
Motor Trade Finance Limited

Constitution

Certified as the constitution of Motor Trade Finance Limited adopted by a Special Resolution.

Name:
Chairperson

Date:

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Interpretation

1 Defined terms

In this constitution:

1.1 The following expressions have the following meanings:

the Act means the Companies Act 1993;

the 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;

the Company means Motor Trade Finance Limited;

this constitution means this constitution as it may be altered from time to time in accordance with the Act;

Director means a person appointed as a director of the Company in accordance with this constitution;

Disposal Notice has the meaning given in *clause 18*;

Employee in relation to the Company includes an employee or officer of the Company or any of its subsidiaries, a labour only contractor, consultant, or consultant company who or which contracts with the Company or with any of its subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of any pension, superannuation or like fund established for the benefit of any of the above employees or officers;

FMC Act means the Financial Markets Conduct Act 2013;

Good Standing means a person of sufficient financial substance and standing, in possession of honesty, integrity, professionalism, competence, reputation and otherwise in good standing in the financial services industry, in the Board's sole opinion, and excludes such persons that have been convicted of any dishonesty offences, is the subject of any circumstances indicating the person is incapable of managing their own affairs, or is subject to any other similar or equivalent circumstance that would result in that person not meeting these criteria in the Board's sole opinion;

Independent Director means a Director who is not an executive of the Company and who has no disqualifying relationship. For the purposes of this definition, a

disqualifying relationship means any direct or indirect interest or relationship that could reasonably influence, in a material way, the Director's decisions in relation to the Company or the holding of a shareholding in the Company that would qualify that person to be elected as a Director;

Interest Group has the meaning given in section 116 of the Act;

Minimum Holding means that number and Class of Shares in the Company as determined from time to time by the Board;

NZDX means the debt security market operated by NZX;

NZX means NZX Limited and includes its successors and assigns;

Originator means a person that has entered into an Originator Agreement with the Company;

Originator Agreement means any agreement entered into with a person for the acquisition or placement of finance receivables with the Company where the parties to that agreement are the Company and a Shareholder or a person that has applied to purchase or be issued Shares in the Company;

Ordinary Resolution means a resolution approved by a majority of more than 50% of the votes of those Shareholders entitled to vote and voting on the question;

perpetual preference shares means any perpetual preference shares issued by the Company which have a right to a fixed or adjustable dividend, which have no rights to vote except on a separate Class meeting of holders of those shares, and which shares can only be redeemed at the option of the Company;

person includes a company, firm, partnership, limited partnership, body corporate, trust, organisation, association, individual or any other entity or organisation, whether incorporated or not (in each case whether or not having separate legal personality);

Rules means the Listing Rules of NZX Limited in force from time to time as, and to the extent that, they apply to the Company;

Ruling has the meaning given in the Rules;

Share means a share issued, or to be issued, by the Company, as the case may be;

Shareholder Originator means a Shareholder that is an Originator and that has previously, and/or continues to originate finance receivables with the Company, and/or continues to have a balance of, finance receivables with the Company under an Originator Agreement;

Shareholder Director means a person who satisfies the qualifications as set out in *clause 89* and is appointed as a Director pursuant to *clause 88.2(a)(ii)*;

Shareholder means a person whose name is entered in the Share Register as the holder for the time being of one or more Shares;

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 votes of those Shareholders entitled to vote and voting on the question;

Treasury Stock means Shares which have been acquired by the Company and are held by it as treasury stock in accordance with the Act, and includes Shares which are held by a subsidiary of the Company other than in accordance with section 82(6) of the Act;

written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

1.2 Subject to *clause 1.1*, expressions:

- (a) which are defined in the Rules (whether or not expressed with an initial capital letter) have the meanings given by those Rules.
- (b) which are defined in the Act (whether generally or for the purposes of one or more particular provisions) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.

2 **Construction**

In this constitution:

- 2.1 headings appear as a matter of convenience and do not affect the interpretation of this constitution;
- 2.2 the singular includes the plural and vice versa, and words importing one gender include the other genders;

- 2.3 a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- 2.4 a reference to *permitted by the Act* means not prohibited by the Act or not prohibited by the Rules; and
- 2.5 the Schedules form part of this constitution.

RELATIONSHIP BETWEEN CONSTITUTION AND THE RULES

3 **Effect of the Rules on this constitution**

While the Company is listed on the NZDX, those provisions of the Rules which are required to be contained or incorporated by reference in this constitution (as modified by any Ruling relevant to the Company), shall be deemed to be incorporated in this constitution as though set out herein in full without any modification.

4 **The Rules prevail**

While the Company is listed on the NZDX, the Company shall comply with the Rules, subject to any applicable requirements under the Act or other relevant legislation, and the terms of any Ruling given from time to time by NZX. Where a provision of this constitution is inconsistent with the Rules, the Rules shall prevail.

5 **Effect of Ruling**

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

6 **Effect of failure to comply**

- 6.1 Any failure on behalf of the Company to comply with the Rules shall not affect the enforceability or validity of any action, transaction, contract or other matter (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that:
- (a) a party to a transaction or contract who knew of the failure to comply with the Rules is not entitled to enforce that transaction or contract; and
 - (b) this provision shall not affect the rights of any holder of any Shares (or any securities which can be converted to Shares) of the Company against the Company or the Directors arising from failure to comply with the Rules.

RELATIONSHIP BETWEEN CONSTITUTION AND ACT

7 **Effect of the Act on this constitution**

The Company, the Board, each Director, and each Shareholder has the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution.

8 **Shareholders may alter or revoke this constitution**

The Shareholders may alter or revoke this constitution by Special Resolution.

9 **Share confers rights on Shareholder**

9.1 Subject to the terms on which a Share is issued, or to any Class rights attached to a Class of Shares, and to the rights and restrictions set out elsewhere in this constitution, each Share confers on the holder:

- (a) subject to the provisions of *clauses 10 and 17*, the right to one vote, on a poll at a meeting of Shareholders on each resolution, including any resolution to:
 - appoint or remove a Director or an auditor in accordance with this constitution; or
 - adopt a constitution; or
 - alter this constitution; or
 - approve a major transaction; or
 - approve an amalgamation under the Act; or
 - put the Company into liquidation.
- (b) in the case of Shares held by Shareholder Originators only, a right to be distributed commissions, incentives and returns in proportion to the amount and profitability of finance receivables introduced by the Shareholder Originator to the Company;
- (c) subject to *subclause (b)* above the right to an equal share in dividends authorised by the Board; and
- (d) subject to *subclause (b)* above the right to an equal share in the distribution of the Company's surplus assets.

9.2 Each Share having the right to vote which is not fully paid shall carry only a fraction of the vote which would be exercisable if the Share was fully paid. The

fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

- 9.3 Shareholders of all Classes shall be entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of Shares carrying votes.
- 9.4 All Shares issued by the Company which have voting rights are and shall be governed by the rights and limitations affecting control, voting and ownership set out in this constitution.

10 Holders of perpetual preference shares

Notwithstanding *clauses 8, 9.1 and 9.2*, no holder of any perpetual preference shares shall have any right to vote at a meeting of Shareholders of the Company and shall only have the rights attached to those said Shares on issue or as may be varied by Special Resolution.

11 Statement of rights to be given to holders of Shares

Where the Act requires, the Company must issue a statement of rights complying with the Act to any holder of Shares who asks for one.

12 Modification of rights of Shareholders

The Company must not take any action that affects the rights attached to Shares or to any Class of Shares unless that action has been approved by a Special Resolution of each Interest Group. For the purposes of this clause, the rights attaching to a Share include:

- 12.1 the rights, privileges, limitations and conditions attached to that Share by the Act, this constitution, or the document which governs the rights of that Share, including voting rights and rights to distributions;
- 12.2 the right to have the procedure set out in this clause observed by the Company and any further procedure required by this constitution for the amendment or alteration of rights attached to Shares or to any Class of Shares, observed by the Company;
- 12.3 the right that a procedure required by this constitution or the document which governs the rights of that Share for the amendment or alteration of rights not to be amended or altered.

