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CONSTITUTION OF
SEDDON VINEYARDS OF MARLBOROUGH LIMITED

I, ROSS GOODIN of Auckland being the applicant for reregistration of SEDDON VINEYARDS OF MARLBOROUGH LIMITED under Part II of the Companies Act 1993, certify that this constitution signed by me for the purposes of identification is the constitution of that company.

Signed: _____

Ross Goodin

Date: _____

19/9/96

WEBSTER MALCOLM & KILPATRICK
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Auckland
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**CONSTITUTION OF
SEDDON VINEYARDS OF MARLBOROUGH LIMITED**
pursuant to the Companies Act 1993

**PART I
INTERPRETATION**

1. DEFINITIONS

- 1.1 In this constitution unless the context otherwise requires the following words and expressions have the meanings given to them in this clause:

"Act" means the Companies Act 1993 and includes amendments and any act in substitution.

"amalgamation" means the completed act of the company and another company amalgamating to form a new company in their place. [Section 219 of the Act]

"annual meeting" means a meeting of shareholders held pursuant to section 120 of the Act

"assets" include property of any kind, whether tangible or intangible.

"balance date" means the close of 31 March or such other date as the board adopts as the company's balance date. [Section 7 of the Financial Reporting Act 1993]

"board" means the directors numbering not less than the required quorum acting together as the board of directors of the company, and if the company has only one director, that director. [Section 127 of the Act]

"call" means a resolution of the board pursuant to clause 31 of this constitution requiring shareholders to pay all or part of the unpaid amount of the issue price of any shares referred to in the resolution held by the shareholder, and where the context requires means the obligation of a shareholder to meet the amount due pursuant to such a resolution.

"chairperson" means the chairperson of the board elected pursuant to clause 73 of this constitution.

"class" and **"class of shares"** means a class of shares having attached to them identical rights, privileges, limitations and conditions. [Section 116 of the Act]

"company" means Seddon Vineyards of Marlborough Limited.

"director" means a person appointed and continuing in office for the time being, in accordance with this constitution, as a director of the company.

"distribution" means:

- a. the direct or indirect transfer of money or property, other than the company's own shares, by the company to or for the benefit of a shareholder; or
- b. the incurring of a debt by the company to or for the benefit of a shareholder

in relation to shares held by that shareholder, and whether by means of a purchase of property, the redemption or other acquisition of shares, a distribution of indebtedness or by some other means. [Section 2(1) of the Act]

"dividend" means a distribution already defined as being by the company other than a distribution to which section 59 (**acquisition of company's own shares**) or section 76 (**financial assistance**) of the Act applies. [Section 53 of the Act]

"general meeting" means any meeting of shareholders, other than a meeting of an interest group.

"holding company" has the meaning set out in section 5 of the Act.

"interest group", in relation to any action or proposal affecting rights attached to shares, means a group of shareholders:

- a. whose affected rights are identical; and
- b. whose rights are affected by the action or proposal in the same way; and
- c. who comprise the holders of one or more classes of shares.

Holders of shares in the same class may fall into two or more interest groups, and one or more interest groups may exist in relation to any action or proposal. [Section 116(2) of the Act]

"interests register" means a register kept by the company at its registered office pursuant to section 189(1)(c) of the Act.

"major transaction" means:

- a. the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the company's assets before the acquisition; or
- b. the disposition of, or an agreement to dispose of, whether contingent or not, assets of the company the value of which is more than half the value of the company's assets before the disposition; or
- c. a transaction that has or is likely to have the effect of the company acquiring rights or interests or incurring obligations or liabilities the value of which is more than half the value of the company's assets before the transaction. [Section 129(2) of the Act]

"managing director" means an employee of the company with the responsibility for the management of the company (together with any other employee) who is appointed to the board pursuant to clause 76 of this constitution.

"month" means calendar month.

"office" means the registered office for the time being of the company.

"ordinary resolution" means a resolution of shareholders approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question. [Section 105(2) of the Act]

"ordinary share" means a share which confers on the holder:

- a. the right to vote at meetings of shareholders and on a poll to cast one vote for each share held; and

- b. subject to the rights of any other class of shares, the right to an equal share in dividends and other distributions made by the company; and
- c. subject to the rights of any other class of shares, the right to an equal share in the distribution of the surplus assets of the company on its liquidation.

"register" means the share register required to be kept pursuant to clause 20 of this constitution and in accordance with **section 87 of the Act**.

"Registrar" means the Registrar of Companies appointed pursuant to **section 357(1) of the Act**.

"security" has the same meaning as in the Securities Act 1978.

"share" means a share in the capital of the company the issue of and rights attaching to which are provided for by this constitution.

"shareholder" means a person:

- a. registered in the register as the holder of one or more shares; and
- b. until such time as his, her or its name is entered in the register, a person named as a shareholder in the application for registration or the constitution of the company at the time of the incorporation of the company.

"solvency test" means an examination to be applied to the financial state of the company which will be satisfied if:

- a. The company is able to pay its debts as they become due in the normal course of business; and
- b. The value of the company's assets is greater than the value of its liabilities, including contingent liabilities.

For the purpose of the definition of the solvency test regard is to be had to the matters referred to in **section 4 of the Act**.

"special meeting" means a meeting called in accordance with **section 121 of the Act**.

"special resolution" means a resolution of shareholders approved by a majority of 75%, or if a higher majority is required by this constitution, that higher majority, of the votes of the shareholders entitled to vote and voting on the question.

"subsidiary" has the meaning set out in **section 5 of the Act**.

"working day" means a day of the week other than:

- a. Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day and Waitangi Day; and
- b. A day in the period commencing on 25 December in any year and ending on 2 January in the following year; and
- c. If the 1st day of January in any year falls on a Friday, the following Monday; and

- d. If the 1st day of January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.
- 1.2 **"writing"** includes all modes of representing or reproducing words, figures or symbols in a visible form including reproduction by facsimile machine.
- 1.3 Words importing the singular number also include the plural number and vice versa.
- 1.4 A reference to a person includes any firm, company or other body corporate.
- 1.5 Words importing one gender include the other genders.
- 1.6 Expressions contained in this constitution bear the same meaning as in the Act at the date on which this constitution becomes binding on the company.
- 1.7 A reference to a clause means a clause of this constitution.
- 1.8 Except to the extent modified by this constitution the Act applies to the company.

