security so forfeited to the Company within 14 days of receiving notice of such resolution as aforesaid.

19.5 **Sale of forfeited security**

Subject to Rule 8.4, a forfeited Security may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the Directors think fit.

19.6 **Liability remains following sale**

A person whose Securities have been forfeited shall cease to be a holder in respect of the forfeited Securities, but shall, notwithstanding, remain liable to pay to the Company all money which at the date of forfeiture was payable by that holder to the Company in respect of the Securities but that holder's liability shall cease if and when the Company receives payment in full of all such money in respect of the Securities.

19.7 **Non-payment**

The provisions of this constitution as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a Security becomes payable at a fixed time on account of the issue price of the Security as if the same had been payable by virtue of a call duly made and notified.

19.8 **Lien**

The Company shall have a first and paramount lien upon all the Securities registered in the name of each holder of Securities whether solely or jointly with others and upon the proceeds of sale thereof, and on distributions from time to time declared in respect of such Securities for:

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

and for the purpose of giving better effect to the provisions of this clause each holder of Securities irrevocably appoints the Company and each officer of the Company as attorney for that holder authorising the Company to complete an assignment to the Company of any moneys owing by that holder under the provisions of this clause and each holder agrees to ratify and confirm any act carried out by the Company in that behalf.

19.9 **Sale of securities subject to lien**

The Company may sell in such manner as the Directors think fit any Securities on which the Company has a lien but no sale shall be made unless a sum in respect of which the lien exists is presently payable nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the Securities or the person entitled thereto by reason of his or her death or bankruptcy.

19.10 **Accounting for proceeds**

If Securities are forfeited and sold, or are sold to enforce a lien, any residue after the satisfaction of unpaid calls, instalments, premiums or other amounts and interest thereon, and

expenses, shall be paid to the previous holder, or to the executors, administrators or assigns of the previous holder.

19.11 Evidence of forfeiture

A certificate under the hand of a Director and countersigned by a second Director that the power of sale hereinbefore mentioned has arisen and is exercisable by the Company under this constitution, or that a Security in the Company has been duly forfeited on the date stated therein, shall be conclusive evidence of the facts stated therein.

19.12 Authority to transfer

For giving effect to any such sale after forfeiture or for enforcing a lien in purported exercise of the powers hereinbefore given the Directors may authorise some person to transfer the Securities sold to the purchaser thereof. The purchaser shall be registered as the holder of the Securities comprised in any such transfer and he shall not be bound to see to the application of the purchase money nor shall such purchaser's title to the Securities be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively. If the certificate for forfeited Securities is not delivered up to the Company the Directors may issue a new certificate distinguishing it as they think fit from the certificate not delivered up.

20 Distributions

20.1 Power to authorise

The Board, if satisfied on reasonable grounds that the Company will immediately after the distribution satisfy the solvency test may, subject to the Act and this constitution, authorise distributions by the Company at times, and of amounts, and to any holders of Securities, as it thinks fit and may do everything which is necessary or expedient to give effect to any such distribution.

20.2 Form of distribution

Subject to the rights of holders of any Securities in a Class, the Board may make a distribution in such form as it thinks fit, but except as provided in clause 20.3 shall not differentiate between holders as to the form in which a distribution is made without the prior approval of the holders of Securities.

20.3 Currency of payment

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

20.4 Entitlement to dividends

The Board shall not authorise a dividend:

- a in respect of some but not all the Securities in a Class; or
- b that is of a greater value per Security in respect of some Securities of a Class than it is in respect of other Securities of that Class;

unless the amount of the dividend in respect of a Security of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the holder under this constitution or under the terms of issue of the Security, but a holder of Securities may waive that holder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of the holder.

20.5 Deduction of expenses

The Directors may deduct from any distribution due to any holder of Securities all sums of money, if any, which are:

- a presently payable to that holder of Securities to the Company on account of any liability in respect whereof the Company has a lien on the Securities on which such distribution is payable; or
- b required by law to be deducted by the Company.

20.6 Method of payment

Any distribution payable in cash in respect of the Securities may be paid by direct bank credit (if so authorised by the holder) or by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders (subject to any arrangement between such joint holders consented to by the Directors), to the registered address of any one of the joint holders or to such person and to such address as the holder or joint holders may in writing direct. Every such cheque or warrant shall be made payable to the order of the person to whom it is sent. Any one of two or more joint holders may give effectual receipts for any distributions payable in respect of the Securities held by them as joint holders but the Company may require the receipt of all the joint holders. The Company shall not be responsible for the loss in transmission of any cheque or warrant sent through the post as aforesaid whether sent at the request of a holder of Securities or otherwise.