13 Further issues of Shares do not affect rights of existing Shareholders

Subject to this constitution, the Board may issue Shares that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares in the Company. Any such issue will not be treated as an action affecting the rights attached

to those existing Shares unless the terms of issue of those Shares expressly provide otherwise.

14 Actions taken not invalid

The taking of an action by the Company affecting the rights attaching to Shares is not invalid by reason only that the action was not approved in accordance with *clause 12*.

15 Cancellation of unpaid amounts subject to Shareholder approval

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 of that Class of Shares.

16 Consolidation and subdivision reclassification

The Board may:

- 16.1 consolidate and divide Shares or any Class of Shares in proportion to those Shares or the Shares in that Class; or
- 16.2 subdivide Shares or any Class of Shares in proportion to those Shares or the Shares in that Class;
- 16.3 reclassify Shares of a different Class or distinguished by a denominator into Shares of the same Class and having the same rights;
- 16.4 create new Classes of Shares.

GENERAL RESTRICTION ON SHAREHOLDING

17 General Restriction on Shareholding

- 17.1 Notwithstanding any other provision of this constitution but subject always to *clauses 42 (Restrictions on Share Issues) and 56 (Further Restriction on Share Transfers)*, no Shareholder may at any time, and in any circumstances, hold or control such number of Shares that result in that person holding or controlling more than or equal to 10% of the voting rights in the Company.
- 17.2 If, at any time, a Shareholder holds or controls such number of Shares that result in that person holding or controlling more than or equal to 10% of the voting rights in the Company, any Shares that carry voting rights held in breach of such limit by that Shareholder shall be automatically disqualified from voting, provided that this clause does not prevent a person disqualified from voting under this clause, who has been appointed as a proxy or voting representative by another person who is not disqualified from voting under this clause, from voting in respect of the Shares that carry voting rights held by that other person in accordance with the express instructions of that other person.

17.3 For the purposes of this *clause 17* all references to Shares are to voting Shares and exclude all perpetual preference shares.

18 Shares treated as affected Shares

If the registered holder of any Shares does not comply with *clause 17*, the Board is entitled to determine without further evidence that those Shares are (to the extent of such excess) to be treated as *affected Shares* and upon making that determination must immediately give a notice ("*Disposal Notice*") to that effect to the registered holder of those Shares.

19 Holders of affected Shares cannot vote

19.1 A registered holder of affected Shares who is given a Disposal Notice under *clause 18* is not entitled to vote in respect of those affected Shares at any Shareholders', class or interest group meeting of the Company.

19.2 The votes attached to such affected Shares shall vest in and may be exercised by the chairperson of any such meeting who may act entirely at his or her discretion. This shall be without prejudice to the right of any such registered holder to attend or speak at any Shareholders', class or interest group meeting of the Company.

20 Company's power of sale

20.1 A registered holder of affected Shares shall, within a period not exceeding six months (or such longer or shorter period as the Board may determine and specify in the Disposal Notice given under *clause 18*) after receiving a Disposal Notice under *clause 18* ensure that the affected Shares are disposed of so that, as at the end of that period, the relevant registered holder no longer holds the affected Shares in contravention of *clause 17*.

20.2 If at the end of the period specified in the Disposal Notice the Board is not satisfied that such a disposal has been made, then:

- (a) the Company may arrange for the sale of the affected Shares at the best price reasonably obtainable at the relevant time, based on advice obtained by it for the purpose so that they are no longer capable of being treated as affected Shares;
- (b) the registered holder is deemed to have authorised the Company to act on behalf of that registered holder in relation to the sale of the affected Shares and to sign all documents which may be required in order to effect any such sale and the Board may register a transfer of the affected Shares so sold, whether or not the transfer has been properly completed and whether or not it is accompanied by the certificates (if any) for the affected Shares;

- (c) the person to whom such affected Shares are transferred shall not be bound to see to the application of the purchase money, nor shall his, her or its title to the Shares be affected by any irregularity or invalidity in the proceedings relating to the sale of those Shares; and
- (d) the proceeds of the sale of any Shares sold under this clause must be applied as follows:
 - (i) first, in payment of any reasonable sale expenses and any other costs incurred by the Company in exercising the powers conferred on the Company or the Board by this *clause 20.2*;
 - (ii) second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Shares;
 - (iii) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors or administrators on surrender of the certificate (if any) relating to the affected Shares.

21 Absence of notice does not invalidate

The Board shall not be obliged to serve any Disposal Notice or other notice required under *clause 20* to be served upon any person if it does not know either the identity or address of the person. The absence of service of such a notice in such circumstances, and any accidental error in or failure to give any notice to any person upon whom notice is required to be served under *clauses 18 to 20* shall not prevent the implementation of or invalidate any procedure under those *clauses*. Section 391 of the Act shall apply to the service on persons of notices required under this clause as if references in that section to Shareholders were references to those persons and references to the addresses of Shareholders were references to the last addresses of those persons known to the Company.

22 Decisions final, conclusive and binding

Any resolution or determination of, or decision or declaration or exercise of any discretion or power by, the Board or by the chairperson of any meeting under or pursuant to *clauses 18 to 20* shall be final and conclusive and any disposal or transfer made, or other things done, by or on behalf of, or on the authority of, the Board pursuant to those clauses shall be conclusive and binding on all persons concerned and shall not be open to challenge, whether as to its validity or otherwise on any ground whatsoever.

23 Certificate conclusive

A certificate signed by a director and countersigned by a second director, that a power of sale under *clause 20* has arisen and is exercisable by the Board, or that any Shares have been duly transferred under *clauses 18 to 20* on the date stated therein, shall be conclusive evidence of the facts stated therein.

24 Paramount provisions

24.1 *Clauses 18 to 25* shall apply notwithstanding any other provision or Schedule of this constitution which is inconsistent with or contrary to it.

25 Entrenched provisions

Notwithstanding any other provision of this constitution or section 32 of the Act, *clauses 18 to 25* shall not be altered without the prior approval of Shareholders given at a duly convened meeting of Shareholders by a special resolution approved by the votes of those Shareholders who are entitled to vote and who vote on the resolution and who between them hold not less than 75% of all of the Shares in the Company which confer the right to vote on a resolution to alter this constitution.

26 Board to ascertain disqualified Shareholders

The Board must use reasonable endeavours to ascertain, no later than five business days before any Shareholders' meeting to consider a resolution on which this constitution prohibits certain persons from voting, the identity of Shareholders who are restricted or disqualified from voting on that resolution, and on request must supply a list of such Shareholders to any Shareholders of Shares of the Company entitled to vote on that resolution.

27 Deadline for challenge

A resolution of, or proceeding at, a Shareholders' meeting in breach of *clause 17* must not be treated as unenforceable on the basis of a breach of *clause 17*. This does not prejudice any remedy (other than those which take legal effect against the Company) which any Shareholder may have against any person who casts a vote at a meeting in breach of *clauses 17 and 26*. Any objection by a Shareholder to the accuracy or completeness of any list provided pursuant to *clause 26* must be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full business day before the time fixed for commencement of the meeting.

ISSUE OF SHARES**28 Board to issue Shares**

The Board may issue Shares in accordance with this constitution.

29 Board need not comply with statutory pre-emptive rights

If the Board issues Shares that rank as to voting or distribution rights, or both, equally with or in priority to the Shares already issued by the Company, the Board need not first offer those Shares to existing Shareholders for acquisition, unless any other provision of this constitution requires otherwise. The provisions of section 45 of the Act shall not apply to the Company.

