

**CONSTITUTION  
OF  
PORTS OF AUCKLAND LIMITED**

**Certificate**

I certify that this document was adopted as the Constitution of the  
Company by Special Resolution on 20 March 2007



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Director

**RUSSELL McVEAGH**

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**CONSTITUTION**  
**OF**  
**PORTS OF AUCKLAND LIMITED**

**1. DEFINITIONS AND INTERPRETATION**

1.1 **Definitions:** In this Constitution, unless the context otherwise requires:

**“Act”** means the Companies Act 1993.

**“Alternate Director”** means a person appointed by a Director as his or her alternate under section 27.

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

**“Class”** means a class of Shares having attached to them identical rights, privileges, limitations and conditions.

**“Company”** means Ports of Auckland Limited.

**“Constitution”** means this constitution, as altered from time to time.

**“Director”** means a person appointed as a director of the Company in accordance with this Constitution.

**“Distribution”** has the meaning set out in section 2(1) of the Act.

**“Interest Group”** has the meaning set out in section 116 of the Act.

**“Interested”**, in relation to a Director, has the meaning set out in section 139 of the Act.

**“Managing Director”** means a person appointed as a managing director of the Company under clause 28.1.

**“month”** means calendar month.

**“New Equity Securities”** has the meaning given in clause 4.1 of this Constitution.

**“Ordinary Resolution”** means a resolution that is approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question.

**“person”** includes an individual, partnership, firm, company, body corporate, corporation, association, organisation, trust, a state or government or any agency thereof, a municipal, local or regional authority, and any other entity or organisation, whether incorporated or not (in each case whether or not having a separate legal personality).

**“Records”** means the documents required to be kept by the Company under section 189(1) of the Act.

**“Representative”** means:

- (a) a person appointed as a proxy under section 23; or

- (b) a representative appointed by a corporation under section 24.

**“Share”** means a share issued, or to be issued, by the Company, as the case may require.

**“Shareholder”** means:

- (a) a person whose name is entered in the Share Register as the holder for the time being of one or more Shares; and
- (b) until the person’s name is entered in the Share Register, a person who is entitled to have that person’s name entered in the Share Register as a Shareholder under a registered amalgamation proposal in respect of which the Company is the amalgamated company.

**“Shareholding Local Authority”** means any harbour board (as defined in the Port Companies Act 1988), any territorial authority or regional council (as defined in the Local Government Act 2002) and includes Auckland Regional Holdings as defined in the Local Government (Auckland) Amendment Act 2004 or any united council that holds any Shares of any Class that confers rights to vote at any meeting of the Company.

**“Share Register”** means the share register for the Company kept in accordance with the Act.

**“Special Resolution”** means a resolution approved by a majority of 75% or more of the votes of those Shareholders entitled to vote and voting on the question.

**“Working Day”** has the meaning set out in section 2 of the Act.

1.2 **Interpretation:** In this Constitution, unless the context otherwise requires:

- (a) the table of contents, headings, and descriptions relating to sections of the Act, are inserted for convenience only and shall be ignored in construing this Constitution;
- (b) the singular includes the plural and vice versa;
- (c) one gender includes the other genders;
- (d) reference to any legislation or to any provision of any legislation (including regulations and orders) includes:
- (i) that legislation or provision as from time to time amended, re-enacted or substituted;
- (ii) any statutory instruments, regulations, rules and orders issued under that legislation or provision;
- (e) “written” and “in writing” include any means of reproducing words, figures and symbols in a tangible and visible form;
- (f) references to clauses and sections (other than sections of the Act) are references to clauses and sections in this Constitution, unless stated otherwise;
- (g) where any word or expression is defined in this Constitution, any other grammatical form of that word or expression has a corresponding meaning;

- (h) words and expressions defined or explained in the Act have the same meaning in this Constitution.

1.3 **Constitution to prevail over Act:** If there is any conflict between:

- (a) a provision in this Constitution and a provision in the Act which is expressly permitted to be altered by this Constitution; or
- (b) a word or expression defined or explained in the Act and a word or expression defined or explained in this Constitution,

the provision, word or expression in this Constitution prevails.

## 2. GENERAL

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

## 3. SHARES

- 3.1 **Existing Shares:** At the time of adoption of this Constitution, the Company has 106,005,192 issued Shares.

- 3.2 **Classes of Shares:** Different Classes of Shares may be issued by the Company in accordance with the provisions of this Constitution. Without limiting the Classes which may be issued, any Share may be issued upon the basis that it:

- (a) confers preferential rights to distributions of capital or income;
- (b) confers special, limited or conditional voting rights;
- (c) does not confer voting rights; or
- (d) is redeemable in accordance with section 68 of the Act.

- 3.3 **Consolidation and subdivision of Shares:** The Board may with the approval of Shareholders by Special Resolution:

- (a) consolidate and divide the Shares or any Class; and
- (b) subdivide the Shares or any Class,

in each case in proportion to those Shares or the Shares in that Class, as the case may be.

## 4. ISSUE OF NEW EQUITY SECURITIES

- 4.1 **Board may issue Shares and other securities:** Notwithstanding anything in clause 4.2, the Board may issue Shares, securities that are convertible into or exchangeable for Shares, or options to acquire Shares (together referred to in this clause as "**New Equity Securities**") to such persons and on such terms as the Shareholders may by Special Resolution approve.

4.2 **Procedure for issue of new Shares and other securities:** The Board may, with the approval of Shareholders by Special Resolution, issue New Equity Securities in accordance with the following provisions:

- (a) Subject to the provisions of the resolution of Shareholders and to any special rights or restrictions attaching to any existing Shares, all New Equity Securities must be offered to the Shareholders in proportion to the number of existing Shares held by them.
- (b) The offer must be made by written notice to each Shareholder stating:
  - (i) the number of New Equity Securities to which that Shareholder is entitled;
  - (ii) the consideration for which the New Equity Securities will be issued and the terms on which they will be issued;
  - (iii) the time (not being less than 14 days nor more than 28 days) within which the offer, if not accepted, will be deemed to be declined;
  - (iv) that any Shareholder who wishes to acquire New Equity Securities in excess of that Shareholder's entitlement must, when accepting the offer, state the number of excess New Equity Securities which that Shareholder wishes to acquire;
  - (v) that any unclaimed New Equity Securities will be used for satisfying the requests for excess New Equity Securities, upon the basis that the unclaimed New Equity Securities will be allocated to the Shareholders requesting excess New Equity Securities in proportion to their existing shareholdings in the Company, but no Shareholder shall be allocated more excess New Equity Securities than the number which that Shareholder has requested; and
  - (vi) that if, thereafter, any New Equity Securities remain unallocated, the Board may offer them to any person whom the Board is prepared to register as a Shareholder provided that the consideration and terms of issue are no more advantageous to that person than those offered to the Shareholders.
- (c) If any holders of securities other than Shares are entitled by the terms of issue of those securities to participate in any issue of New Equity Securities, the provisions of this clause shall be appropriately modified to take account of such entitlement.