20.7 No interest

No distribution shall bear interest against the Company.

20.8 Unclaimed distributions

All distributions unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed and all distributions unclaimed for five years after having been declared may be forfeited by the Directors for the benefit of the Company **provided always that** the Directors must at any time after such forfeiture annul the same and, subject to the Company meeting the Solvency Test, pay the distributions so forfeited to any person producing evidence of entitlements to the

same and shall do so unless in the opinion of the Directors such payment would adversely affect the Company.

20.9 Directors establish reserves

The Directors may, from time to time, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves which shall at the discretion of the Directors be applicable for any purpose to which the profits of the Company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit. The Directors may also without placing the same to reserve carry forward any profits which they think prudent not to distribute.

21 Execution of Deeds

21.1 Procedure

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

- a two or more Directors;
- b any Director, or any person authorised by the Board, whose signature must be witnessed; or
- c one or more attorneys appointed by the Company in accordance with Section 181 of the Act.

Schedule 1 Directors' meetings

All meetings of Directors of the Company shall be conducted in accordance with the Third Schedule to the Act, except where varied by the following provisions:

1 Procedure

- 1.1 The Directors may meet together for the despatch of business, adjourn, or otherwise regulate their meetings and proceedings as they may think fit and may determine the quorum necessary for the transaction of business. The quorum for meetings of Directors shall be a majority of the Directors unless:
- a a majority of the Directors for the time being otherwise determine; or
 - b in respect of a matter to be considered by the Board, there would be less than a majority of the Directors eligible to be counted in a quorum and vote, in which case the quorum shall be the number of Directors present at the meeting and eligible to vote on the relevant matter.
- 1.2 If a quorum shall not be present at a meeting then the meeting may be adjourned for at least 48 hours and notice of the day, time and place for such adjourned meeting shall be given to all Directors who are in New Zealand at least 2 days prior to the time of such adjourned meeting. Provided however that if the chairperson, in his or her absolute discretion, forms the opinion that it is in the interests of the Company to convene the adjourned meeting within 48 hours of the original meeting, the adjourned meeting shall be convened at such earlier time as the chairperson deems appropriate, provided that notice of the adjourned meeting is given to all Directors who are in New Zealand at least 10 hours before the time set for such adjourned meeting. If at that further meeting a quorum is not present within 30 minutes after the time appointed for the meeting any Director present is a quorum.

2 Notice

2.1 Usual notice for meetings

Every Director who is in New Zealand shall be given not less than five working days' notice of a meeting unless the Director waives that right. Notice may be given to a Director by:

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

- d sending the notice by electronic means if requested by the Director, in which case the notice will be deemed to be given when transmitted.

2.2 Urgent meeting

If, in the opinion of the chairperson or in his or her absence the deputy chairperson (if any) or in the absence of both the Managing Director (if any), a meeting is required in the interests of the Company to be convened on less than five clear days' notice, the meeting may be convened on short notice **provided that:**

- a not less than three-quarters of the Directors entitled to be given notice consent to such shorter notice; or
- b the chairperson, or in his or her absence the deputy chairperson (if any), or in the absence of both the Managing Director (if any) and at least one other Director reasonably consider that by reason of extreme urgency, a meeting on short notice is required in the interests of the Company and that it is not practicable to give five clear days' notice.

In the case of a meeting convened on short notice pursuant to this clause:

- c a copy of the notice convening the meeting shall be given to every Director entitled to be given notice either personally or shall be sent by facsimile transmission to his or her facsimile prior to the holding of a meeting;
- d the Managing Director or in his or her absence the next most senior executive of the Company, shall use all reasonable endeavours to contact every Director either personally or by telephone prior to the holding of the meeting to try to ensure that every Director is aware that the meeting is to be held;
- e every Director shall be entitled to attend the meeting telephonically; and
- f the business to be transacted at the meeting shall be limited to business related to the urgent matter or matters which necessitated the meeting being called on short notice.

2.3 Powers of quorum

A meeting of the Directors at which a quorum is present shall be competent to exercise all or any or the authorities, powers and discretions by or under this constitution or the Act for the time being vested in or exercisable by the Directors generally.

3 Meeting methods

- 3.1 For the purposes of this constitution the contemporaneous linking together with simultaneous audio or audio and visual means of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, shall be deemed to constitute a meeting of the Directors and all the provisions in this constitution as to meetings of the Directors shall apply to such meetings by telephone so long as the following conditions are met:

- a All the Directors for the time being entitled to receive notice of a meeting of the Directors (including any alternate for any Director) shall be entitled to notice of such a meeting and

to be linked by such means for the purposes of such meeting. Notice of any such meeting may be given by such means.