30 Issues of new Shares are restricted

The Board must not issue any Shares unless:

- 30.1 the precise terms and conditions of the specific proposal to issue those Shares have been approved (subject to *clause 32*) by separate resolutions (passed by a simple majority of votes) of holders of each Class of Shares of the Company whose rights or entitlements could be affected by the issue, and the issue is completed within six months, after the passing of those resolutions; or
- 30.2 the issue is made in accordance with any of *clauses 31 to 36*.

31 Resolution not required if terms allow new issue

A resolution pursuant to *clause 30.1* of the holders of a Class of Shares is not required if:

- 31.1 the terms of issue of those Shares expressly reserved the right to make the issue of new Shares in question, and specified at least the maximum number, and Class, of new Shares which could be issued, and the time within which they could be issued; or
- 31.2 those Shares were issued on terms that the holders of those Shares would vote together with the holders of another Class or Classes of Shares on a resolution of the nature referred to in *clause 30.1* and the issue is approved by a resolution (passed by a simple majority of votes) of holders of all the relevant Classes voting together.

32 Board may issue new Shares of the same Class on pro rata basis

The Board may issue Shares of the same Class if:

- 32.1 those Shares are offered to holders of existing Shares of the Company of the same Class on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of that Class of Shares) to votes and to distribution rights, and that offer is renounceable; or
- 32.2 those Shares are issued to holders of existing Shares of the same Class as fully paid Shares on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of that Class of Shares) to votes and to distribution rights.

Notwithstanding *clauses 32.1 and 32.2*, the Board is entitled:

- 32.3 to issue any Shares in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the Company, provided that the price and terms and conditions of the issue of such

Shares are not materially more favourable to the persons to whom they are issued than the terms of the original offer; and

- 32.4 to offer and issue Shares to the holders of existing Shares in accordance with specific rights attached to those existing Shares to participate in issues of Shares, notwithstanding that the effect may be that existing proportionate rights to votes and distribution rights are not maintained; or
 - 32.5 to authorise a disproportionate offer to the extent necessary to round up holdings of Shares to a Minimum Holding, or to avoid the creation of holdings which are less than Minimum Holdings; or
 - 32.6 to not offer or issue Shares to holders of existing Shares the terms of which expressly exclude the right to participate in the relevant offer or issue.
- 33 **Board may issue new Shares in lieu of dividends or other payments to Shareholders**
The Board may issue Shares if the issue is made pursuant to a plan for the issue of Shares in lieu of dividends or other payments due to Shareholders (including, without limitation, commission payments or any similar payments).
- 34 **Board may issue new Shares in other cases**
The Board may issue Shares if:
- 34.1 the issue is made as consideration in an offer made by the Company:
 - (a) under any take-over approved under the Takeovers Act 1993 or a scheme of arrangement under Part 15 of the Act; or
 - (b) to acquire assets of the same or similar type of assets to those held by the Company; or
 - (c) under any take-over provisions within a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of the Board is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in (a) above;
 - 34.2 the issue is made upon conversion of any Shares from time to time issued by the Company if the terms of issue of those Shares provided for conversion to Shares of the kind issued; or
 - 34.3 the issue is made to an existing holder of Shares of the Company in order to bring that holder's holding up to a Minimum Holding; or

34.4 the issue is made pursuant to an arrangement, amalgamation or compromise effected pursuant to Part 8 or Part 15 of the Act.

35 Issue of small shareholdings

Notwithstanding the provisions in *clauses 30 to 34* the Board is permitted to issue Shares in the following circumstances:

35.1 where the Shares are offered to all Shareholders of the same Class and where the total amount payable by each Shareholder does not exceed \$5,000; or

35.2 if that offer is to enable a Shareholder to increase his, her or its shareholding to a Minimum Holding.

36 Issues of Shares to Shareholder Originators

36.1 Notwithstanding the provisions of *clauses 29 to 32* if there are not sufficient Shares available for sale by existing Shareholders to enable a new or existing Shareholder Originator to obtain a Minimum Holding the Board may issue:

(a) such new Shares of such Class as may be determined by the Board; or

(b) such new Shares to increase the shareholding of an existing Shareholder Originator to the minimum number of Shares that the Board determines are required to be held by a Shareholder Originator based on the balance outstanding of finance receivables introduced by that Shareholder Originator into the Company;

36.2 The Board at its discretion may vary the number of Shares required to be held in the Company by Shareholder Originators and may also issue any Shares of a Class to enable existing Shareholder Originators to increase their shareholding to the number and Class as specified by the Board. The Board shall take into account in issuing any new Shares any existing Shares that are not held by Shareholder Originators and which may be available for purchase by Shareholder Originators.

36.3 The Board may designate classifications to Shares so that:

(a) Shares held by Shareholder Originators and which are equal to the Minimum Holding required to be held by that Shareholder Originator cannot be sold except if approved by the Board;

(b) Shares held in excess of the Minimum Holding as in (a) above and Shares held by Shareholders who are not Shareholder Originators may be traded through a share trading system as determined by the Board.

36.4 Conditions of Holding Shares

The Board may impose conditions on the holding of Shares by Shareholder Originators from time to time, including and without limiting the same, that the relevant Shareholder Originator:

- (a) has entered into an Originator Agreement with the Company and complies at all times with all the terms of that agreement and any other agreements between the relevant Shareholder Originator and the Company; and/or
- (b) complies at all times with a code of conduct or other policies introduced by the Board to ensure continued compliance with statutory obligations and best practice in the market; and/or
- (c) complies at all times with the provisions of this constitution or the terms of any agreements between the relevant Shareholder Originator and the Company; and/or
- (d) may be required to transfer any of its Shares to another Shareholder Originator; and/or
- (e) is a person of Good Standing and its shareholders, directors, trustees or representatives are persons of Good Standing, as applicable.

If, at any time, the Board considers in its sole opinion, that a Shareholder Originator does not-comply with any one or more of the above conditions, the Board may compulsorily acquire that Shareholder Originator's Shares by exercising the rights set out in the Second Schedule for forfeiture of any Shares held by the relevant Shareholder Originator.

37 Issue to persons signing an Originator Agreement

37.1 Notwithstanding *clauses 30 to 34* the Company may issue new Shares to any person who has entered into an Originator Agreement with the Company;

37.2 The Directors may determine the minimum number of Shares that a person must hold when first becoming a Shareholder if Shares are offered to that person on the entering into of an Originator Agreement.

38 Sale of treasury stock treated as issue of Shares

For the avoidance of doubt, the transfer by the Company of Treasury Stock to a person is deemed to constitute the issue of Shares, provided that Treasury Stock may be reissued pursuant to *clause 65* of this Constitution.

39 Entitlements to third party Shares treated as issue of Shares

Entitlements conferred by the holding of Shares of the Company, to shares of a third party (whether or not that third party is an Issuer), must not be created or conferred other than in compliance with *clauses 32 to 36*, as if such shares comprise an issue of Shares of the Company.

40 Bonus Issue of Shares

The Board may authorise the issue of Shares as fully paid up Shares:

40.1 to all Shareholders of the same Class in proportion to the number of Shares held;
or

40.2 to any Class of Shareholders from moneys payable to those Shareholders to enable those Shareholders to obtain a Minimum Holding.

RESTRICTION ON SHARE ISSUES**41 10% limit on new Share issuance**

Notwithstanding any other provision of this constitution, the Board is expressly prohibited from issuing Shares to any person where any such Share issue would result in that person becoming the holder or controller of more than or equal to 10% of the voting rights in the Company.

42 20% limit

Notwithstanding any other provision of this constitution, the Board is expressly prohibited from issuing Shares to any person where any such Share issue would result in that person, either alone or together with its associates, becoming the holder or controller of, or increasing its holding or control above, 20% of the voting rights in the Company. For the purposes of this clause, one person (the "*first person*") will be considered an "*associate*" of another person (the "*other person*") if that first person is an "*associate*" of the other person within the meaning of "*associate*" in Rule 4 of the Takeovers Code Approval Order 2000, as amended from time to time.