4.3 **Bonus issues:** 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 clause 4.3(a)(i),

or partly in one way and partly in the other.

4.4 **Shares in lieu of dividends:** The Board may exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

4.5 **Fractional entitlements:** The Board may, in exercising any powers pursuant to this section, deal with fractional entitlements to Shares or other securities in such manner as the Board considers equitable and in the interests of the Company.

## 5. ALTERATION OF SHAREHOLDER RIGHTS

5.1 **Procedure in respect of Shares:** The Company shall, before taking action affecting the rights attached to any Shares, comply with the provisions of sections 116 and 117 of the Act.

5.2 **Issue of further Shares:** For the purposes of clause 5.1, the issue of further Shares which rank equally with, or in priority to, any existing Shares, whether as to voting rights, Distributions or otherwise, is deemed not to be action affecting the rights attaching to those existing Shares.

## 6. ACQUISITION OF COMPANY'S OWN SHARES

6.1 **Powers to acquire, redeem and hold Securities:** The Company may purchase or otherwise acquire Shares from one or more Shareholders in accordance with the provisions of the Act and may, subject to any requirements or restrictions imposed by law, hold any Shares so purchased or acquired. A transfer by the Company of any Shares so held by it is deemed to be an issue of new Shares to which the provisions of clause 4.2 apply.

## 7. SHARE CERTIFICATES

7.1 **Issue of Share certificates:** The Company may issue Share certificates in respect of all or any Shares and must, within 20 Working Days after receiving an application by a Shareholder, send to that Shareholder a Share certificate, in accordance with section 95 of the Act.

7.2 **Replacement Share certificates:** The Company:

- (a) may issue a replacement certificate for any Share certificate that is worn out or defaced; and
- (b) shall issue a replacement Share certificate for one that has been lost or destroyed,

subject to satisfactory proof of that fact, payment of the reasonable expenses of the Company and, if so required by the Board, an appropriate indemnity being given to the Company.

## 8. EQUITABLE INTERESTS IN SHARES

- 8.1 **No notice of trusts:** No notice of a trust, whether express, implied, or constructive, may be entered on the Share Register.
- 8.2 **No recognition of equitable interests:** Except as required by law or by this Constitution, no person shall be recognised by the Company as holding any Share upon trust and the Company shall not be bound by, nor be compelled to recognise (even after notice), any equitable, contingent, future or partial interest in any Share, or any interest in any fraction or part of a Share or (except as provided by this Constitution or by law) any other rights in respect of any Share, except an absolute right of the registered holder to the entire Share.

## 9. CALLS ON SHARES

- 9.1 **Board may make calls:** The Board may, from time to time, make such calls as it thinks fit upon the Shareholders in respect of any amounts unpaid on any Shares held by them which are not made payable at fixed times by the terms of issue of those Shares. A call may be made payable by instalments. The Board may revoke or postpone any call.
- 9.2 **Time of call:** A call is deemed to be made at the time when the resolution of the Board making the call is passed.
- 9.3 **Fixed instalments deemed calls:** An amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date is deemed for the purposes of this Constitution to be a call duly made and payable on the date on which the amount is payable.
- 9.4 **Notice of call:** At least 14 days' notice of any call shall be given to the holder of the Share in respect of which the call is made, specifying the time and place of payment.
- 9.5 **Differential calls:** The Board may, on the issue of Shares, differentiate between the Shareholders as to the amounts to be paid in respect of the Shares and the times of payment of such amounts.
- 9.6 **Manner of payment:** A Shareholder by whom a call is payable shall pay the amount of the call to the Company at the time and place specified by the Board.
- 9.7 **Joint Shareholders:** Joint Shareholders are jointly and severally liable to pay all calls in respect of Shares registered in their names.
- 9.8 **Default interest:** If a call in respect of a Share is not paid on or before the due date, the Shareholder by whom the call is payable shall pay interest on the call from the due date to the date of actual payment at such rate as the Board determines, unless the Board waives payment of interest wholly or in part.
- 9.9 **Proceedings for recovery of call:** In any proceedings for recovery of a call:
- (a) it is sufficient to prove that:
    - (i) the name of the relevant Shareholder is entered in the Share Register as the holder, or one of the holders, of the Shares to which the call relates; and
    - (ii) except in relation to any amount which, by the terms of issue of a Share, is payable on allotment or at a fixed date, the resolution making



the call is entered in the Records and notice of the call has been duly given,

and proof of the matters mentioned in this clause is conclusive evidence of the debt; and

- (b) it is not necessary to prove the appointment or qualification of any member of the Board which made the call nor any other matter.

9.10 **Payment in advance of calls:** The Company may receive from any Shareholder in advance any amount uncalled and unpaid upon any Shares held by that Shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the Board and the Shareholder agree.

9.11 **Cancellation of unpaid amounts:** No obligation to pay any amount which is unpaid on any Shares shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

## 10. FORFEITURE OF SHARES

10.1 **Notice requiring payment of call:** If a Shareholder fails to pay any call or instalment of a call on the due date, the Company may at any time thereafter by written notice to that Shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the Company by reason of such non-payment.

10.2 **Contents of notice:** The notice shall specify a further date (not earlier than 14 days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the Share in respect of which the call or instalment of a call is due, is liable to be forfeited.