PART II CAPITAL SHARES AND DIVIDENDS

2. CLASSES OF SHARES

- 2.1 Different classes of shares may with the approval of the shareholders by special resolution be issued including without limitation shares which:
 - a. are redeemable within the meaning of the Act; or
 - b. confer preferential rights to distributions of capital or income; or
 - c. confer special, limited, or conditional voting rights; or
 - d. do not confer voting rights. [Section 37 of the Act]

3. RIGHT TO ISSUE SHARES : BOARD AND ENTITLED PERSONS

- 3.1 Subject to clause 3.3 of this constitution, the board in accordance with section 42 of the Act may from time to time, and with the approval of the shareholders by ordinary resolution issue ordinary shares, to any person at any time and in any number it thinks fit. [Section 42 of the Act]
- 3.2 A share is issued when the name of the shareholder is entered as the holder on the register. [Section 51 of the Act]
- 3.3 **Section 45 of the Act** (which deals with the issue of additional shares pro rata to existing shareholders in accordance with their shareholding) applies to any issue of shares by the board.
- 3.4 If all entitled persons have agreed or concur, shares may be issued otherwise than in accordance with sections 42, 44 or 45 of the Act. [Section 107(2) of the Act]

4. CONSIDERATION FOR ISSUE OF SHARES

4.1 Subject to clause 4.2 of this constitution before the board issues shares it must:

- a. Decide the consideration for which the shares will be issued and the terms on which they will be issued; and
- b. If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
- c. Resolve that, in its opinion, the consideration for the shares and the terms of the issue are fair and reasonable to the company and to all existing shareholders; and
- d. If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of that consideration is not less than the amount by which the shares would be credited as paid up. [Section 47(1) of the Act]

4.2 Clause 4.1 of this constitution does not apply to:

- a. The issue of shares that are fully paid up from the reserves of the company to all shareholders of the same class in proportion to the number of shares held by each such shareholder;
- b. The consolidation and division of the shares or any class of shares in proportion to those shares or the shares in that class;
- c. The subdivision of shares or any class of shares in proportion to those shares or the shares in that class; and
- d. The issue of shares on the conversion of any convertible securities or the exercise of any option to acquire shares in the company.
[Sections 47(8) and 48 of the Act]

4.3 The consideration for which shares are issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the company. [Section 46 of the Act]

5. DIRECTORS' CERTIFICATE ON CONSIDERATION FOR ISSUE

5.1 The directors who vote in favour of a resolution required under clause 4.1 of this constitution to issue shares must sign a certificate:

- a. Stating the consideration for, and the terms of, the issue; and
- b. Describing the consideration in sufficient detail to identify it; and
- c. Where a present cash value has been determined in accordance with clause 4.1 b., stating that value and the basis for assessing it; and
- d. Stating that, in their opinion, the consideration for and terms of issue are fair and reasonable to the company and to all existing shareholders; and
- e. If the shares are to be issued other than for cash payable on issue, stating that, in their opinion, the present cash value of the consideration to be provided for the issue

of the shares is not less than the amount to be credited for the issue of shares.
[Section 47(2) of the Act]

- 5.2 A copy of the directors' certificate given in respect of the consideration for the issue of shares must be filed with the Registrar within 10 working days after the certificate is given.
[Section 47(5) of the Act]

6. PAYMENT ON SHARES ALREADY ISSUED

- 6.1 Before shares that have already been issued are credited as fully or partly paid up other than for cash, the board must:
- a. Determine the reasonable present cash value of the consideration; and
 - b. Resolve that, in its opinion, the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders, and the present cash value of the consideration is not less than the amount to be credited in respect of those shares. [Section 47(3) of the Act]

7. DIRECTORS' CERTIFICATE ON PAYMENT OF SHARES ALREADY ISSUED

- 7.1 The directors who vote in favour of a resolution under clause 6 of this constitution must sign a certificate:
- a. Describing the consideration in sufficient detail to identify it; and
 - b. Stating:
 - i. The present cash value of the consideration and the basis for assessing it; and
 - ii. That the present cash value of the consideration is fair and reasonable to the company and to all existing shareholders; and
 - iii. That the present cash value of the consideration is not less than the amount to be credited in respect of the shares. [Section 47(4) of the Act]

- 7.2 The board must deliver a copy of a certificate that complies with clause 7.1 of this constitution to the Registrar within 10 working days after it is given. [Section 47(5) of the Act]

8. DEEMED PAYMENT OTHER THAN FOR CASH

- 8.1 For the purposes of clauses 4 to 7 of this constitution, shares that are or are to be credited as paid up, whether wholly or partly, as part of an arrangement that involves the transfer of property or the provision of services and an exchange of cash or cheques or other negotiable instruments, whether simultaneously or not, must be treated as paid up other than in cash to the value of the property or services. [Section 47(6) of the Act]

9. AMOUNT OWING ON ISSUE OF SHARES

- 9.1 Where money or other consideration is due to the company on shares in accordance with their terms of issue such an amount does not comprise a call and no notice is required to be given to the holder or other person liable under the terms of issue in order for the company to enforce payment of the amount due. [Sections 97 to 100 of the Act]

10. **BONUS SHARES**

- 10.1 The board may authorise the allotment to shareholders of shares issued as fully or partly paid up from the assets of the company.

11. **COMPANY PAYING UP PARTLY PAID SHARES**

- 11.1 Subject to the company being able to meet the solvency test immediately after the distribution, the board may authorise payment from the assets of the company of any amount unpaid on shares already issued by the company.

COMPANY PURCHASING ITS OWN SHARES

12. **PURCHASE BY COMPANY OF ITS OWN SHARES**

- 12.1 The company may subject to the approval of the shareholders by ordinary resolution, in accordance with and subject to sections 52, 59 to 66, 107 and 110 to 112 of the Act, purchase or otherwise acquire and hold its own shares and, subject to section 60 of the Act, offer to acquire its own shares. [Sections 58 and 59 of the Act]

13. **TREASURY STOCK**

- 13.1 Shares acquired by the company under clause 12 of this constitution may be held by the company in accordance with section 67A-67C of the Act. [Section 67A-67C of the Act]

TRANSFER OF SHARES

14. **ENTRY IN REGISTER**

- 14.1 Subject to clauses 15 to 19 of this constitution shares may be transferred by entry of the name of the transferee in the register. [Section 84(1) of the Act]

15. **SIGNED TRANSFER**

- 15.1 A form of transfer signed by the present holder of the shares or the holder's personal representative must be delivered to the company or to any agent of the company who maintains the register for the purpose of transferring shares. [Section 84(2) of the Act]

16. **FORM OF TRANSFER**

- 16.1 The form of transfer may be in the form set out in the First Schedule to the Securities Transfer Act 1991 or in any usual or common form, or any other form approved by the board.
- 16.2 The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the company on the transferee. [Section 84(3) of the Act]

17. BOARD'S RIGHT TO REFUSE REGISTRATION OF TRANSFER

- 17.1 The board may, within 30 working days of the receipt of a transfer of shares by the company, refuse or delay the registration of the transfer if:
- a. The holder of the shares has failed to pay an amount due to the company in respect of those shares; or
 - b. The board considers that the effect the transfer would be to make the company an **overseas person** as defined in the Overseas Investment Regulations 1994; or
 - c. The board considers that it is not in the best interests of the company to register the transfer; or
 - d. clause 28 (**transfer to be accompanied by certificate**) of this constitution has not been complied with, or the share transfer has not been properly executed or does not comply with clauses 15 (**signed transfer**) and 16 (**form of transfer**) of this constitution.
 - f. The applicant for registration has failed to supply the company with any information that the board may reasonably seek in respect of the proposed transfer.
- 17.2 Any resolution of the board to refuse or delay the registration of a transfer of shares must set out in outline the reason under clause 17.1 of this constitution for doing so, and must be sent to the transferor and transferee within 5 working days of the date of the resolution.

18. REGISTRATION OF TRANSFER

- 18.1 Subject to clauses 16 (**form of transfer**) and 17 (**board's right to refuse registration of transfer**) of this constitution, on receipt of a duly completed form of transfer the company must enter the name of the transferee on the register as holder of the shares, unless the board has resolved in accordance with clause 17 to refuse or delay the registration of the transfer of the shares.

19. TRANSFER APPROVED BY ALL SHAREHOLDERS

- 19.1 Any share may be transferred by a shareholder to any person if the transfer is approved in writing by all shareholders.