43 Board's decision final

The Board shall have the sole discretion to determine any dispute as to whether a person is an "*associate*" of another person and the Board's determination of any such dispute shall be final.

44 Voidable share issues

Any Shareholder issued Shares in contravention of *clauses 41 or 42* will be required to surrender those Shares to the Company immediately on demand by the Board.

SHARE REGISTER

45 Company to maintain registers of Shares

The Company must maintain a Share Register in the manner required by the Act and in accordance with any legislative requirement. The Company must maintain a register for any other Shares issued by the Company in the manner required by the Act.

46 Share register may be divided

The Share Register may be divided into two or more registers kept in different places.

47 Status of registered Shareholder

The Company may treat the registered Shareholder as the only person entitled to:

47.1 exercise any right to vote attaching to the Share; and

47.2 receive notices; and

47.3 receive any distribution in respect of the Share; and

47.4 exercise any other rights and powers attaching to the Share.

The Board may determine in a notice of meeting for the purpose of voting at that meeting that those registered holders as at 5 p.m. on a day not more than two working days before the meeting shall be the only persons entitled to exercise the right to vote at that meeting. This clause does not limit the right of the registered Shareholder to appoint a proxy or corporate representative.

48 Registration of separate parcels

A holder of Shares of the Company or a transferee may request the Company to register the Shares held by that person in two or more separately identifiable parcels. Where the Company agrees to such a request, the Company may, so far as it considers convenient, communicate with the holder of the Shares, pay dividends and otherwise act in respect of such parcel, as if the separately identifiable parcels belonged to different persons.

49 Trusts not to be entered on registers

The Company must not enter any notice of a trust on the Share Register, or any other register of Shares, whether that trust is express, implied or constructive.

TRANSFER OF SHARES

50 Methods of transfer

Subject to any determination by the Board, Shares (and, subject to their terms of issue, any other Shares) may be transferred by the following methods:

50.1 by the delivery of any usual or common form of transfer signed by the present holder of the Shares or by that holder's attorney, personal representative, or by any other person who may lawfully sign on behalf of that holder, to the Company or to an agent of the Company who maintains the register for those Shares. The transferee must sign the transfer form if the registration as holder of those Shares imposes a liability to the Company on the transferee; or

50.2 in accordance with any system of transfer approved by legislation.

51 Trading Platform for Shares

The Board may implement a system and policies for the orderly trading of Shares in the Company and administer the trading of Shares for that purpose. The Board may give notice to all holders of Shares on the rules and policies for trading Shares and enforce those rules and policies. There shall be no responsibility for the Company or the Board in failing to find sellers or buyers for any Shares in the Company available for sale or sought to be purchased.

52 Shares transferred by entry on register

Shares may be transferred by entry of the name of the transferee on the Company's Share Register.

53 Minimum Holdings

53.1 The Board may from time to time determine:

- (a) different requirements for the Minimum Holding of Shares that must be held by different Shareholder Originators and the period over which the Minimum Holding must be obtained;
- (b) criteria to be applied to the obtaining of a Minimum Holding by a Shareholder Originator, with those criteria to be consistently applied for all Shareholder Originators; and/or
- (c) and enforce policies to enable that Minimum Holding to be obtained by Shareholder Originators; and/or
- (d) the Minimum Holding of Shares that must be held by the holders of perpetual preference shares, as may be required by the Rules; and/or

- (e) the Minimum Holding of Shares that must be held by any Shareholder other than Shareholder Originators and holders of perpetual preference shares.

53.2 If any Shareholder does not hold, or is not meeting any policy to attain a Minimum Holding, the Board can invoke and enforce the provisions set out in the First Schedule. The provisions of the First Schedule shall apply to the sale of Shares that is less than a Minimum Holding of a Shareholder.

54 **Restriction on Transfers**

54.1 The overriding discretion of the Board to decline any transfer of Shares as set out in *clause 59*, and to transfers of Shares that may be permitted pursuant to *clause 54.2*, no transfer of Shares (except in relation to perpetual preference shares) is permitted except pursuant to a trading system and in accordance with a policy determined by the Board and notified to all Shareholders (except Shareholders of perpetual preference shares) under which the Company gives willing sellers and willing buyers an opportunity to sell and buy Shares.

54.2 Transfers of Shares may also be permitted:

- (a) by a Shareholder who is party to an Originator Agreement and who wishes to sell a business so that the Shareholder which provides finance receivables to the Company also sells with that business Shares held by that Shareholder and where the Shares are being transferred to the purchaser of that business which must be a Shareholder Originator; or
- (b) between Shareholders who agree to sell Shares between them; or
- (c) where the Shareholder has died or in the opinion of the Board has suffered such hardship that a Share transfer should be permitted.

FURTHER RESTRICTIONS ON SHARE TRANSFERS

55 **10% limit**

Notwithstanding any other provision of this constitution, the Board is expressly prohibited from transferring Shares to any person where any such Share transfer would result in that person becoming the holder of controller of more than or equal to 10% of the voting rights in the Company.

56 **20% limit**

Notwithstanding any other provision of this constitution, the Board is expressly prohibited from transferring Shares to any person where any such Share transfer would result in that person, either alone or together with its associates, becoming the holder

or controller of, or increasing its holding or control above, 20% of the voting rights in the Company.

57 Meaning of “associate”

For the purposes of *clause 56*, the meaning of “*associate*” shall be as defined in *clause 42* of this constitution and the determination of any disputes as to whether any person is an “*associate*” of another person shall be subject to the Board’s rights as stated in *clause 43* of this constitution.

58 Voidable share transfers

Any transfer of Shares that is made in contravention of *clauses 55 or 56* will be deemed to be null and void and of no effect and any Shareholder transferred shares in contravention of *clauses 55 or 56* will be required to transfer those Shares back to the transferring Shareholder immediately on demand by the Board.

59 Board may refuse or delay transfer

The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares (subject to their terms of issue) in any of the following circumstances:

- 59.1 the Company has a lien on those Shares; or
- 59.2 the transfer is not accompanied by documentation that establishes the entitlement to transfer; or
- 59.3 registration of the transfer, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than the Minimum Holding or holding or controlling such number of Shares that result in that person becoming the holder or controller of more than or equal to 10% of the voting rights in the Company in breach of *clause 55*; or
- 59.4 where the Company has contingent or actual rights against the proposed transferor under agreements or arrangements whereby that transferor has provided a guarantee or indemnity to the Company under recourse arrangements relating to finance receivables held by the Company or its assignee; or
- 59.5 such action is not permitted under any other provisions of this constitution; or
- 59.6 where the transfer of those Shares would reduce the shareholding of a Shareholder Originator below the Minimum Holding of Shares to be held by that Shareholder Originator as determined by the Board; or

- 59.7 registration of the transfer, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee being in breach of *clause 55 and/or 56*.
- 59.8 where a Shareholder Originator is the proposing transferor and is in breach of any agreement entered into with the Company; or
- 59.9 where the proposed transferee has not signed all documents required to qualify as an Originator and been approved by the Board to be an Originator under such rules and policies applied by the Board for approving Originators; or
- 59.10 where the proposed transferee or its directors, shareholders, trustees or representatives are not persons of Good Standing.

CALLS, FORFEITURE AND LIEN

60 Board may make calls on Shares

The Board may make calls on any Shareholder for any money that is unpaid on that Shareholder's Shares and not otherwise payable at a specified time or times under this constitution or the terms of issue of those Shares or any contract for the issue of those Shares. The Second Schedule governs calls on Shares.

61 Forfeiture of Shares where calls or other amounts unpaid

The Board may exercise the rights set out in the Second Schedule for forfeiture of any Shares if the holder of those Shares fails to pay:

- 61.1 a call, or an instalment of a call, on those Shares; or
- 61.2 any amount that is payable under this constitution or the terms of issue of those Shares or any contract for the issue of the Shares; or
- 61.3 any amount that is payable under an Originator Agreement or any other agreement between the relevant Shareholder and the Company.