10.3 **Forfeiture for non-payment:** If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any Share in respect of which the notice has been given may be forfeited by a resolution of the Board to that effect. The forfeiture shall include all Distributions declared in respect of the forfeited Share and not paid before the forfeiture.

10.4 **Notice of forfeiture:** When a Share has been forfeited, the Company shall give notice of the resolution to the Shareholder in whose name the Share stood immediately prior to the forfeiture, and shall enter in the Share Register details of the forfeiture.

10.5 **Cancellation of forfeiture:** A forfeiture may be cancelled at any time before the sale of the forfeited Share, on such terms as the Board thinks fit.

10.6 **Effect of forfeiture:** The holder of a Share which has been forfeited ceases to be a Shareholder in respect of the forfeited Share, but remains liable to the Company for all money payable in respect of the forfeited Share.

## 11. LIEN ON SHARES

11.1 **Lien on Shares:** The Company has a first and paramount lien upon each Share, the proceeds of sale of the Share, and all Distributions made in respect of the Share, for:

- (a) all unpaid calls owing in respect of the Share and interest thereon (if any); and

- (b) any amount which the Company may be called upon to pay under any legislation in respect of the Share, whether or not the due date for payment thereof has arrived; and
- (c) all liabilities and obligations of the Shareholder to the Company, whether solely or jointly with any other person, whether incurred or arising before or after notice to the Company of any equitable interest in any person other than the Shareholder, and whether or not the date for payment, fulfilment or discharge thereof has arrived.

11.2 **Waiver of lien:** Unless otherwise agreed between the Company and the relevant Shareholder, the registration of a transfer of a Share shall operate as a waiver of any lien which the Company may have on that Share.

## 12. SALE OF SHARES SUBJECT TO FORFEITURE OR LIEN

12.1 **Company may sell Shares:** The Company may sell any forfeited Share, or any Share on which the Company has a lien, in such manner as the Board thinks fit, provided that:

- (a) the amount in respect of which a lien exists is due and payable;
- (b) 14 days have expired since written notice demanding payment of the amount owing has been given to the person entitled to receive notice of meetings of Shareholders in respect of the Share; and
- (c) before exercising the power of sale, the Board first offers the Share for sale to the holders of the remaining Shares as though it is a new Share to which the provisions of clause 4.2 apply.

12.2 **Proceeds of sale:** The net proceeds (after deduction of any expenses) of the sale of a forfeited Share or of any Share sold for the purpose of enforcing a lien shall be applied in or towards satisfaction of any unpaid calls, interest or other amount in respect of which any lien exists (as the case may require). The residue, if any, shall be paid to the holder of the Share at the time of its forfeiture or, in the case of a Share sold for the purpose of enforcing a lien, the holder immediately prior to the sale.

12.3 **Evidence:** A certificate by a Director that any power of sale has arisen and is exercisable by the Company under this Constitution, or that a Share has been forfeited on the date stated in the certificate, shall be conclusive evidence of those facts.

12.4 **Sale procedure:** For giving effect to any sale after forfeiture of any Share or for enforcing a lien over any Share, the Board may authorise any person to transfer any Share to the purchaser. The purchaser shall be registered as the holder of the Share and shall not be bound to see to the application of the purchase money, and the title of the purchaser shall not be affected by any irregularity or invalidity in relation to the sale. The remedy of any person having a cause of action in relation to the sale is in damages only and solely against the Company.

## 13. TRANSFER OF SHARES

13.1 **Right to transfer:** Subject to any restrictions contained in this Constitution, a Shareholder may transfer any Share:

- (a) by an instrument of transfer which complies with this Constitution; or

- (b) under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company.

13.2 **Securities Transfer Act:** A Share which is disposed of in a transaction to which the provisions of the Securities Transfer Act 1991 apply may be transferred in accordance with the provisions of that Act. Where an instrument of transfer executed by a transferor outside New Zealand would have complied with the provisions of that Act if it had been executed in New Zealand, it may nevertheless be registered by the Company if it is executed in a manner acceptable to the Company.

13.3 **Other forms of transfer:** An instrument of transfer of Shares to which the provisions of clause 13.2 are not applicable shall:

- (a) be in any common form or any other form approved by the Company;
- (b) be signed or executed by or on behalf of the transferor; and
- (c) if registration as holder of the Share imposes a liability on the transferee, be signed or executed by or on behalf of the transferee.

13.4 **Delivery to Company:** An instrument transferring Shares must be delivered to the Company or to the agent of the Company who maintains the Share Register, together with such evidence (if any) as the Company reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Shares.

13.5 **Board may refuse to register:** Subject to section 84 of the Act (which imposes certain procedural requirements on a board), the Board may refuse to register a transfer of any Share if:

- (a) the Company has a lien on the Share;
- (b) the transferor fails to produce such evidence as the Company reasonably requires to prove the title of the transferor to, or right of the transferor to transfer, the Share;
- (c) the Board has notice of any agreement by the Shareholder to transfer only to some specified person or subject to some specified condition; or
- (d) the Board, in its absolute discretion, believes that registration of the transfer would not be in the best interests of the Company, but this provision shall not apply in respect of a transfer to an existing Shareholder,

provided that the Board resolves to exercise its power under this clause within 30 Working Days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five Working Days of the resolution being passed by the Board.

13.6 **When transfer effective:** A transferor of a Share is deemed to remain the holder of the Share until the name of the transferee is entered in the Share Register in respect of the Share.

13.7 **Company to retain transfer:** If the Company registers an instrument of transfer it shall retain the instrument.

13.8 **Multiple registers:** The Share Register may, by resolution of the Board, be divided into two or more registers, which may be kept in different places.

- 13.9 **Securities other than Shares:** The provisions of this section 13 shall apply, with any necessary modifications, to securities of the Company other than Shares except to the extent (if any) provided otherwise by the terms of issue of such securities or by law.

## 14. DISTRIBUTIONS

- 14.1 **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 Shareholders, as it thinks fit and may do everything which is necessary or expedient to give effect to any such Distribution.

- 14.2 **Form of Distribution:** Subject to the rights of holders of any Shares in a Class, the Board may make a Distribution in such form as it thinks fit and shall not differentiate between Shareholders as to the form in which a Distribution is made without the prior approval of the Shareholders.