SHARE REGISTER

20. MAINTENANCE OF SHARE REGISTER

- 20.1 The company must maintain a share register which records all shares issued by the company and states any restrictions or limitations on their transfer, and where any document that contains the restrictions or limitations may be inspected. **[Section 87(1) of the Act]**
- 20.2 The company may appoint an agent to maintain the share register. **[Section 87(3) of the Act]**

21. CONTENTS OF REGISTER

- 21.1 The share register must state, with respect to each class of shares:

- a. The names, alphabetically arranged, and the latest known address of each person who is, and each person who has within the last 10 years, been a shareholder; and
- b. The number of shares and the class of shares held by each shareholder within the last 10 years; and
- c. The date of any:
 - i. Issue of shares to; or
 - ii. Repurchase or redemption of shares from; or
 - iii. Transfer of shares by or to

each shareholder within the last 10 years, and in relation to the transfer, the name of the person to or from whom the shares were transferred. [Section 87(2) of the Act]

22. DUTY TO SUPERVISE REGISTER

- 22.1 It is the duty of each director to take reasonable steps to ensure that the register is properly kept and that share transfers are promptly entered in it in accordance with clause 18 of this constitution. [Section 90 of the Act]

23. REGISTER PRIMA FACIE EVIDENCE

- 23.1 Subject to section 91 of the Act (power of court to rectify register) the entry of the name of a person in the register as holder of a share is prima facie evidence that the legal title to the share is vested in that person. [Section 89 of the Act]

24. REGISTER EVIDENCE OF RIGHTS

- 24.1 The company may treat the registered holder of a share as the only person entitled to:
- a. Exercise the right to vote attaching to the share; and
 - b. Receive notices in respect of the share; and
 - c. Receive a distribution in respect of the share; and
 - d. Exercise the other rights and powers attaching to the share. [Section 89 of the Act]

25. TRUST NOT TO BE REGISTERED OR RECOGNISED

- 25.1 No notice of a trust, whether express, implied, or constructive, may be entered on the register. [Section 92 of the Act]
- 25.2 Except as required by law, no person will be recognised by the company as holding any share upon trust, or holding any interest in a share whether equitable, contingent, future or partial except the absolute legal right to the entirety of the share vested in the registered holder.
- 25.3 A personal representative of a deceased holder of shares is entitled to be entered in the register as the holder of such shares as personal representative. [Section 93 of the Act]

- 25.4 The registration of a trustee, executor or administrator as a personal representative of a former shareholder does not constitute notice of a trust. [Section 93(3) of the Act]

SHARE CERTIFICATES

26. APPLICATION FOR SHARE CERTIFICATE

- 26.1 A shareholder may apply to the company for a certificate relating to some or all of the shareholder's shares. [Section 95(3) of the Act].

27. ISSUE OF CERTIFICATE

- 27.1 On receipt of an application for a share certificate under clause 26 of this constitution, the company must, within 20 working days after receiving the application, send to the shareholder a certificate stating the name of the company, the class and number of shares represented by the certificate. [Section 95(4) of the Act]

- 27.2 If the application relates to some but not all of the shareholder's shares the company must, within 20 working days after receiving the application, separate the shares shown in the register as owned by the applicant into separate parcels; one parcel being the shares to which the share certificate relates, and the other parcel being any remaining shares. [Section 95(4) of the Act]

28. TRANSFER TO BE ACCOMPANIED BY CERTIFICATE

- 28.1 Notwithstanding clauses 14 to 18 of this constitution (**transfer of shares**), where a share certificate has been issued a transfer of the shares to which it relates must not be registered by the company unless the form of transfer is accompanied by the share certificate relating to the share, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board. [Section 95(5) of the Act]

29. SURRENDERED SHARE CERTIFICATE

- 29.1 Where shares to which a share certificate relates are transferred, and the share certificate has been sent to the company to enable registration of the transfer, the share certificate must be cancelled and no further share certificate issued except at the request of the transferee. [Section 95(6) of the Act]

TRANSMISSION OF SHARES

30. TRANSMISSION

- 30.1 In the event of the death of a shareholder, the survivor, where the deceased was a joint holder, or the legal personal representative of the deceased, where the deceased was a sole holder, will be the only persons recognised by the company as having any title to the deceased's interest in the shares. Nothing contained in this clause 30.1 will release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by the deceased with other persons.

- 30.2 a. Notwithstanding clause 25 of this constitution, the assignee of the property of a bankrupt registered in the register as holder of a share in the company is entitled to be registered as the holder of that share as the assignee of the property of the bankrupt.
- b. Notwithstanding clause 25 of this constitution, the assignee of the property of a bankrupt beneficially entitled to a share in the company, being a share registered in the register, is, with the consent of the company and the registered holder of that share, entitled to be registered as the holder of that share as the assignee of the property of the bankrupt. [Section 94 of the Act]

CALLS ON SHARES

31. BOARD MAY MAKE CALLS

- 31.1 Subject to the terms of issue of any shares the board may resolve to require the holders of unpaid or partly paid shares to pay all or part of the amount unpaid on the shares. The terms of the resolution of the board will constitute the terms of the obligation to pay the call including payment by instalments. The call may be revoked or postponed at any time by the board.

32. NOTICE OF CALLS

- 32.1 Subject to the terms of issue of any class of shares and to clause 34 of this constitution, unless all the holders of a class of shares subject to a call unanimously agree, a call or the postponement or revocation of a call will apply to all the holders of shares of the class equally.
- 32.2 Notice of the call must be given to the shareholders at the time of the call, or to a subsequent holder. Failure to give notice to a shareholder will not invalidate a call but it will not be payable by that shareholder until the notice has been served on the shareholder.
- 32.3 Notice of a call sent by post to a shareholder to the address recorded in the register as the address of the shareholder will be deemed to have been received by the shareholder the day following the date of the posting of the notice.

33. LIABILITY FOR CALLS

- 33.1 The joint holders of shares are jointly and severally liable to pay all calls in respect of the shares.
- 33.2 If a call is not paid before or on the day appointed for payment the person from whom the sum is due will be liable to pay interest on the sum from the day appointed for payment to the time of actual payment at such rate as the board determines either at the time of the call or subsequently.
- 33.3 The liability for a call which has become due and payable attaches to the shareholder for the time being recorded in the register and not a prior shareholder, notwithstanding that at the date of the call, or the date the call fell due for payment, another person was the shareholder or that the notice of the call was served on the previous and not the current shareholder. [Section 100 of the Act]

- 33.4 Following the registration in the register of a change of ownership of shares in respect of which a call has been made, a notice of the call is not required to be served on the new shareholder.

34. **AGREEMENT TO DIFFERENTIATE CALLS**

- 34.1 The board may, on the issue of shares, by agreement with the shareholders concerned, differentiate between the shareholders of the same class as to the amount to be paid on the shares and the times of payment.

SUSPENSION OF RIGHT TO DIVIDENDS AND LIEN

35. **NOTICE OF SUSPENSION OF RIGHTS TO DIVIDEND**

- 35.1 If a shareholder fails to pay any call or instalment of a call on the day appointed for payment, the board may, at any time after that date, while any part of the call or instalment payable by the shareholder remains unpaid, serve a notice on the shareholder 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.
- 35.2 The notice must state a further date (not earlier than the expiration of 5 days from the date of service of the notice) on or before which the payment required by the notice is to be made and state that, in the event of non-payment at or before the time appointed, the right to dividends in respect of the shares subject to the call will be suspended.