62 Forfeiture of Shares in other circumstances

The Board may exercise the rights set out in the Second Schedule for forfeiture of any Shares held by:

- 62.1 a Shareholder Originator if the Originator Agreement between the relevant Shareholder Originator and the Company is for any reason terminated or the Shareholder Originator is in default under it at any time;
- 62.2 a Shareholder Originator if that Shareholder Originator has not originated or placed any finance receivables with the Company pursuant to its Originator Agreement in the then preceding 12 months; or

62.3 a Shareholder Originator if at any time a Shareholder Originator ceases to comply with any one or more of the conditions of holding Shares in accordance with *clause 36.4*.

63 Company's lien

The Company has a lien on Shares, dividends in respect of such Shares, and other payments due to the Shareholder as set out in *clauses 72 to 74*, on the terms set out in the Second Schedule.

ACQUISITION OF OWN SHARES, REDEMPTIONS AND FINANCIAL ASSISTANCE

64 Company may acquire and hold its own Shares

64.1 Subject to this constitution, the Company may purchase or otherwise acquire Shares issued by the Company and may hold Shares as Treasury Stock in accordance with the Act and this constitution.

64.2 Subject to the Board determining that some or all of the Shares will be held by the Company pursuant to *clause 65*, Shares that are acquired by the Company are deemed to be cancelled immediately on acquisition by the Company. For the purposes of this *clause 64.2*, Shares are acquired by the Company on the date on which the Company would, apart from this *clause 64.2* become entitled to exercise the rights attaching to the Shares. On the cancellation of a Share by virtue of this *clause 64.2*:

- (a) the rights and privileges attached to that Share expire; but
- (b) the Share may be reissued in accordance with this constitution and the Act.

65 Treasury Stock

The Company is permitted to hold its own shares. Any Share or Shares that the Company holds in itself shall be so held and may be transferred or reissued pursuant to sections 67A, 67B and 67C of the Act.

66 Company may acquire Shares on a non-proportionate basis

Subject to this constitution, the Board may make an offer to one or more holders of Shares to acquire Shares issued by the Company in such number or proportions as it thinks fit, in accordance with the Act and this constitution.

67 Acquisitions of own Shares are restricted

Subject to *clause 70*, the Company must not acquire Shares of the Company unless the acquisition is:

67.1 effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Act; or

- 67.2 effected in compliance with section 60(1)(b)(ii) (read together with section 61) of the Act; or
- 67.3 an acquisition of the nature referred to in section 61(7) of the Act; or
- 67.4 approved in accordance with *clause 70*; or
- 67.5 required by a Shareholder of the Company pursuant to sections 110 or 118 of the Act; or
- 67.6 if all entitled persons agree or concur, Shares in the Company may be acquired in accordance with sections 107 (which relates to unanimous consent) and 108 of the Act.

68 Company may issue and redeem Shares

Subject to compliance with applicable provisions of this constitution, the Company may:

- 68.1 issue redeemable Shares; and
- 68.2 redeem redeemable Shares in accordance with the Act and the terms of issue of the redeemable Shares; and
- 68.3 exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares, in accordance with the Act, the terms of issue of the redeemable Shares.

69 Financial assistance is restricted

The Company must not give financial assistance for the purpose of, or in connection with, the acquisition of Shares issued or to be issued by the Company unless the giving of that assistance:

- 69.1 complies with the Act; or
- 69.2 is approved in accordance with *clause 70*.

70 Approval of certain acquisitions, redemptions, or financial assistance

The Company may acquire Shares otherwise than pursuant to *clauses 64 to 67*, if the precise terms and conditions of the specific proposal (the *Proposal*) to acquire or redeem those Shares, or of the giving of that financial assistance, have been approved by separate resolutions (passed by a simple majority of votes) of members of each separate group of each Class of voting Shares of the Company whose rights or entitlements are materially affected in a similar way by the Proposal. Any such acquisition must be completed within 12 months, and redemption or financial assistance completed or given within six months, after the passing of the relevant resolutions.

71 Ordinary resolutions required for changes of control

Notwithstanding the provisions of *clauses 64 to 67*, the Company must not, acquire or redeem Shares unless the precise terms and conditions of the acquisition or redemption have been approved by an Ordinary Resolution or the acquisition of Shares is to repurchase the Shares held by a Shareholder who has ceased to be a Shareholder Originator and whose Shares cannot be sold over such period as the Board considers reasonable.

DISTRIBUTIONS**72 Board may authorise distributions**

The Board may authorise a distribution by the Company in accordance with the Act. Notwithstanding *clause 73*, distributions may be made as commission under an Originator Agreement other than pro rata to existing Shareholders.

73 Person to whom distribution payable

A distribution shall be payable to the person who is, on the record date, the registered holder of the Share in respect of which the distribution is made.

74 Board's power to authorise dividend is restricted

The Board must not authorise a dividend:

74.1 in respect of some but not all the Shares in a Class; or

74.2 that is of a greater value per Share in respect of some Shares of a Class than it is in respect of other Shares of that Class,

unless the amount of the dividend in respect of a Share of that Class is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder under this constitution or under the terms of issue of the Share or under a contract for the issue of the Share. Any Share that is partly paid on the date for payment of a dividend shall be paid a proportionate part of that dividend in proportion to the amount paid as a proportion of the total amount if those Shares were fully paid up. Nothing in this clause prevents the Board issuing Shares wholly or partly in lieu of dividend in accordance with the Act.

75 Shareholder may waive dividend

Notwithstanding *clause 73*, a Shareholder may waive his, her or its entitlement to receive a dividend by giving a written notice to the Company signed by or on behalf of the Shareholder.

76 Board deductions from distribution

The Board may, at its discretion, deduct from any dividend, commission or other distribution payable to a Shareholder any amount owed by the Shareholder to the Company in respect of which the Company has a lien over the specific Shares on which

the dividend, commission or other distribution is payable and may deduct any moneys due and payable under, or which the Company is entitled to set off in accordance with, the terms of an Originator Agreement executed by a Shareholder. The Board must deduct from any dividend, commission or other distribution payable to any Shareholder any amount it is required by law to deduct, including withholding and other taxes.

77 Distributions do not bear interest

No dividend or other distribution shall bear interest against the Company unless the applicable terms of issue of Shares expressly provide otherwise.

78 Unclaimed distributions

All dividends and other distributions unclaimed for one year after the due date for payment may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. The Company shall be entitled to mingle the distribution with other money of the Company and shall not be required to hold it or to regard it as being impressed with any trust but, subject to compliance with the solvency test, shall pay the distribution to the person producing evidence of entitlement.

MEETINGS OF SHAREHOLDERS

79 Company must hold annual meeting of Shareholders

79.1 The Board must call an annual meeting of Shareholders to be held not later than 15 months after the date of the previous annual meeting of Shareholders; and

79.2 the Company must hold the meeting on the date on which it is called by the Board to be held.

80 Company may hold special meetings of Shareholders

A special meeting of Shareholders entitled to vote on an issue:

80.1 may be called at any time by the Board; and

80.2 must 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.

81 Company may hold meetings of holders of perpetual preference shares

A meeting of holders of perpetual preference shares must be convened by the Board on the written request of holders of perpetual preference shares that have a combined nominal value of 5% or more of the nominal value of the perpetual preference shares on issue in that Class, or such other number of holders as required by section 120(1)(b) of the FMC Act (if applicable).

82 Required majority for extraordinary resolution of holders of perpetual preference shares

The necessary majority for holders of perpetual preference shares passing an extraordinary resolution is approval of holders holding at least 75% of the nominal value of those perpetual preference shares held by persons entitled to vote and voting.

83 Proceedings at meetings of Shareholders and interest groups

The Third Schedule governs the proceedings at meetings of Shareholders. The Third Schedule also governs the proceedings of meetings of any interest group required to be held by the Act, the Rules, or this constitution, with all necessary consequential modifications, except that the quorum shall be the members of the interest group holding 5% or more of the total number of Shares held by all members of that group having the right to vote at the meeting.