- 14.3 **Entitlement to dividends:** The Board shall 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, but a Shareholder may waive that Shareholder's entitlement to receive a dividend or any part thereof by written notice to the Company signed by or on behalf of that Shareholder.

- 14.4 **Deduction of money:** The Board may deduct from a Distribution payable to a Shareholder any amount which is due and payable by the Shareholder to the Company on account of calls or otherwise in relation to any Shares held by that Shareholder.

- 14.5 **Method of payment:** A Distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint Shareholders, to the Shareholder named first in the Share Register, or to such other person and in such manner as the Shareholder or joint Shareholders may in writing direct. Any one of two or more joint Shareholders may give a receipt for any payment in respect of the Shares held by them as joint Shareholders.

- 14.6 **No interest on Distributions:** The Company is not liable to pay interest in respect of any Distribution.

## 15. EXERCISE OF POWERS OF SHAREHOLDERS

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

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can reasonably be expected to be able to hear each other simultaneously throughout the meeting.

15.2 **Exercise of power by meeting or written resolution:** A power reserved to the Shareholders by the Act or by this Constitution may be exercised either:

- (a) at a meeting of Shareholders; or
- (b) by a resolution in writing signed in accordance with section 122 of the Act.

15.3 **Powers exercisable by Ordinary Resolution:** Unless otherwise specified in the Act or this Constitution, a power or right of approval reserved to Shareholders may be exercised by an Ordinary Resolution.

## 16. MEETINGS OF SHAREHOLDERS

16.1 **Annual meetings:** The Company shall hold annual meetings of Shareholders in accordance with section 120 of the Act.

16.2 **Special meetings:** All meetings of Shareholders, other than annual meetings, shall be called special meetings.

16.3 **Calling of special meetings:** A special meeting of Shareholders entitled to vote on an issue:

- (a) may be called by the Board at any time;
- (b) shall be called by the Board on the written request of Shareholders holding Shares carrying together not less than 5% of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

16.4 **Time and place of meetings:** Each meeting of Shareholders shall be held at such time and place as the Board appoints.

16.5 **Meetings of Interest Groups:** A meeting of the Shareholders constituting an Interest Group may be called by the Board at any time. All the provisions of this Constitution relating to meetings of Shareholders shall apply, with all necessary modifications, to meetings of Interest Groups, except that:

- (a) the necessary quorum for a meeting is one Shareholder having the right to vote at the meeting, present in person or by Representative;
- (b) any Shareholder in the relevant Interest Group, present in person or by Representative, may demand a poll; and
- (c) if the Board so elects, one meeting may be held of Shareholders constituting more than one Interest Group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of the Shareholders in each Interest Group.

16.6 **Resolution in lieu of annual meeting:** It is not necessary for the Company to hold an annual meeting in any calendar year if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act.

## 17. NOTICE OF MEETINGS OF SHAREHOLDERS

- 17.1 **Written notice:** Written notice of the time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting, to every Director, and to the auditor of the Company, not less than 10 Working Days before the meeting, but with the consent of all Shareholders entitled to attend and vote at a meeting, it may be convened by such shorter notice, and in such manner, as those Shareholders agree.
- 17.2 **Contents of notice:** A notice of meeting shall 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;
  - (b) the text of any Special Resolution to be submitted to the meeting; and
  - (c) that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder;
- 17.3 **Form of resolutions:** So far as reasonably practicable, the resolutions to be proposed at a meeting shall be framed in a way which facilitates the giving of two way voting instructions to proxies.
- 17.4 **Waiver of notice irregularity:** 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.
- 17.5 **Accidental omission of notice:** The accidental omission to give notice of a meeting to, or the non-receipt or late receipt of notice of a meeting by, any person entitled to receive notice, does not invalidate the proceedings at the meeting.
- 17.6 **Notice of adjourned meeting:** If a meeting of Shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned. In any other case, notice of the adjourned meeting shall be given in accordance with clause 17.1.

## 18. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

- 18.1 **Requirement for quorum:** Subject to clause 18.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.
- 18.2 **Quorum:** Subject to clause 18.3, a quorum for a meeting of Shareholders is that number of Shareholders, present in person or by Representative and holding, or representing the holder or holders of, not less than 75% of the Shares.
- 18.3 **Lack of quorum:** If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called by the Board on the written request of Shareholders entitled to exercise that right, 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 Board 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 or their Representatives present are a quorum.

- 18.4 **Regulation of procedure:** Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the procedure at meetings of Shareholders.
- 18.5 **Adjournment of meeting:** The chairperson may, with the consent of a meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the relevant meeting.
- 18.6 **Adjournment or dissolution of disorderly meeting:** If a meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the meeting.
- 18.7 **Completion of unfinished business if meeting dissolved:** If a meeting is dissolved by the chairperson pursuant to clause 18.6, the unfinished business of the meeting shall be dealt with as follows:
- (a) in respect of a resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act or this Constitution, authorise such Distribution;
  - (b) in respect of a resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors;
  - (c) the chairperson may direct that any other item of uncompleted business, which in his or her opinion requires to be voted upon, prior to the dissolution of the meeting, be put to the vote by a poll without further discussion, in accordance with clause 22.4.

## 19. CHAIRPERSON OF MEETINGS OF SHAREHOLDERS

- 19.1 **Chairperson:** If the Directors have elected a chairperson of the Board and he or she is present at a meeting of Shareholders, he or she shall chair the meeting, unless or except to the extent that the chairperson considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting.
- 19.2 **Directors may appoint chairperson:** 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 after the time appointed for the commencement of the meeting, or considers it not proper or desirable to act as chairperson, either in relation to the entire meeting or in relation to any particular business to be considered at the meeting, the Directors present may elect one of their number to chair the meeting or that part of the meeting which relates to the particular business, as the case may require.
- 19.3 **Shareholders may appoint chairperson:** If at any meeting of Shareholders no Director is willing to act as chairperson or no Director is present within 15 minutes after the time appointed for the commencement of the meeting, the Shareholders present may choose one of their number to chair the meeting.