36. **APPLICATION OF SUSPENDED DIVIDENDS**

- 36.1 All dividends which would have been payable in respect of shares which are subject to a suspension of the right to dividends must be withheld and applied by the company to reduce the amount owing under the call.
- 36.2 The amount owing under the call, for the purposes of clauses 36 and 38 of this constitution may include any interest which may have accrued and all expenses which may have been incurred by the company by reason of non-payment by the shareholder under the call.

37. **LIABILITY NOT DISCHARGED BY SUSPENSION OF RIGHT TO DIVIDENDS OR TRANSFER OF SHARES**

- 37.1 A shareholder whose shares are the subject of a suspension of the right to dividends remains liable to the company for all money owing under the call, and that liability is not extinguished by a transfer of the shares subject to the suspension to a third party.

38. **LIFTING OF SUSPENSION OF RIGHT TO DIVIDENDS**

- 38.1 When the total dividends withheld and applied under clause 36 of this constitution equal the total amount owing under the call, including amounts owing under clause 36.2 of this constitution, or when the shares are transferred to a third party, the suspension of the right to dividends will be lifted and all rights to be paid dividends on the shares will resume.

39. **LIENS**

- 39.1 The company has a first and paramount lien upon every share registered in the name of a shareholder (whether solely or jointly with others) and upon the proceeds of sale of those shares, for all money (whether presently payable or not) payable in respect of shares held by the shareholder, and for all other money presently payable by the shareholder to the company on any account whatever, and also for such amounts (if any) as the company may be called upon to pay under any statute or regulation in respect of shares of a deceased or other shareholder, whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.
- 39.2 The lien extends to all dividends from time to time declared in respect of the shares.

40. **SALE ON EXERCISE OF LIEN**

- 40.1 The company may sell, in such manner as the board thinks fit, any shares on which the company has a lien, but no sale may be made unless a sum in respect of which the lien exists is due and payable, nor until the expiration of 14 days after a notice in writing, which states and demands payment of the amount due and payable in respect of which the lien exists, has been given to the registered shareholder for the time being or the person entitled to that share by reason of the registered shareholder's death or bankruptcy.
- 40.2 The net proceeds of the sale of any shares sold for the purpose of enforcing a lien is to be applied in or towards satisfaction of any unpaid calls, instalments or any other money payable by the shareholder in respect of which the lien existed. The residue, if any, is to be paid to the former shareholder.
- 40.3 A certificate signed by a director stating that the power of sale provided in this clause 40 of this constitution has arisen and is exercisable by the company under this constitution will be conclusive evidence of the facts stated in the certificate.
- 40.4 In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under clause 40.1 of this constitution the board may authorise any person to execute a transfer of the shares to the purchaser. The purchaser will be registered as the shareholder of the shares which are transferred, and will not be bound to see to the application of the purchase money. The purchaser's title to the shares will not be affected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only and against the company exclusively. If the certificate for the shares is not delivered up to the company the board may issue a new certificate distinguishing it as the board thinks fit from the certificate not delivered up.

DISTRIBUTIONS

41. **SOLVENCY TEST**

- 41.1 Subject to clause 42 of this constitution, the board may authorise a distribution by the company at a time, and of an amount, and to any shareholders it thinks fit if it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test. [Sections 4 and 52(4) of the Act]
- 41.2 The directors who vote in favour of a distribution must sign a certificate stating that in their opinion the company will, immediately after the distribution, satisfy the solvency test and stating the grounds for that opinion. [Sections 4 and 52 of the Act]

- 41.3 For the purpose of this clause in applying the solvency test "debts" and "liabilities" have the meaning given to them in section 52(4) of the Act.

42. **DIVIDENDS PAYABLE PARI PASSU**

- 42.1 Subject to clause 42.3 of this constitution the board must not authorise a dividend:

- a. In respect of some but not all the shares in a class; or
- b. That is of a greater value per share in respect of some shares of a class than it is in respect of other shares in 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 the constitution of the company or under the terms of issue of the share. [Section 53 of the Act]

- 42.2 A shareholder may, by notice in writing signed by or on behalf of the shareholder and given to the company, waive his or her entitlement to receive a dividend. [Section 53(3) of the Act]

- 42.3 If all the shareholders of the same class have agreed or concur in writing, a dividend may be authorised otherwise than in accordance with clause 42.1 of this constitution. [Section 107(1) of the Act]

43. **SHARES IN LIEU OF DIVIDEND**

- 43.1 The board may with the approval of the shareholders by ordinary resolution 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 that would, if those shareholders agreed to receive the shares, maintain the existing voting or distribution rights, or both, of those shareholders; and
- b. The number of shares issued to each shareholder is in the same proportion as the number issued to all shareholders in that class who agree to receive the shares; 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 section 47 of the Act are complied with by the board. [Section 54 of the Act]

44. **DISCOUNTS TO SHAREHOLDERS**

- 44.1 The board may resolve that the company offer shareholders discounts in respect of some or all of the goods sold or services provided by the company. [Section 55 (1) of the Act]

- 44.2 Subject to clause 44.4 of this constitution, a discount scheme may only be approved by the board if it has previously resolved that the proposed discounts are:
- a. Fair and reasonable to the company and to all shareholders; and
 - b. To be available to all shareholders or all shareholders of the same class on the same terms.
- 44.3 A discount scheme may not be approved or continued by the board unless it is satisfied on reasonable grounds that the company satisfies the solvency test. [Section 55(3) of the Act]
- 44.4 If all shareholders of the class of shares to which a proposed discount scheme would apply agree in writing, the scheme may be put into effect notwithstanding that it does not comply with clause 44.2 of this constitution. [Sections 55 and 107(1)(b) of the Act]
45. **FINANCIAL ASSISTANCE ON ACQUISITION OF SHARES**
- 45.1 The company may, subject to and in accordance with sections 52, 76, 77, 78 and 107(1)(e) of the Act, give financial assistance to a person for the purpose of, or in connection with, the purchase of a share issued or to be issued by the company, or by its holding company, whether directly or indirectly. [Section 76 of the Act]

PART III SHAREHOLDERS' RIGHTS AND OBLIGATIONS

STATEMENT OF SHAREHOLDERS' RIGHTS

46. **ISSUE OF STATEMENT OF RIGHTS TO SHAREHOLDER**
- 46.1 The company must issue to a shareholder, on request, a statement that sets out:
- a. The class of shares held by the shareholder, the total number of shares of that class issued by the company, and the number of shares of that class held by the shareholder; and
 - b. The rights, privileges, conditions, and limitations, including restrictions on transfer, attaching to the shares held by the shareholder; and
 - c. The relationship of the shares held by the shareholder to other classes of shares.
- 46.2 The company is not obliged to provide a shareholder with a statement pursuant to clause 46.1 if:
- a. A statement has been provided within the previous 6 months; and
 - b. The shareholder has not acquired or disposed of shares since the previous statement was provided; and
 - c. The rights attached to shares of the company have not been altered since the previous statement was provided; and

- d. There are no special circumstances which would make it unreasonable for the company to refuse the request.