84 Voting rights

Generally:

- (a) In the case of a meeting of Shareholders held under *clause 80.1*, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:
 - (i) voting by voice; or
 - (ii) voting by show of hands.
- (b) In the case of a meeting of Shareholders held under *clause 80.2*, unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.
- (c) 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 84(d)*.
- (d) At a meeting of Shareholders a poll may be demanded by:
 - (i) not less than five Shareholders having the right to vote at the meeting; or
 - (ii) 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
 - (iii) 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; or

- (iv) the chairperson.
- (e) A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.
- (f) 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.
- (g) Except as provided in *clause 84(h)*, if a poll is demanded it shall be taken in such manner as the chairperson directs and the results of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (h) A poll demanded on the election of a chairperson or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such times as the chairperson directs and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of a poll.
- (i) The chairperson of a Shareholders' meeting is entitled to a casting vote.
- (j) For the purposes of this clause the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

85 Corporations may act by representatives

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.

86 Votes of joint holders

Where two or more persons are registered as the holder of a Share, the vote of the person named first in the share register and voting on a matter shall be counted to the exclusion of any other votes on those Shares.

87 Loss of voting rights

87.1 If a sum due to the Company in respect of any Shares has not been paid on the due date, that Share may not be voted at a Shareholders meeting other than a meeting of an Interest Group.

87.2 The Board may determine pursuant to the terms of this constitution that certain specified Shares do not have a right to vote at a meeting of Shareholders.

DIRECTORS

88 Appointment and removal

88.1 Number of Directors:

- (a) The minimum number of Directors shall be six and the maximum number of Directors shall be seven.
- (b) The Shareholders may change the minimum and/or the maximum number of Directors by Ordinary Resolution.
- (c) The Board may increase the number of Directors by one Independent Director or one Shareholder Director at its option. The appropriate candidate will be determined on the basis of the skills required by the Board at the time of election. The Board may set the tenure of a Director appointed under this clause, provided that such tenure shall not exceed a maximum of one term of two years and may be terminated at the Board's discretion. The tenure of a Director appointed under this clause shall operate independently of the provisions as to retirement and re-election contained in *clauses 88.3 to 93*. Upon retirement of a Director appointed under this clause, that Director may be elected as an Independent Director or a Shareholder Director, as the case may be, in accordance with the provisions of this constitution, excluding this clause.

88.2 Appointment of Directors

- (a) The Directors shall be appointed as follows:
 - (i) The Shareholder Directors shall appoint two persons as Independent Directors. Such appointments made by the Shareholder Directors shall ensure there is an ongoing balance in the composition of the Board between knowledge of the finance industry, business and community involvement, banking and finance and such other special skills as may be required for the ongoing business of the Company.
 - (ii) The remaining Directors shall be Shareholder Directors appointed by Ordinary Resolution passed by those Shareholders entitled to vote.
 - (iii) The Board may appoint a person to fill a casual vacancy under *clause 93*.
- (b) The existing Directors of the Company shall continue in office and shall be subject to the provisions as to removal, retirement and re-election contained in *clause 88.3 and clauses 90 to 93*.

88.3 Removal of Directors:

Directors may be removed from office as follows:

- (a) Any Director may be removed from office by a resolution of the Board provided that the Director on whose removal as a Director the Board is voting, as the case may be, may not vote on such resolution.
- (b) Any Shareholder Director appointed pursuant to *clause 88.2(a)(ii)* may be removed from office by an Ordinary Resolution passed by the holders of the voting Shares and voting as a Class at a meeting called for the purpose of, or for purposes that include, removal of the Director.
- (c) Any Independent Director appointed under *clause 88.2(a)(i)* may also be removed by Ordinary Resolution of Shareholders as set out in *clause 88.3(b)*.

89 Qualification as a Director**89.1 Qualification of all Directors**

Any person appointed as a Director under *clause 88.2(a)* must not be disqualified by the Act or this constitution from being a Director and must not be appointed unless he or she has consented in writing to be a Director and certified that he or she is not disqualified from being appointed or holding office as a Director.

89.2 Qualification of Shareholder Directors

A person appointed as a Shareholder Director under *clause 88.2(a)(ii)* must be:

- (a) a Director of a Shareholder Originator; or
- (b) a holder of the majority of the voting Shares in a Shareholder Originator; or
- (c) a trustee of a Trust that owns or holds the majority of the voting Shares in a Shareholder Originator; or
- (d) a Key Person of a Shareholder Originator.

For the purposes of *subclause (d)*, “Key Person” means the key decision-maker in a Shareholder Originator’s business and occupying the title and position of Chief Executive Officer, Managing Director, Chief Operating Officer or equivalent.

90 Term, Rotation, and Retirement of Shareholder Directors**90.1 Term of Shareholder Directors**

A Shareholder Director may hold office for a term of three years, and for a maximum of four consecutive terms. At the annual meeting in every year at least one third (to the nearest whole number) of Shareholder Directors must retire from office. For the avoidance of doubt, if four Shareholder Directors are

appointed under *clause 88.2(a)(ii)* then at least one director shall retire by rotation in each year, in addition to any Director appointed to fill a casual vacancy and who is subject to re-election, and the Directors shall determine the year in which two directors retire by rotation.

- (b) The Shareholder Directors to retire at an annual meeting will be:
- (i) first, any Shareholder Directors who wish to retire and do not offer themselves for re-election; and
 - (ii) secondly, if those retiring pursuant to *clause 88.2(b)(i)* do not constitute the number of Shareholder Directors required to retire from office under *clause 88.1*, those of the other Shareholder Directors who have been longest in office since their last election must then retire. Persons who became Shareholder Directors on the same day must retire in the same order as they were elected by the Shareholders, unless the Board resolves otherwise.
- (c) A retiring Shareholder Director continues to hold office until:
- (i) he or she is re-elected; or
 - (ii) if he or she is not re-elected, until the Shareholders at any meeting at which he or she retires (or any adjournment of that meeting) elect someone in his or her place; or
 - (iii) if the meeting does not elect someone in his or her place, until the end of the meeting or any adjournment of the meeting.
- (d) A retiring Shareholder Director who continues to satisfy the qualifications as set out in *clause 89*, is eligible for re-election.
- (e) The holders of voting Shares may by Ordinary Resolution fill the office vacated by a Shareholder Director who is retiring in accordance with this *clause 90* by electing a person who satisfies the qualifications as set out in *clause 89* to that office at the annual meeting at which the outgoing Shareholder Director retires. If no new Shareholder Director is elected and if the retiring Shareholder Director (not being disqualified under *clause 89*) is offering himself or herself for re-election, the retiring Shareholder Director shall be regarded as having been re-elected unless it is expressly resolved by Ordinary Resolution not to fill the vacated office or a resolution for the re-election of that Shareholder Director is lost.
- (f) For the avoidance of doubt, the provisions of *clause 90* shall only apply to a Shareholder Director appointed by the holders of the voting Shares in

accordance with *clause 88.2(a)(ii)*. Any Independent Director appointed under *clause 88.2(a)(i)* shall not be required to retire from office by rotation and shall not be counted in the number of Shareholder Directors for that purpose.

91 **Nominations Process for Shareholder Directors**

91.1 No person, other than a Shareholder Director retiring pursuant to *clause 90* will be eligible for election to the office of Shareholder Director at any annual meeting unless:

- (a) he or she has been recommended by the Board for election; or
- (b) there has, at least 20 Working Days before the meeting, been served on the Company:
 - (i) a notice in writing, signed by a Shareholder qualified to attend and vote at the meeting for which the notice is given, of his or her intention to propose that person be nominated for election; and
 - (ii) another notice in writing, signing by an unrelated Shareholder qualified to attend and vote at the meeting for which the notice is given, seconding the proposal of that person as a nominee for election pursuant to *subclause (i)*; and
 - (iii) a notice in writing signed by the Person of his or her willingness to be elected.