- b Each of the Directors taking part in such a meeting must be able to hear each of the other Directors taking part at the commencement of the meeting.
- c At the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Directors of the Company to all the other Directors taking part.

A Director may not leave the meeting by disconnecting unless he or she has previously obtained the express consent of the chairperson of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times at such a meeting unless he or she has previously obtained the express consent of the chairperson to leave the meeting as aforesaid. Neither the meeting nor any business conducted at the meeting shall be invalidated if a Director does leave a meeting conducted in this manner without the express consent of the Chairperson.

A minute of the proceedings at such meeting by telephone shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting.

4 Calling of meeting

The chairperson of Directors, the Managing Director or any two Directors may at any time summon a meeting of the Directors.

5 Voting

- 5.1 Questions arising at any meeting of the Directors shall be determined by vote of the Directors. Except as provided in the Rules the chairperson shall have a casting vote and each Director shall have one vote.

6 Chairperson

The Directors shall from time to time appoint a chairperson and (if they think fit) a deputy chairperson and determine the period, not exceeding three years, for which they respectively are to hold office and may from time to time reappoint such chairperson or deputy chairperson for further periods not exceeding three years at any one time. The chairperson, or failing him or her the deputy chairperson (if any), shall preside at all meetings of the Directors, but if no such chairperson or deputy chairperson is present within 10 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairperson of such meeting, and the Director so chosen shall preside at such meeting accordingly.

7 Proceedings of committee

Any committee of Directors shall in the exercise of the powers so delegated conform to any regulation that may be imposed upon it by the Directors. Save as aforesaid the meetings and

proceedings of a committee shall be governed by the provisions of this constitution regulating the proceedings and meetings of Directors, including those relating to the signing of written resolutions.

8 Defects

All acts done by any meeting of the Directors or a committee of Directors or by any person acting as a Director, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such Director or person acting as aforesaid or that they or any of them were disqualified, shall be as valid as if every such person had been duly appointed and was qualified to be a Director.

9 Resolution in writing

A resolution in writing signed by a majority of the Directors for the time being entitled to vote on that resolution (or their alternate Directors) shall be as valid and effective as if it had been passed at a meeting of the Directors duly called and constituted **provided that** prior notice of the resolution has been given to Directors not entitled to vote and those Directors have acknowledged in writing that they do not require a meeting to be held. Any such resolution may consist of several documents in like form each signed by one or more Directors.

10 Minutes

The Directors shall cause minutes to be made in books provided for the purpose of recording:

- a The names of the Directors present at each meeting of the Directors and of any committee of the Directors.
- b All resolutions and proceedings at all meetings of the Company and of the Directors and of committees of Directors.

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

Schedule 2 Shareholders' meetings

All meetings of shareholders of the Company shall be conducted in accordance with the First Schedule to the Act, except where varied by the following provisions:

1 Chairperson

If the Directors have elected a chairperson, he or she shall chair a meeting of shareholders. If there is no such chairperson, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act, the Directors present shall elect one of their number to be chairperson of the meeting. If at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes after the time appointed for holding the meeting, the shareholders present shall choose one of their number to be chairperson of the meeting.

2 Quorum

The quorum for a general meeting of shareholders of the Company shall be at least five shareholders present in person or by proxy, postal vote or representative.

3 Proxies

A shareholder may exercise the right to vote either by being present in person or by proxy. Postal voting shall only be permitted at any particular meeting if the Directors designate such meeting as one at which postal votes may be cast and so identify the meeting in the relevant notice of meeting given to shareholders.

A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

No proxy is effective in relation to a meeting unless it has been received by or on behalf of the Company at any place specified for the purpose in the notice of meeting at least 48 hours before the start of the relevant meeting.

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

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

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

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

- a death of the principal; or

- b insanity of the principal; or
- c revocation of the proxy; or
- d transfer of the Securities in respect of which the proxy is given;

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

4 Adjournment

The chairperson may adjourn a meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

5 No voting if disqualified

5.1 Notwithstanding anything to the contrary in the Act or this constitution, a person is not entitled to cast a Vote in favour of a resolution where that person is disqualified from voting by the Rules.

5.2 Paragraph 5(a) shall not prevent a person who:

- a is disqualified from voting under paragraph 5(a); and
- b has been appointed as a proxy or representative by another person (who is not disqualified from voting),

from voting in respect of the Securities held by that other person in accordance with the express instructions of that other person.

6 Procedure

Except as provided in this constitution, or as required by the Act, the chairperson of the meeting shall regulate the procedure at any meeting of shareholders.