46.3 A statement issued pursuant to clause 46.1 of this constitution must state in a prominent place that it is not evidence of title to the shares or of the matters set out in it. [Section 83 of the Act]

EXERCISE OF POWERS RESERVED TO SHAREHOLDERS

47. POWERS RESERVED TO SHAREHOLDERS

47.1 Powers reserved to shareholders of the company by the Act or by this constitution may be exercised:

- a. At an annual meeting or a special meeting; or
- b. By a resolution in lieu of a meeting pursuant to clause 54. [Section 104 of the Act]

47.2 Unless otherwise specified in the Act or this constitution, a power reserved to shareholders may be exercised by an ordinary resolution. [Section 105 of the Act]

48. SPECIAL RESOLUTIONS

48.1 When shareholders exercise a power to approve any of the following, that power may only be exercised by a special resolution:

- a. An alteration to or the revocation of this constitution or the adoption of a new constitution; or
- b. A major transaction; or
- c. An amalgamation; or
- d. The liquidation of the company.

48.2 Any decision made by special resolution pursuant to subclauses a. b. and c. of this clause may be rescinded only by a special resolution; a decision made by special resolution pursuant to subclause d. of this clause cannot be rescinded. [Section 106 of the Act]

49. MANAGEMENT REVIEW BY SHAREHOLDERS

49.1 The chairperson of a meeting of shareholders of the company must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management of the company.

49.2 Notwithstanding anything in the Act or any other clause of this constitution, and subject to clause 49.3 of this constitution, a meeting of shareholders may pass a resolution relating to the management of the company.

49.3 A resolution relating to the management of the company passed at a meeting of shareholders is not binding on the board. [Section 109 of the Act]

50. **DISSENTING SHAREHOLDER MAY REQUIRE COMPANY TO PURCHASE SHARES**

50.1 When the shareholders, by a special resolution, resolve to exercise a power to approve:

- a. An alteration to or the revocation of this constitution or the adoption of a new constitution and the proposed alteration imposes or removes a restriction on the activities of the company; or
- b. A major transaction; or
- c. An amalgamation,

and a shareholder who is entitled to vote on the resolution casts all the votes attached to the shares which are registered in the shareholder's name and which have the same beneficial owner against the resolution or where the resolution to exercise the power was passed under section 122 of the Act (**Resolution in lieu of meeting**) and the shareholder did not sign the resolution, then the shareholder may within 10 working days of the passing of the resolution or 10 working days after the date on which notice of the passing of the written resolution under section 122 of the Act was given to the shareholder, give written notice to the company pursuant to section 111(1) of the Act requiring the company to purchase those shares in accordance with sections 111 to 115 of the Act. [**Sections 110 to 115 of the Act**]

50.2 Within 20 working days of receiving a notice from a shareholder given under clause 50.1 the board must:

- a. Agree to the purchase by the company of the shares of the shareholder giving the notice; or
- b. Arrange for some other person to purchase the shares; or
- c. Apply to the court for an order under section 114 (**Court may grant exemption**) or section 115 (**Court may grant exemption if company insolvent**) of the Act; or
- d. Arrange, before taking the action concerned, for the special resolution entitling the shareholder to give the notice to be rescinded by a special resolution, or decide in the appropriate manner not to take the action concerned; and
- e. Give written notice to the shareholder giving notice of the board's decision under this clause.

[**Sections 106 and 111(2) of the Act**]

50.3 Where the board agrees, pursuant to clause 50.2 a., to the purchase of the shares by the company, the board must give notice to the shareholder in accordance with section 111(2) (**Notice requiring purchase**), and comply with section 112 (**Purchase by company**) of the Act.

51. **SHAREHOLDER PROPOSALS**

51.1 A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of the shareholders at which the shareholder is entitled to vote.

51.2 The notice must be received by the board not less than 10 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board.

- 51.3 The board must give notice of a shareholder proposal and the text of a proposed resolution received by it under clause 51.1 in the notice of the meeting given to shareholders, and, if the directors intend that shareholders may vote on that proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in the notice of meeting a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- 51.4 The costs incurred or to be incurred by the board under clause 51.3 must be met by the proposing shareholder by depositing with or tendering to the company a sum sufficient to meet those costs.
- 51.5 The board is not required to include in the notice of meeting a statement prepared by a shareholder which the board considers to be defamatory, frivolous or vexatious [clause 9 of the First Schedule to the Act]

MEETING OF SHAREHOLDERS

52. ANNUAL MEETING

- 52.1 The board must, in accordance with Section 120 (**Annual meeting of shareholders**) of the Act, call an annual meeting of shareholders to be held:
- a. Once in each calendar year other than the year of its registration; and
 - b. Not later than 6 months after the balance date of the company; and
 - c. Not later than 15 months after the previous annual meeting, or in respect of its first annual meeting not later than 18 months after its date of registration.
- 52.2 The company must hold the annual meeting on the date on which it is called to be held. [Section 120 of the Act]

53. SPECIAL MEETINGS

- 53.1 A special meeting of shareholders entitled to vote on an issue:
- a. May be called at any time by the board or a person who is authorised by this constitution to call the meeting; and
 - b. Must be called by the board on the written request of shareholders holding not less than 5% of the voting rights entitled to be exercised on the issue. [Section 121 of the Act]

54. RESOLUTION IN LIEU OF MEETING

- 54.1 Subject to sections 122(2) and (3) of the Act, a resolution in writing signed by not less than 75% of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% of the votes entitled to be cast on that resolution is as valid as if it had been passed at a meeting of those shareholders. Such a resolution may consist of several documents in like form, each signed by one or more shareholders. A facsimile of such signed resolution is as valid and effectual as the original signed document. [Section 122 of the Act]

55. **CHAIRPERSON OF MEETINGS OF SHAREHOLDERS**

- 55.1 The chairperson of the board, if one has been elected and is present at a meeting of shareholders, must chair the meeting.
- 55.2 If no chairperson has been elected or if, at any meeting of shareholders, the chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may choose one of the number to chair the meeting. [Clause 1 of the First Schedule to the Act]
- 55.3 Each Director who is not a member of the Company shall be entitled to attend every general meeting.

56. **SHAREHOLDERS ENTITLED TO NOTICE OF MEETINGS**

- 56.1 The shareholders entitled to receive notice of a meeting of shareholders are the shareholders of the relevant class recorded in the register as registered shareholders:
- a. Where the board has fixed a date for the purpose of establishing an entitlement to receive notice - on the date so fixed; or
 - b. If no date has been fixed by the board for that purpose - at the close of business on the day immediately preceding the day on which the notice is given. [Section 125 of the Act]
- 56.2 A date fixed by the board under clause 56.1 a. must not precede by more than 30 working days nor less than 10 working days the date on which the meeting is to be held. [Section 125(4) of the Act]

57. **NOTICE OF MEETING**

- 57.1 Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting, and to every director and an auditor of the company not less than 10 working days before the meeting. [clause 2(1) of the First Schedule to the Act]

58. **CONTENTS OF NOTICE**

- 58.1 The notice referred to in clause 57 of this constitution must state:
- a. The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
 - b. The text of any resolution to be submitted to the meeting; and
 - c. The postal address to which postal votes may be sent and the name or office of the person to whom they may be sent; and
 - d. That the postal vote must be received by the person referred to in paragraph c. at least 48 hours prior to the time of the meeting. [clause 2(2) of the First Schedule to the Act]

59. **IRREGULARITIES IN NOTICE**

- 59.1 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceeding of that meeting [clause 2(3A) of the First Schedule to the Act]
- 59.2 Notwithstanding clause 59.1, an irregularity in a notice of a meeting required by clause 57 of this constitution is waived if all the shareholders entitled to attend and vote at the meeting, do attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver. [clause 2(3) of the First Schedule to the Act]