91.2 Notice of each and every eligible candidate for the office of Shareholder Director must either be included in the notice of the meeting at which the election is to take place or be sent by the Company to all persons entitled to receive notice of the meeting at least five Working Days prior to the meeting. Failure to send such notice to any such person will not invalidate the nomination but the meeting, as far as the election of Shareholder Directors is concerned, must be adjourned until such notices have been sent. The accidental omission to give such notice to, or the non-receipt of notice of a meeting by, any person does not invalidate the election of a Shareholder Director at that meeting.

92 **Term and Retirement of Independent Directors**

The Independent Directors appointed under *clause 88.2(a)(i)* shall retire from office on the date being three years after the date of appointment of each such Independent Director or at such earlier date as may be fixed by the Board at the time of appointment of an Independent Director. An Independent Director so appointed may be reappointed by the Shareholder Directors to hold office for periods not exceeding four consecutive terms of three years or such shorter periods as the Board determines.

93 **Board may fill casual vacancy**

The Board may appoint a person to be a Director to fill a casual vacancy in respect of the Directors appointed under *clause 88.2(a)(iii)* provided that person qualifies under *clause 89*. The person so appointed shall retire at the next annual meeting of the Company but shall be eligible for reappointment. That person shall not be counted or included in the number of Directors to be re-elected at that meeting.

CHAIRPERSON

94 Directors to elect chairperson of the Board

94.1 The Directors must elect one of their number as chairperson of the Board. While there are Independent Directors one of their number shall be appointed as chairperson. The chairperson shall be subject to reappointment at the first Directors meeting following the annual meeting of Shareholders held in each year. At the meeting the chairperson shall resign but may be reappointed for a further term.

94.2 Chairperson to hold office on certain terms

The chairperson of the Board holds that office until he or she vacates office or the Directors elect a chairperson in his or her place.

95 Directors to elect deputy chairperson of the Board

95.1 The Directors must elect one of their number as deputy chairperson of the Board. While there are Shareholder Directors one of their number shall be appointed as deputy chairperson. The deputy chairperson shall be subject to reappointment at the first Directors meeting following the annual meeting of Shareholders held in each year. At the meeting the deputy chairperson shall resign but may be reappointed for a further term.

95.2 Deputy chairperson to hold office on certain terms

The deputy chairperson of the Board holds that office until he or she vacates office or the Directors elect a deputy chairperson in his or her place.

VACATION OF OFFICE

96 Office of Director vacated in certain cases

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

- (a) dies; or
- (b) is absent from three consecutive meetings of the Board without leave being granted by a resolution of the Board and the Board resolves that the Director has vacated office; or
- (c) becomes disqualified from being a director pursuant to the Act; or

- (d) retires from office and is not re-elected; or
- (e) resigns that office in accordance with this constitution; or
- (f) is removed from office in accordance with this constitution; or
- (g) if appointed by Shareholders as a Shareholder Director, ceases to meet the requirements of *clause 89*.

97 Director resignation

A Director may resign office:

97.1 by signing a written notice of resignation and delivering it to the address for service of the Company, the notice being effective when it is received at that address or at any later time specified in the notice; or

97.2 in any other manner permitted by the Act.

MANAGEMENT OF THE COMPANY

98 Board to manage Company

The Company's business and affairs must be managed by, or under the direction or supervision of, the Board, except to the extent that the Act or this constitution provides otherwise.

99 Board has powers necessary to manage Company

The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs, except to the extent that the Act or this constitution provides otherwise.

100 Special Resolutions required for major transactions

The Company must not enter into a major transaction (as defined in section 129 of the Act) unless the transaction is:

100.1 approved by a Special Resolution of Shareholders; or

100.2 contingent on approval by a Special Resolution of Shareholders.

101 Ordinary Resolutions required for certain asset acquisitions or dispositions

101.1 Subject to the exceptions set out in this clause and the provisions of *clauses 100 and 102* the Company must not enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of assets held, or to be held, by the Company which assets (other than by way of assignments for finance receivables, or other dispositions of finance receivables, or creating security interests over finance receivables including in each case the

assets secured under those finance receivables) would change the essential nature of the business of the Company except with the prior approval of an Ordinary Resolution or a Special Resolution if section 129 of the Act applies.

101.2 The notice of meeting containing the resolution to approve any such intended transaction must contain or be accompanied by such information, reports, valuations, and other material as are necessary to enable the holders of Shares to appraise the implications of the transactions.

102 Exceptions for certain acquisitions and dispositions

Clause 101 does not apply to any transaction entered into by the Company with a bank, on arms' length terms and in the ordinary course of banking business, or with any other financial entity or institution that acquires or provides financing over finance receivables, that are normally assigned, securitised or otherwise dealt with in the ordinary course of business of the Company to fund the operations of the Company.

PROCEEDINGS OF THE BOARD

103 Meetings of the Board

The Fourth Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Act does not apply to proceedings of the Board.

104 Written resolutions of Board permitted

A written resolution signed or assented to by all of the Directors then entitled to receive notice of a meeting of the Board is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

105 Written resolutions may be in counterparts

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written resolution, which has been signed and is sent by electronic communication, will satisfy the requirements of this clause.

DELEGATION OF POWERS

106 Restriction on Board's right to delegate its powers

Subject to the restrictions on delegation in the Act, the Board may delegate any one or more of its powers to a committee of Directors, a Director, an employee of the Company or any other person.

107 Board delegates to comply with regulations

In exercising the Board's delegated powers, any committee of Directors, Director, Employee, or any other person must comply with any regulations that the Board may impose.

108 Committee proceedings

The provisions of this constitution relating to meetings and proceedings of the Board also apply to meetings and proceedings of any committee of Directors, except to the extent the Board determines otherwise.

INTERESTED DIRECTORS**109 Directors must disclose their interests**

As soon as a Director becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Company, then unless the Act provides otherwise, that Director must disclose that interest in accordance with the Act. A Director may provide to the Company a general disclosure of interest that covers all transactions of a particular type or category entered into with the Company.

110 Failure to disclose does not affect validity of transaction

Any failure by a Director to comply with *clause 109* does not affect the validity of a transaction entered into by the Company or the Director. The transaction may be avoided under *clause 111*.

111 Company may avoid transaction if Director interested

Where the Company enters into a transaction in which a Director is interested, the Company may avoid that transaction in accordance with the Act.

112 Interested Director must not vote

A Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company must not:

112.1 vote on a matter relating to that transaction; or

112.2 be included among the Directors present at a meeting of Directors, at which a matter relating to that transaction arises, for the purpose of a quorum,

except that a Director may vote in respect of and be counted in the quorum for the purposes of a matter relating to that transaction in which that Director is interested if the matter is one in respect of which, the interest of the director is the same interest that all Originators have in the transaction, or 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 under section 162 of the Act.

A Director who is interested in a transaction may:

112.3 attend a meeting of Directors at which a matter relating to the transaction arises; or

112.4 sign a document relating to the transaction on behalf of the Company; or

112.5 do anything else as a Director in relation to the transaction as if he or she were not interested in the transaction.

REMUNERATION

113 **Board's power to authorise remuneration is limited**

The power of the Board to authorise the payment of remuneration by the Company to a Director in his or her capacity as a Director is subject to prior approval by Ordinary Resolution in accordance with *clause 114.1*. This clause does not apply to the payment of remuneration to a Director for work done not in the capacity as a Director of the Company.

114 **Fixing Director remuneration**

114.1 Each Ordinary Resolution approving Director remuneration must express the remuneration as either:

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

114.2 If remuneration is expressed in accordance with *clause 114.1*, then in the event of an increase in the total number of Directors holding office, the Board may, without the authorisation of an Ordinary Resolution, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other Directors (other than the chairperson and deputy chairperson).