## 20. VOTING AT MEETINGS OF SHAREHOLDERS

- 20.1 **Voting at meeting in one place:** In the case of a meeting of Shareholders held under clause 15.1(a), unless a poll is demanded in accordance with clause 22.1, the chairperson of the meeting shall determine whether voting will be by voice or by show of hands.
- 20.2 **Voting at audio/visual meeting:** In the case of a meeting of Shareholders held under clause 15.1(b), unless a poll is demanded in accordance with clause 22.1, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- 20.3 **Postal votes:** Unless the Board determines otherwise, Shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that postal voting will be permitted at a meeting, the provisions of clause 7 of the first schedule to the Act shall apply, with such modifications (if any) as the Board thinks fit.
- 20.4 **Entitlement to vote:** A Shareholder may exercise the right to vote either in person or by Representative.
- 20.5 **Number of votes:** Subject to clause 21.1 and to any rights or restrictions for the time being attached to any Share:
- (a) where voting is by show of hands or by voice every Shareholder present in person or by Representative has one vote;
  - (b) on a poll every Shareholder present in person or by Representative has:
    - (i) in respect of each fully paid Share held by that Shareholder, one vote;
    - (ii) in respect of each Share held by that Shareholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Share were fully paid equivalent to the proportion which the amount paid (excluding amounts credited as paid) on that Share bears to the total amount paid and payable thereon (excluding amounts credited as paid and amounts paid in advance of calls).
- 20.6 **Declaration by chairperson:** A declaration by the chairperson of a meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 22.1.
- 20.7 **Chairperson's casting vote:** The chairperson of a meeting of Shareholders is not entitled to a casting vote.
- 20.8 **Joint Shareholders:** Where two or more persons are registered as joint Shareholders, 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.

## 21. RESTRICTIONS ON VOTING

- 21.1 **No vote when amount owing on Share:** A Shareholder is not entitled to vote at any meeting of Shareholders (including a meeting of an Interest Group) in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.



## 22. POLLS

- 22.1 **Right to demand poll:** At a meeting of Shareholders a poll may be demanded by:
- (a) the chairperson; or
  - (b) not less than five Shareholders having the right to vote at the meeting; or
  - (c) a Shareholder or Shareholders representing not less than 10% of the total voting rights of all Shareholders having the right to vote at the meeting; or
  - (d) a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right.
- 22.2 **When poll may be demanded:** A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- 22.3 **When poll taken:** A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson directs and any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.
- 22.4 **Poll procedure:** A poll shall be taken in such manner as the chairperson directs and the result of the poll is deemed to be a resolution of the meeting at which the poll is demanded.
- 22.5 **Votes:** On a poll:
- (a) votes may be given either personally or by Representative;
  - (b) votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by Representative and voting in respect of those Shares;
  - (c) a Shareholder need not cast all the votes to which the Shareholder is entitled and need not exercise in the same way all of the votes which the Shareholder casts.
- 22.6 **Scrutineers:** The auditors shall be scrutineers unless they are unable or unwilling to act, or the chairperson of the meeting directs otherwise, in which case the scrutineers shall be appointed by the chairperson.
- 22.7 **Declaration of result:** The chairperson is entitled to declare the result of a poll upon receipt of a certificate from the scrutineers stating that sufficient votes to determine the result of the resolution have been counted and setting out the basis of that determination.

## 23. PROXIES

- 23.1 **Right to appoint:** A Shareholder may appoint a proxy to vote on behalf of the Shareholder at a meeting of Shareholders. The proxy is entitled to attend and be heard at the meeting, and to demand or join in demanding a poll, as if the proxy were the Shareholder.
- 23.2 **Notice of appointment:** A proxy shall be appointed by written notice signed by the appointing Shareholder and the notice shall state whether the appointment is for a

particular meeting or for a specified term. The notice shall (so far as the subject matter and form of the resolutions to be proposed at the relevant meeting reasonably permit) provide for two way voting on all resolutions, enabling the appointor to instruct the proxy as to the casting of the vote.

- 23.3 **Proxy form to be sent with notice of meeting:** The Company shall send a form of notice of appointment of proxy to every Shareholder entitled to attend and vote at a meeting, with the notice convening the meeting.
- 23.4 **Proxy form must not name proxy:** The Company shall not issue any form of notice of appointment with a proxy named in it, either by name or by reference to an office which that proxy holds, but the Company may indicate in a footnote that certain persons or officers are willing to act as a proxy if a Shareholder desires to appoint them or any of them.
- 23.5 **Production of notice:** No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the Company at its registered office not later than 48 hours before the start of the meeting.
- 23.6 **Validity of proxy vote:** A vote given in accordance with the terms of a notice of appointment of a proxy is valid notwithstanding the previous death or mental disorder of the principal, or the revocation of the appointment or of the authority under which the notice of appointment was executed, or the transfer of the Share in respect of which the proxy is appointed, if no written notification of such death, mental disorder, revocation, or transfer is received by the Company at its registered office before the commencement of the meeting or adjourned meeting for which the proxy is appointed.

## 24. CORPORATE REPRESENTATIVE

- 24.1 **Appointment of representative:** A corporation which is a Shareholder may appoint a person to attend a meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy.

## 25. SHAREHOLDER PROPOSALS AND MANAGEMENT REVIEW

- 25.1 **Shareholder proposals:** A Shareholder may give written notice to the Board of a matter which the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause.
- 25.2 **Shareholder resolutions:** Where the notice to the Board referred to in clause 25.1 is given in terms of clause 9(2) of the first schedule to the Act or accompanies a request made pursuant clause 16.3(b), and, in either case, states that the Shareholder wishes to propose a resolution at the relevant meeting, then the chairperson of the meeting shall allow Shareholders to consider and vote on the resolution at the meeting. Such resolution shall not be binding on the Board but if the resolution is passed, the Board shall:
- (a) consider the resolution at the next regular Board meeting following the Shareholders' meeting; and
  - (b) no later than one month following that Board meeting circulate a report to Shareholders on the outcome of its deliberations on the resolution.
- 25.3 **Management review by Shareholders:** The chairperson of a meeting of Shareholders shall allow a reasonable opportunity for Shareholders at the meeting to question, discuss, or comment on the management of the Company. The Shareholders may pass a

resolution relating to the management of the Company at that meeting but no such resolution is binding on the Board.