60. **METHOD OF HOLDING MEETING**

- 60.1 A meeting of shareholders, where notice of the meeting has been given, may be held either:
- a. By a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
 - b. By means of audio, or audio and visual communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting. [clause 3 of the First Schedule to the Act]

61. **ADJOURNMENTS**

- 61.1 If a meeting of shareholders is adjourned for less than thirty days it is not necessary to give notice of the time and place or the business to be transacted of the adjourned meeting other than by announcement at the meeting which is adjourned. [clause 2(4) of the First Schedule to the Act]

62. **MINUTES**

- 62.1 The board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- 62.2 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings. [clause 8 of the First Schedule to the Act]

VOTING AT MEETINGS

63. **QUORUM**

- 63.1 A quorum at a general meeting shall be five (5) shareholders present in person or by proxy having the right to vote at the meeting.
- 63.2 No business may be transacted at a meeting of shareholders if a quorum is not present.
- 63.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- a. In the case of a meeting called pursuant to a requisition of shareholders under clause 53.1 b. the meeting is dissolved;
 - b. In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as

the directors may appoint, and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present or their proxies are a quorum. [clause 4 of the First Schedule to the Act]

64. **VOTING**

64.1 In the case of a meeting of shareholders held under clause 60.1 a., unless a poll is demanded, voting at the meeting must be by whichever of the following methods is determined by the chairperson of the meeting:

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

64.2 In the case of a meeting of shareholders held under clause 60.1 b., unless a poll is demanded, voting at the meeting must be by the shareholders signifying their assent or dissent by voice.

64.3 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 64.4 of this constitution.

64.4 At a meeting of shareholders a poll may be demanded by:

- a. By the chairman; or
- b. Not less than two (2) shareholders present in person or by proxy and having the right to vote at the meeting; or
- c. A shareholder or shareholders present in person or by proxy and representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or

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

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

64.7 In the case of an equality of votes whether on a show of hands or on a poll the chairman or the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a second or casting vote.

65. **PROXIES AND REPRESENTATIVES**

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

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

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

65.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is received by the person referred to in clause 58.1 c. of this constitution at least 48 hours

before the start of the meeting. The chairperson may generally or in respect of any particular shareholder waive the requirements of this clause 65.4. [Clause 6 of the First Schedule to the Act]

- 65.5 A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. [Clause 10 of the First Schedule to Act]

66. **POSTAL VOTES**

- 66.1 A shareholder may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause 66.

- 66.2 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the board to receive and count postal votes at that meeting.

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

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

- 66.5 Any person authorised to receive and count postal votes at a meeting:

- a. Must collect together all postal votes received by him or her or by the company; and
- b. In relation to each resolution to be voted on at a meeting, must count:
 - i. The number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
 - ii. The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
- c. Must sign a certificate that he or she has carried out the duties set out in paragraphs a. and b. of this clause, and which sets out the results of the counts required by paragraph b. of this clause; and
- d. Must ensure that the certificate required by paragraph c. of this clause is presented to the chairperson of the meeting.

- 66.6 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:

- a. On a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution; and
- b. On a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.

66.7 The chairperson of a meeting must call for a poll on a resolution on which the chairperson holds sufficient postal votes that the chairperson believes that if a poll were taken the result could differ from that obtained on a show of hands.

66.8 The chairperson of a meeting must ensure that a certificate of postal vote held by the chairperson is annexed to the minutes of the meeting. [Clause 7 of the First Schedule to the Act]

67. **VOTES OF JOINT HOLDERS**

67.1 Where 2 or more persons are recorded in the register as the holder of a share, the vote of the person named first in the register and voting on a resolution will be accepted to the exclusion of the votes of the other joint holders. [Clause 11 of the First Schedule to the Act]

68. **UNPAID SHARES**

68.1 If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholders' meeting other than at a meeting of an interest group. [Clause 12 of the First Schedule of the Act]

**PART IV
THE BOARD**

POWERS AND DUTIES OF THE BOARD

69. **POWERS OF THE BOARD**

69.1 The business and affairs of the company must be managed by, or under the direction or supervision of the board.

69.2 The board has, and may exercise, all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company, except to the extent that this constitution or the Act expressly requires those powers to be exercised by the shareholders or any other person. [Section 128 of the Act]

70. **DELEGATION BY THE BOARD**

70.1 The board may delegate to a committee of directors, a director, or an employee of the company, or any other person, any one or more of its powers other than the following powers:

- a. Section 23(1)(c) (change of company names):
- b. Section 42 (issue of shares):
- c. Section 44 (shareholder approval to the issue of shares):
- d. Section 47 (consideration for the issue of shares):
- e. Section 52 (distributions):
- f. Section 54 (issue of shares in lieu of dividends):
- g. Section 55 (shareholder discounts):
- h. Section 60 (offers to acquire shares):

- i. Section 61 (special offers to acquire shares):
- j. Section 63 (stock exchange acquisitions subject to prior notice to shareholders):
- k. Section 65 (stock exchange acquisitions not subject to prior notice to shareholders):
- l. Section 69 (redemption of shares at the option of a company):
- m. Section 71 (special redemptions of shares):
- n. Section 76 (provision of financial assistance):
- o. Section 78 (special financial assistance):
- p. Section 80 (financial assistance not exceeding 5 percent of shareholders' funds):
- q. Section 84(4) (transfer of shares):
- r. Section 187 (change of registered office):
- s. Section 193 (change of address for service):
- t. Section 221 (manner of approving an amalgamation proposal):
- u. Section 222 (short form amalgamations).

[Section 130 and Second Schedule to the Act]

- 70.2 The board is responsible for the exercise by any delegate of a power delegated under this clause 70 as if the power had been exercised by the board, unless the board:
- a. Believed on a reasonable ground at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on the directors by the Act and this constitution; and
 - b. Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate. **[Section 130 of the Act]**

71. DIRECTORS TO ACT IN GOOD FAITH

- 71.1 A director, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.
- 71.2 If the company is a wholly-owned subsidiary a director may, when exercising the powers or performing duties as a director, act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.
- 71.3 If the company is a subsidiary (but not wholly-owned subsidiary) a director may, when exercising powers or performing duties as a director, with the prior agreement of the shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the best interests of the company.
- 72.4 If the company is incorporated to carry out a joint venture between its shareholders the director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders, even though it may not be in the best interests of the company. **[Section 131 of the Act]**.

72. MAJOR TRANSACTIONS

- 72.1 The board may not procure or permit the company to enter into a major transaction unless the transaction is:
- a. Approved by special resolution; or
 - b. Contingent on approval by special resolution. **[Section 129 of the Act]**

PROCEEDINGS OF BOARD

73. CHAIRPERSON

- 73.1 The directors may elect one of their number as chairperson of the board and determine the period for which the chairperson is to hold office.
- 73.2 The director elected as chairperson holds that office until he or she dies or resigns or the directors elect a chairperson in his or her place.
- 73.3 If no chairperson is elected, or if at a meeting of the board the chairperson is not present within five minutes after the time appointed for the commencement of the meeting, the directors present may choose one of their number to be chairperson of the meeting.

74. NOTICE OF MEETING

- 74.1 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with this clause 74.
- 74.2 Not less than two days' notice of a meeting of the board must be given to every director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.
- 74.3 An irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.
- 74.4 Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a director at his or her last known residential address will be deemed to have been received by the director the day following the date the letter is posted.

75. MEETINGS OF BOARD

- 75.1 A meeting of the board may be held either:
- a. By a number of directors sufficient to form 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 the directors participating in the meeting and constituting a quorum can simultaneously hear each other throughout the meeting.

76. QUORUM

- 76.1 The quorum necessary for the transaction or business of the board may be fixed by the board and unless so fixed, shall be two but where only such quorum is present the chairman or the meeting shall not have a casting vote.
- 76.2 A quorum for a meeting of the board is a majority of the directors.
- 76.3 No business may be transacted at a meeting of directors if a quorum is not present.

- 76.4 In accordance with clause 91 of this constitution an alternate director present at a meeting may be included for the purpose of establishing a quorum.

77. **VOTING**

- 77.1 Every director has one vote.
- 77.2 The chairperson of the meeting has a casting vote.
- 77.3 A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it.
- 77.4 A director may vote in respect of any transaction in which the director is interested and if the director does so the director's vote will be counted and the director will also be counted in the quorum present at the meeting.

78. **MINUTES**

- 78.1 The board must ensure that full and accurate minutes are kept of all proceedings at meetings of the board.

79. **UNANIMOUS RESOLUTION**

- 79.1 A resolution in writing, signed or assented to by all directors is as valid and effective as if it had been passed at a meeting of the board duly convened and held.
- 79.2 Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form each signed or assented to by one or more directors.
- 79.3 A copy of any such resolution must be entered in the minute book of board proceedings.

80. **APPOINTMENT OF DIRECTORS**

- 80.1 At the Annual General meeting of the company, one third of the directors (excluding the Managing Director) shall retire from office.
- 80.2 If the number of directors is not three or a multiple of three, then the number of directors nearest one third shall retire.
- 80.3 A retiring director holds office until the dissolution of the meeting at which his or her successor is elected.
- 80.4 The directors to retire each year shall be those who have been longest in office since their election: as between directors who were appointed at the same meeting, the director to retire shall be determined by lot.
- 80.5 A retiring director shall be eligible for re-election.
- 80.6 At the meeting at which a director retires, the meeting may appoint a new director, or if the meeting does not appoint a new director and the retiring director is available for re-appointment the retiring director shall be deemed to have been re-appointed unless it is expressly resolved not to fill the vacancy.

- 80.7 Where more than one director is to be appointed at a meeting, each appointment shall be voted on individually.
- 80.8 If at a meeting at which an election of directors is to take place the place of a retiring director is not filled, the meeting shall stand adjourned until the same day in the next week at the same time and place.
- 80.9 If at such adjourned meeting the places of vacating directors are not filled the vacating director or directors shall (if willing) remain in office until the next annual general meeting.

81. REMOVAL OF DIRECTORS

- 81.1 A director holds office until his or her resignation, retirement, disqualification or removal in accordance with this constitution.
- 81.2 In addition to the appointment or removal of directors under clauses 80 and 81 of this constitution, a director may be appointed or removed from office by an ordinary resolution of shareholders.
- 81.3 A notice of meeting at which the removal of a director will be considered must state that the purpose of the meeting is the removal of a director.

82. CASUAL VACANCY IN OFFICE OF DIRECTORS

- 82.1 The directors shall have power at any time to appoint any person to be a director to fill a casual vacancy, or in addition to the existing directors but so that the total number does not exceed the total number of directors authorised by this constitution. Any director so appointed shall hold office until the next Annual General Meeting and shall then be eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation.
- 82.2 No person other than a retiring director shall be eligible for re-election unless twenty one days notice in writing has been given to the company of the intention of some other person to stand for office, accompanied by a consent from that person to act as a director, together with brief biographical information.
- 82.3 The company shall, at least seven days prior to the Annual General Meeting, give to each person entitled to receive notice of meeting, a copy of any notice of intention to stand as a director, together with a copy or summary of any biographical information received.
- 82.4 Notice of the intention of any person to stand as a director shall at least seven days prior to the meeting be forwarded to each person entitled to receive notice of meeting.

83. NOTICE TO ALTERNATE DIRECTORS

- 83.1 It is not necessary to give notice of a meeting of the board to any director for the time being absent from New Zealand, but if a director is resident outside New Zealand, or to the knowledge of the company is temporarily absent from New Zealand, and the director has appointed an alternate director under the provisions of this constitution, notice must (subject to clause 91.2 of this constitution) be given to the alternate director.

84. **CONTINUING DIRECTORS**

- 84.1 Notwithstanding any vacancy in the number of directors, the board will continue to comprise the continuing directors, but, if their number is reduced below the number fixed by or pursuant to this constitution as the minimum number of directors, the continuing directors may act only for the purpose of increasing the number of directors to the minimum number, or for summoning a general meeting of the company.

85. **OTHER PROCEEDINGS**

- 85.1 Except as provided above the board may regulate its own procedure.

MANAGING DIRECTORS

86. **APPOINTMENT AND DISMISSAL**

- 86.1 *The board may from time to time appoint one or more of their body to the office of managing director or managing directors of the company either for a fixed term or without any limitation as to the term.*
- 86.2 *Every managing director is liable to be dismissed or removed by a resolution of the board. The board may enter into any agreement on behalf of the company with any person who is or is about to become a managing director with regard to the length and terms of the managing director's employment, on the basis that the remedy of any such person for any breach of the agreement will be in damages only. The managing director will not have a right or claim to continue in office as managing director contrary to the will of the board.*
- 86.3 *The maximum term of office for a Managing Director (in that capacity) is (5) five years from the date of appointment.*

87. **TERMINATION OF EMPLOYMENT**

- 87.1 *A managing director is, subject to the terms of any contract, subject to the same provisions as regards resignation, removal and disqualification as the other directors. If the managing director ceases to hold the office of director for any reason the managing director will immediately cease to be a managing director.*

DIRECTORS

88. **NUMBER OF DIRECTORS**

- 88.1 *The company must have at least two directors. [Section 150 of the Act]*

89. **DISQUALIFICATION**

- 89.1 *A person will be disqualified from holding the office of director if he or she is removed under this constitution or he or she:*
- a. Dies; or

- b. Becomes a protected person under the Protection of Personal and Property Rights Act 1988; or
- c. Is an undischarged bankrupt; or
- d. Is prohibited by the Companies Act 1955 from being a director or officer or promoter or would be so prohibited but for the repeal of that Act; or
- e. Is prohibited by the Companies Act 1993 from being a director or officer or promoter or taking part in the management of the company; or

90. **SHAREHOLDING QUALIFICATION**

- 90.1 A director is not required to hold shares.

91. **ALTERNATE DIRECTORS**

- 91.1
- a. Every director may, by notice given in writing to the company, appoint any person (including any other director) to act as an alternate director in the director's place, either generally or in respect of a specified meeting or meetings during the director's absence or inability to act as a director. Every director may, at the director's discretion, by notice in writing to the company, remove that director's alternate director.
 - b. On any such appointment being made the alternate director may, while acting in the place of the director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson) of the director appointing the alternate director, and is subject in all respects to the same terms and provisions as that director (except as regards remuneration, and the power to appoint an alternate director under this constitution). For the purpose of establishing a quorum of the board an alternate director is deemed to be the director appointing him or her.
- 91.2 The notice of appointment of alternate director should include an address for service of notice of meetings of directors. Failure to give an address will not invalidate the appointment but notice of meetings of the board need not be given to the alternate director until an address is provided to the company.