## 26. DIRECTORS

- 26.1 **Number of Directors:** The number of Directors shall not at any time be more than nine nor less than six.
- 26.2 **Shareholding Local Authority:** Not more than a total of two members or employees of the Shareholding Local Authority may hold office as Directors of the Company at the same time.
- 26.3 **Office to be vacated:** The office of Director shall be vacated if the Director becomes a member or employee of the Shareholding Local Authority and there are already two Directors who are members or employees of the Shareholding Local Authority. Where two or more Directors are elected as members of the Shareholding Local Authority at the same election and the effect of that is there would be more than two Directors who are also members or employees of the Shareholding Local Authority, the Directors so elected to the Shareholding Local Authority shall determine which of them is or are not to hold office as Directors or is or are to vacate membership of the Shareholding Local Authority. In the absence of agreement the matter shall be determined by lot with the losing Director or Directors having the option to relinquish either the directorship of the Company or the membership of the Shareholding Local Authority.
- 26.4 **Appointment by Shareholders:** Subject to clauses 26.1, 26.2 and 26.3 a person may be appointed as a Director at any time by an Ordinary Resolution or by written notice to the Company signed by the holders of a majority of the Shares which confer the right to vote at meetings of Shareholders. Two or more persons may be appointed as Directors by a single resolution or notice.
- 26.5 **Appointment by Board:** Subject to clauses 26.1, 26.2 and 26.3 the Board may at any time appoint a person to be a Director. A Director so appointed holds office only until the next annual meeting of the Company but is eligible for re-election at that meeting.
- 26.6 **Existing Directors to continue:** The persons holding office as Directors on the date of adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to this Constitution.
- 26.7 **Rotation of Directors:** At the annual meeting of the Company in each year one third of the Directors, or if their number is not a multiple of three then the number nearest to one third, shall retire from office. The Directors to retire shall be those who have been longest in office since their last election. If two or more of those Directors were last elected on the same day, the Directors to retire shall (unless they otherwise agree among themselves) be determined by lot. A retiring Director is eligible for re-election.
- 26.8 **Exceptions to rotation:** In determining the Directors who are to retire by rotation at a meeting:
- (a) a Director who is retiring pursuant to clause 26.5 shall not be liable to retire by rotation at the meeting or be taken into account in calculating the number of Directors to retire;
  - (b) a Managing Director, even though not liable to retire by rotation by virtue of clause 28.2, shall be taken into account in calculating the number of Directors to retire.

26.9 **Removal:** A Director may at any time be removed from office by Ordinary Resolution or by written notice to the Company signed as provided in clause 26.4.

26.10 **Notice of appointment and removal:** Any notice to the Company pursuant to this section appointing or removing a Director must:

- (a) be signed, or purport to be signed, by the person exercising such right;
- (b) in the case of joint Shareholders, be signed, or purport to be signed, by all of those Shareholders;
- (c) if given by a Shareholder which is a corporation, be signed, or purport to be signed, on behalf of the corporation by any director or other person holding equivalent office; and
- (d) be given to the Company by delivering the notice, or by sending the notice through the post or by facsimile or other electronic means of communication, to its registered office,

and may be comprised in one or more separate notices, each signed or purporting to be signed by one or more persons. A notice shall be effective from the time of receipt of the notice by the Company at its registered office.

26.11 **Vacation of office:** A Director ceases to be a Director if he or she:

- (a) is removed from office by an Ordinary Resolution; or
- (b) dies, or becomes mentally disordered or subject to a property order or personal order made under the Protection of Personal and Property Rights Act 1988; or
- (c) resigns by written notice delivered to the Company at its address for service or at its registered office (such notice to be effective at the time when it is so received unless a later time is specified in the notice); or
- (d) becomes disqualified from being a Director pursuant to the Act; or
- (e) becomes bankrupt or makes an arrangement or composition with his or her creditors generally; or
- (f) has for more than six months been absent without approval of the Board from meetings of the Board held during that period; or
- (g) vacates office pursuant to clause 26.3.

26.12 **Timing of retirement and appointment:** If:

- (a) a Director retires at a meeting of Shareholders and is not re-elected or deemed to be re-elected at that meeting, the Director shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting;
- (b) a Director is removed from office at a meeting of Shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting;
- (c) a person who is not already a Director is appointed or elected as a Director at a meeting of Shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

## 27. ALTERNATE DIRECTORS

- 27.1 **Power to appoint:** A Director may from time to time by written notice to the Company appoint any person, who is not already a Director and who is approved by a majority of the other Directors, to be that Director's alternate. No Director may appoint a deputy or agent except by way of appointment of an Alternate Director under this section 27.
- 27.2 **Rights of Alternate Director:** Unless otherwise specified by the terms of his or her appointment, an Alternate Director:
- (a) is entitled, in the absence or unavailability of the Director who appointed him or her (the "**Appointor**"), to exercise the same rights, powers and privileges (other than the power to appoint an Alternate Director) as the Appointor;
  - (b) when acting as an Alternate Director is subject to the same duties and obligations as the Appointor;
  - (c) is not entitled to be given notice of a meeting of the Directors unless the Appointor has given written notice to the Company requesting that notice be given to the Alternate Director.
- 27.3 **Remuneration and expenses:** An Alternate Director is not entitled to any remuneration from the Company in his or her capacity as an Alternate Director but is entitled to be reimbursed by the Company for all expenses incurred in attending meetings of the Directors and in the discharge of his or her duties, to the same extent as if he or she were a Director.
- 27.4 **Cessation of appointment:** An Alternate Director ceases to be an Alternate Director:
- (a) if the Appointor ceases to be a Director, or revokes the appointment by written notice to the Company; or
  - (b) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director; or
  - (c) if a majority of the other Directors resolve to revoke the Alternate Director's appointment.

## 28. MANAGING DIRECTORS

- 28.1 **Appointment:** The Board may from time to time appoint one or more Directors to the office of Managing Director for such period not exceeding five years, and on such terms, as the Board thinks fit and, subject to the terms of any agreement entered into in any particular case, may at any time revoke such appointment.
- 28.2 **Resignation:** A Managing Director is subject to the same provisions as regards resignation, removal, and disqualification as the other Directors, and if a Managing Director ceases to hold the office of Director from any cause he or she automatically ceases to be a Managing Director.
- 28.3 **Remuneration:** A Managing Director is entitled to receive such remuneration for his or her services as an employee (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the Board may determine.

## 29. REMUNERATION AND OTHER BENEFITS OF DIRECTORS

29.1 **Power to authorise:** The Board may not exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section to or in respect of a Director in his or her capacity as such, without the prior approval of an Ordinary Resolution, except as provided in this section 29. Each such resolution shall express the Directors' remuneration as either:

- (a) a monetary sum per annum payable to all Directors taken together; or
- (b) a monetary sum per annum payable to each person from time to time holding office as a Director.

29.2 **Power to increase:** If at any time while the approved remuneration of the Directors is expressed in accordance with clause 29.1(a), the total number of Directors holding office is increased, the amount of remuneration then payable in accordance with that clause may be increased by the Board by such amount as is necessary to enable the Company to pay the additional Director or Directors by way of remuneration a fee not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson).

29.3 **Notice of proposed increase:** No resolution which increases the amount of the Director's remuneration shall be moved at a meeting of Shareholders unless notice of the amount of increase has been given in the notice of meeting.

29.4 **Payment of expenses:** Directors are entitled to be paid for all travelling, accommodation and other expenses properly incurred by them in attending meetings of the Board, or any committee of the Board, or meetings of Shareholders, or in connection with the business of the Company.

29.5 **Special remuneration:** Without limiting clause 29.1, the Board may authorise the Company to pay special remuneration to any non-executive Director who is, or has been, engaged by the Company to carry out work in a capacity other than that of Director.

## 30. INDEMNITY AND INSURANCE

30.1 **Indemnity of Directors:** Subject to clause 30.3, every Director shall be indemnified by 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 a director 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 a director 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,

and this indemnity shall continue in force, despite any subsequent revocation or amendment of this clause, in relation to any liability which arises out of any act or omission by a Director prior to the date of such revocation or amendment.

30.2 **Other indemnities:** Subject to clause 30.3, the Company may, with the prior approval of the Board, indemnify a director of a related company, or an employee of the Company or 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 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 such capacity, and costs incurred by him or her in defending or settling any claim or proceeding relating to any such liability.

30.3 **Exceptions:** An indemnity conferred by clause 30.1(b), or given pursuant to clause 30.2(b), shall not apply in respect of:

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

30.4 **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 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 in which he or she is acquitted.

30.5 **Definitions:** In this section 30:

- (a) “Director” includes a former Director and “director” includes a former director; and
- (b) other words given extended meanings in section 162(9) of the Act have those extended meanings.

## 31. POWERS OF DIRECTORS

31.1 **Management of Company:** The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

31.2 **Exercise of powers by Board:** The Board may exercise all the powers of the Company which are not required, either by the Act or this Constitution, to be exercised by the Shareholders.

- 31.3 **Delegation of powers:** The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the second schedule to the Act.
- 31.4 **Appointment of attorney:** The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.
- 31.5 **Ratification by Shareholders:** Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause is deemed to be, and always to have been, a proper and valid exercise of that power.

## 32. INTERESTS OF DIRECTORS

- 32.1 **Disclosure of Interests:** A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of interest of directors) but failure to comply with that section does not affect the operation of clause 32.2.
- 32.2 **Personal involvement of Directors:** Notwithstanding any rule of law or equity to the contrary, but subject to sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a Director is Interested) and section 199(2) of the Act (prohibiting a director from acting as auditor of a company), a Director may:
- (a) contract with the Company in any capacity;
  - (b) be a party to any transaction with the Company;
  - (c) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
  - (d) become a director or other officer of, or otherwise Interested in, any corporation promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
  - (e) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause may be avoided by reason of a Director's Interest.

- 32.3 **Interested Directors may not vote:** A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:
- (a) attend a meeting of the Board at which any matter relating to the transaction arises but shall not be included among the Directors present at the meeting for the purposes of a quorum and may not vote on any matter relating to the transaction except as provided in clause 32.4;



- (b) sign a document relating to the transaction on behalf of the Company, and may do any other thing in his or her capacity as a Director in relation to the transaction, as if the Director were not interested in the transaction.

32.4 **Exception to voting prohibition:** A Director may vote in respect of, and be counted in the quorum for the purposes of, a matter in which he or she is Interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

### 33. PROCEEDINGS OF BOARD

33.1 **Third schedule of Act not to apply:** The provisions of the third schedule to the Act (relating to proceedings of a board) do not apply to the Company, except to the extent expressly incorporated in this Constitution.

33.2 **Alternative forms of meeting:** A meeting of the Board may be held either:

- (a) by a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) by means of audio, or audio and visual, communication by which all Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

33.3 **Procedure:** Except as provided in this Constitution, the Board may regulate its own procedure.

33.4 **Notice of meeting:** The following provisions apply in relation to meetings of the Board (except where otherwise agreed by all Directors in relation to any particular meeting or meetings or as provided in clause 33.5):

- (a) Not less than two clear days' notice of a meeting of the Board shall be sent to each Director, unless:
  - (i) the Director waives that right; or
  - (ii) the issue which is to be the subject of the meeting is, in the reasonable opinion of a majority of the Directors, a matter of urgency, in which event such notice as is practicable in the circumstances shall be given.
- (b) Notice to a Director of a meeting of the Board may be:
  - (i) given to the Director in person by telephone or other oral communication;
  - (ii) delivered to the Director;
  - (iii) posted to the address given by the Director to the Company for such purpose;
  - (iv) sent by facsimile transmission to the facsimile telephone number given by the Director to the Company for such purpose; or
  - (v) sent by electronic means in accordance with any request made by the Director from time to time for such purpose.

- (c) It is not necessary to give notices of meetings to an alternate Director, unless the Director who appointed that person has given written notice to the Company requiring that such notices be given.
- (d) A notice of meeting shall specify the date, time and place of the meeting and, in the case of a meeting by means of audio, or audio and visual, communication, the manner in which each Director may participate in the proceedings of the meeting.
- (e) A notice of meeting given to a Director pursuant to this clause is deemed to be given:
  - (i) in the case of oral communication, at the time of notification;
  - (ii) in the case of delivery, by handing the notice to the Director or by delivery of the notice to the address of the Director;
  - (iii) in the case of posting, three days after it is posted;
  - (iv) in the case of facsimile transmission, when the Company receives a transmission report by the sending machine which indicates that the facsimile was sent in its entirety to the facsimile telephone number given by the Director;
  - (v) in the case of electronic means, at the time of transmission.