92. **INDEMNITY OF DIRECTORS AND EMPLOYEES**

- 92.1 The board may cause the company to indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding:
- a. That relates to liability for any act or omission in his or her capacity as a director or employee; and
 - b. In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
[Section 162(3) of the Act]
- 92.2 The board may cause the company to indemnify a director or an employee of the company or a related company in respect of:

- a. Liability to any person other than the company or a related company for any act or omission in his or her capacity as a director or employee; or
- b. Costs incurred by the director or employee in defending or settling any claim or proceeding relating to any liability under subparagraph a. above

not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Act or, in the case of an employee, of any fiduciary duty owed to the company or related company. [Section 162(4) of the Act]

93. INSURANCE OF DIRECTORS AND EMPLOYEES

93.1 The board may, subject to section 162 of the Act, cause the company to effect insurance for a director or for an employee of the company or a related company in respect of:

- a. Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee; or
- b. Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability under subclause a. ; or
- c. Costs incurred by that director or employee in defending any criminal proceedings in which he or she was acquitted. [Section 162(5) of the Act]

93.2 The directors who vote in favour of authorising the effecting of insurance under this constitution must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company.
[Section 162(6) of the Act]

93.3 The board must ensure that particulars of any indemnity given to, or insurance effected for, any director or employee of the company or related company, are forthwith entered in the interests register. [Section 162 of the Act]

93.4 For the purpose of this clause "director" includes a former director and "employee" includes a former employee.

REMUNERATION OF DIRECTORS

94. AUTHORITY TO REMUNERATE DIRECTORS

94.1 The board may with the approval of shareholders by ordinary resolution authorise the payment of remuneration or the provision of other benefits by the company to a director for services as a director, or in any other capacity if the board is satisfied that to do so is fair to the company.

94.2 The board may authorise the directors to be paid reasonable travelling, hotel, entertaining, and other expenses incurred in attendances at meetings of the Directors and of the company when engaged in the business of the company.

94.3 The payment of remuneration or the giving of any other benefit to a director in accordance with any contract authorised pursuant to clause 94.1 of this constitution need not be separately authorised by the board.

- 94.4 The board must ensure that forthwith after authorising any payment, benefit, loan, guarantee, or contract made pursuant to clause 94.1 of this constitution particulars of the payment or benefit or loan or guarantee or contract are entered in the interests register.
- 94.5 The directors who vote in favour of authorising a payment, benefit, loan guarantee or contract under clause 94.1 of this constitution must sign a certificate stating that, in their opinion the making of the payment or the provision of the benefit, or the making of the loan, or the giving of the guarantee, or the entering into of the contract is fair to the company, and the grounds for that opinion. [Section 161 of the Act]

95. OTHER OFFICES WITH COMPANY HELD BY DIRECTOR

- 95.1 Any director may act by himself or herself or by the director's firm in a professional capacity for the company, and the director or the director's firm will be entitled to remuneration for professional services as if the director were not a director. Nothing in this clause authorises a director or the director's firm to act as auditor to the company.
- 95.2 A director may hold any other office or place of profit in the company (other than the office of auditor) in conjunction with the director's office of director for such period and on such terms (as to remuneration and otherwise) as the board may determine.
- 95.3 Other than as provided in clause 96, a director is not disqualified by virtue of his or her office from entering into any transaction with the company. Any such transaction will be valid and enforceable to the same extent as if he or she were not a director and not in a fiduciary relationship with the company.

INTERESTED DIRECTORS

96. NOTICE OF INTEREST TO BE GIVEN

- 96.1 A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company, cause to be entered in the interests register, and, if the company has more than one director, disclose to the board of the company:
- a. If the monetary value of the director's interest is able to be quantified, the nature and monetary value of that interest; or
 - b. If the monetary value of the director's interest cannot be quantified, the nature and extent of that interest.
- 96.2 For the purposes of clause 96.1 a general notice entered in the interests register or disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction. [Section 140 of the Act]

97. RIGHT OF INTERESTED DIRECTOR TO VOTE

- 97.1 Subject to all necessary disclosures a director may vote in respect of any transaction in which the director is interested, and if the director does so the director's vote will be counted and

the director will be counted in the quorum present at the meeting.

[Section 144 of the Act]

MISCELLANEOUS

98. NOTICES

98.1 Service

Notice may be served by the company upon any director or shareholder, either personally or by post or by fastpost in a pre-paid envelope or package addressed to such director or shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile number of such director or shareholder.

98.2 Time of Service by Facsimile

A notice served by facsimile is deemed to have been served on the day following completion of its transmission.

98.3 Time of Service by Post

A notice sent by post or delivered to a document exchange is deemed to have been served:

- a. In the case of a person whose last known address is in New Zealand, at the end of 48 hours after the envelope or package containing the same was posted or delivered in New Zealand; and
- b. In the case of a person whose last known address is outside New Zealand, at the expiration of 7 days after the envelope or package containing the same was posted by fastpost in New Zealand.

98.4 Proof of Service

In proving service by post or delivery to a document exchange, it is sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it is sufficient to prove that the document was properly addressed and sent by facsimile.

98.5 Service on Joint Holders

A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register in respect of the share.

98.6 Service of Representatives

A notice may be given by the company to a person or persons entitled to a share in consequence of the death or bankruptcy of a shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address (if any) within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such time an address has been supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

99. **REMOVAL FROM THE NEW ZEALAND REGISTER**

99.1 In the event that:

- a. The company has ceased to carry on business, has discharged in full its liabilities to all known creditors and has distributed its surplus assets in accordance with this constitution and the Act; or
- b. The company has no surplus assets after paying its debts in full or in part and no creditor has applied to the Court under section 241 of the Act for an order putting the company into liquidation;

the board of directors may, in the prescribed form, request the Registrar of Companies to remove the company from the New Zealand register.

100. **METHOD OF CONTRACTING**

100.1 A contract or other enforceable obligation may be entered into by a company as follows:

- a. An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the company in writing signed under the name of the company by:
 - i. two or more directors of the company; or
 - ii. if there is only one director, by that director whose signature must be witnessed; or
 - iii. a director, or other person or class of persons whose signature or signatures must be witnessed, provided that such persons signing on behalf of the company must first be approved by the board;
 - iv. one or more attorneys appointed by the company in accordance with section 181 of the Act;
 - v. any person authorised by the board to enter into contracts by deed on behalf of the company, whether generally or for a particular contract or contracts.
- b. An obligation which, if entered into by a natural person, is, by law, required to be in writing, may be entered into on behalf of the company in writing by a person acting under the company's express or implied authority:
- c. An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority. [Section 180 of the Act]

100.2 Clause 100.1 applies to a contract or other obligation:

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

101. **APPOINTMENT OF ATTORNEY**

- 101.1 The company may by instrument in writing executed in accordance with section 180(1)(a) of the Act appoint a person as its attorney either generally or in relation to a specified matter and the provisions of section 181 of the Act will apply. **[Section 181 of the Act]**

Change to Constitution 10 November 2003

"That the constitution of the Company be amended by:

(a) deleting clause 90.1 and replacing it with the following:

"A person may not be nominated, appointed or elected as a director, and may not remain in office as a director, unless they hold not less than 5000 shares."; and

(b) inserting as clause 89.1 f. the following:

"Ceases to maintain the share qualification referred to in clause 90.1."