33.5 **Director may convene meeting:** Without limiting the provisions of clauses 33.3 or 33.4, a Director has the right at any time to convene a meeting of the Board, or to require an employee of the Company to convene a meeting of the Board, at the registered office of the Company or at the place where the meetings of the Board for the time being are customarily held, by giving not less than seven days' written notice signed by or on behalf of the Director to each of the other Directors stating the date, time and place of the meeting and the matters to be discussed.

33.6 **Waiver of notice irregularity:** An irregularity in the giving of notice of a meeting is waived if each of the Directors either attends the meeting without protest as to the irregularity or agrees (whether before, during, or after the meeting) to the waiver.

33.7 **Quorum:** A quorum for a meeting of the Board is the greater of four Directors and such number of Directors as represents a majority of the Directors. No business may be transacted at a meeting of Directors if a quorum is not present.

33.8 **Insufficient number of Directors:** The Directors may act notwithstanding any vacancy in their body, but if and so long as the number of Directors holding office is less than the minimum number fixed by clause 26.1 only for the purpose of increasing the number of Directors to that number or of summoning a meeting of the Shareholders.

33.9 **Election of chairperson:** The Directors may from time to time elect a chairperson and (if they think fit) a deputy chairperson, of their meetings, and determine the period for which they respectively are to hold office. The chairperson, or failing the chairperson the deputy chairperson (if any), shall preside at all meetings of the Directors but if no such chairperson or deputy chairperson is elected, or if at any meeting the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for holding the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

33.10 **Voting:** Every Director has one vote. Subject to clause 33.11, the chairperson has a casting vote provided that a quorum is present and entitled to vote at the meeting. 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 the resolution. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from or votes against, or expressly abstains from voting on, the resolution at the meeting.

33.11 **Chairperson to have a casting vote:** The Chairperson has a casting vote at a meeting of the Board unless the quorum consists only of:

- (a) two Directors who are members or employees of a Shareholding Local Authority; and
- (b) two Directors who are not members or employees of a Shareholding Local Authority; and

the Chairperson is a Director who is a member or employee of a Shareholding Local Authority.

33.12 **Written resolution:** A resolution in writing, signed or assented to by a majority of two thirds or more of the Directors, or if the number of Directors is not a multiple of three then by the number nearest to two thirds, is as valid and effective as if passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in similar form, each signed or assented to by one or more Directors. A copy of any such resolution shall be entered in the Records. The Company shall, within seven days after any resolution is passed in accordance with this clause, send a copy of the resolution to each Director who has not signed or assented to the resolution.

33.13 **Committees:** A committee of Directors shall, in the exercise of the powers delegated to it, comply with any procedural or other requirements imposed on it by the Board. Subject to any such requirements, the provisions of this Constitution relating to proceedings of Directors apply, with appropriate modification, to meetings of a committee of Directors.

33.14 **Validity of actions:** The acts of a person as a Director are valid even though the person's appointment was defective or the person is not qualified for appointment.

33.15 **Minutes:** The Board shall ensure that minutes are kept of all proceedings at meetings of the Shareholders and of the Board. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## 34. METHOD OF CONTRACTING

34.1 **Deeds:** 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; or
- (b) any one Director, together with the chief executive or the secretary of the Company whose signature must be witnessed.

34.2 **Other written contracts:** An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by the Company, may be signed on behalf of the Company by a person acting under the express or implied authority of the Company.

- 34.3 **Other obligations:** Any other obligation or contract may be entered into on behalf of the Company in writing or orally by a person acting under the express or implied authority of the Company.

## 35. INSPECTION OF RECORDS

- 35.1 **Inspection by Directors:** Subject to section 191(2) of the Act (which relates to the power of a court to limit inspection), all accounting and other records of the Company shall be open to the inspection of any Director.

- 35.2 **Inspection by Shareholders:** No Shareholder who is not also a Director is entitled to inspect any accounting or other records of the Company except as expressly authorised by law or permitted by the Board. Subject to the provisions of section 216 of the Act (which permits inspection of certain records by Shareholders) the Board may from time to time determine whether, to what extent, at what times and places, and under what conditions, the accounting or other records of the Company or any of them are open to the inspection of Shareholders (who are not also Directors).

## 36. NOTICES

- 36.1 **Method of service:** All notices, reports, accounts and other documents required to be sent to a Shareholder, shall be sent in the manner provided in section 391 of the Act.

- 36.2 **Service of notices overseas:** If the holder of a Share has not given to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that holder at such international address and shall be deemed to have been received by that holder 24 hours after the time of posting.

- 36.3 **Accidental omissions:** The failure to send an annual report, notice, or other document to a Shareholder in accordance with the Act or this Constitution does not invalidate the proceedings at a meeting of Shareholders if the failure to do so was accidental.

- 36.4 **Joint Shareholders:** A notice may be given by the Company to joint Shareholders by giving the notice to the joint Shareholder named first in the Share Register in respect of the Share.

- 36.5 **Waiver by Shareholders:** Subject to section 210 of the Act (which requires financial statements to be sent to Shareholders who elect not to receive annual reports), a Shareholder may from time to time, by written notice to the Company, waive the right to receive all or any documents from the Company and may at any time thereafter revoke the waiver in the same manner. While any waiver is in effect, the Company need not send to the Shareholder the documents to which the waiver relates.

## 37. AUDIT

- 37.1 The auditors of the Company shall be the Auditor-General as provided in section 19 of the Port Companies Act 1988.

## 38. LIQUIDATION

- 38.1 **Distribution of assets:** If the Company is liquidated the liquidator may, with the approval of Shareholders and any other sanction required by the Act:

- (a) divide among the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose fix such value as the liquidator deems fair in respect of any property to be so divided, and may determine how the division shall be carried out as between Shareholders or between different Classes; and
- (b) vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the persons so entitled as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.