114.3 An Ordinary Resolution which increases the amount of remuneration fixed pursuant to a previous resolution must not be passed at a meeting of Shareholders unless notice of the amount of increase has been given in the notice of meeting.

115 **Reimbursement of expenses**

A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director without requiring the prior approval of Shareholders.

CHANGE OF COMPANY NAME

116 A Director may apply to change Company name

A Director may apply to the Registrar of Companies to change the name of the Company if:

116.1 the Board has approved the Director doing so; and

116.2 Shareholders have approved the change of name by an Ordinary Resolution.

INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES

117 Company may indemnify directors and employees for certain liabilities

The Company may indemnify a Director or Employee of the Company or a related company for any liability or costs for which a Director or Employee may be indemnified under the Act. The Board may determine the terms and conditions of such an indemnity.

118 Company may effect insurance for directors and employees

The Company may, with the prior approval of the Board, effect insurance for a Director or Employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

EXECUTION OF CONTRACTS

119 Manner of execution

A contract or other enforceable obligation may be entered into by the Company as follows:

119.1 an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

- (a) two or more Directors; or
- (b) a Director, or any other person authorised by the Board whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company in accordance with this constitution;

119.2 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; and

119.3 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.

120 Company may appoint attorneys

The Company may, by an instrument in writing executed in accordance with *clause 119*, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with the instrument binds the Company.

LIQUIDATION

121 Distribution of surplus assets in kind

If the Company is liquidated the liquidator may, with the approval of Shareholders by Special Resolution, but subject to any other sanction required by the Act:

121.1 divide among the Shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may:

- (a) fix such values for surplus assets as the liquidator considers to be appropriate; and
- (b) determine how the division will be carried out as between Shareholders or different Classes of Shareholder; and

121.2 vest the whole or any part of any such surplus assets in trustees upon such trusts for the benefit of such of those Shareholders as the liquidator thinks fit,

but so that no Shareholder is compelled to accept any Shares or other Shares on which there is any liability.

REMOVAL OF COMPANY FROM REGISTER

122 Directors may remove Company from New Zealand register

If the Company:

122.1 has ceased to carry on business, discharged in full its liabilities to all known creditors, and distributed its surplus assets in accordance with the Act; or

122.2 has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the Company into liquidation,

the Board may request the Registrar to remove the Company from the New Zealand register.

FIRST SCHEDULE: SALE OF LESS THAN MINIMUM HOLDINGS**INTERPRETATION****1 Construction**

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

NOTICE**2 Notice to holder with less than a Minimum Holding**

Where Shares registered in the name of a holder are less than a Minimum Holding, the Board may at any time give written notice of that fact and of the provisions of *clause 3* to that holder.

3 Company may sell less than Minimum Holdings

The Company may at any time not less than three months after a notice has been given under *clause 2*, if Shares then registered in the name of a holder are less than a Minimum Holding, sell those Shares in a manner approved by the Board.

4 Sale procedures

The Board may authorise the transfer of the Shares sold to a purchaser of the Shares in the manner approved by the Board. The purchaser is not bound to see to the application of the purchase money, nor shall the title to the Shares be affected by any irregularity or invalidity in the procedures under this constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.

5 Application of proceeds

The proceeds of the sale of any Shares sold under *clauses 3 and 4* must be applied as follows:

- 5.1 first, in payment of any reasonable sale expenses.
- 5.2 second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Shares.
- 5.3 the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.

6 Evidence of sale

A certificate, signed by a Director which records that a power of sale under this Schedule has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

SECOND SCHEDULE: CALLS, FORFEITURE AND LIENS

INTERPRETATION

1 **Construction**

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

CALLS ON SHARES

2 **Shareholders must pay calls**

Every Shareholder on receiving at least 10 working days notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any Shares that Shareholder holds. The Board may revoke or postpone a call, or require a call to be paid by instalments.

3 **Call made when Board resolution passed**

A call is regarded as having been made at the time when the Board resolution authorising the call was passed.

4 **Joint holders are jointly and severally liable**

The joint holders of a Share are jointly and severally liable to pay all calls for that Share.

5 **Unpaid calls will accrue interest**

If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. Subject to the Rules, the Board may waive some or all of the payment of that interest.

6 **Amounts payable under terms of issue treated as calls**

Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of Shares or under a contract for the issue of Shares, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this constitution will apply as if the amount had become payable by virtue of a call made in accordance with this constitution.

7 **Board may differentiate between Shareholders as to calls**

On the issue of Shares, the Board may differentiate between Shareholders as to the amount of calls to be paid and the times of payment.

8 **Board may accept payment in advance for calls**

8.1 Where a Shareholder is willing to advance some or all of the money unpaid and uncalled on any Share of that Shareholder, the Board may accept the amount advanced

on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and that Shareholder for the period between the date that the amount is accepted and the date that the amount becomes payable pursuant to a call or the date specified for its payment.

- 8.2 The Board may at any time repay to any Shareholder the whole or any portion of any money so advanced upon giving that holder at least 10 working days notice in writing and as from the date of such repayment interest (if any) shall cease to accrue on the money so repaid.
- 8.3 A Shareholder is not entitled as of right to any payment of interest on any amount so paid in advance and the Board may decline to pay any interest. Any amount so paid in advance must not be taken into account in ascertaining the amount of any dividend or other distribution payable upon the Shares concerned.

FORFEITURE OF SHARES

9 **Board may by notice require forfeiture of Shares if calls unpaid**

The Board may during the time that a call, instalment, or other amount remains unpaid on a Share, serve a notice on the holder of that Share requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest and any expenses incurred by the Company by reason of non-payment and otherwise in accordance with the requirements of *clause 11.1*.

10 **Board may by notice require forfeiture of Shares in other circumstances**

The Board may at any time after:

- 10.1 default or termination of an Originator Agreement by a Shareholder Originator for any reason; or
- 10.2 a Shareholder Originator:
- (a) not originating or placing any finance receivables with the Company pursuant to its Originator Agreement in the then preceding 12 months; and
 - (b) having no balance outstanding of finance receivables introduced by that Shareholder Originator into the Company; or
- 10.3 a Shareholder Originator ceasing to comply with any one or more of the conditions of holding Shares in accordance with *clause 36.4*,

in each case pursuant to *clause 62*, serve a notice on the relevant Shareholder requiring that the Shares held by that Shareholder be forfeited by the Shareholder and otherwise in accordance with the requirements of *clause 11.2*.

11 Notice of forfeiture must satisfy certain requirements

- 11.1 The notice served on a Shareholder under *clause 9* must specify a date not earlier than 10 working days after the date the notice is served by which the payment is to be made. The notice must also state that in the event of non-payment by the appointed time, the Shares to which the call, instalment, or other amount relates, will be liable to be forfeited by the Shareholder.
- 11.2 The notice served on a Shareholder under *clause 10* must specify a date not earlier than 10 working days after the date the notice is served by which the Shareholder can remedy the relevant default or failure or satisfy the conditions, to the extent capable of being remedied, to the satisfaction of the Board in its sole opinion, or on which the Shares will be deemed to be forfeited by the Shareholder.

12 Failure to comply with notice may lead to forfeiture

- 12.1 Where a valid notice under *clause 9* is served on a Shareholder and the Shareholder fails to comply with the notice, then the Board may resolve that any Share for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited.
- 12.2 Where a valid notice under *clause 10* is served on a Shareholder and the Shareholder has not remedied the relevant default or failure or satisfied the conditions, to the extent capable of being remedied and where applicable, to the satisfaction of the Board in its sole opinion, the Shares held by that Shareholder will be automatically forfeited.

13 Board may deal with forfeited Share

A forfeited Share may be sold or otherwise disposed of at such price calculated pursuant to *clause 14* and otherwise on such terms and in such manner as the Board thinks fit. The Board may cancel the forfeiture at any time before the sale or other disposition on such terms as the Board thinks fit if the call, instalment or other amount which remains unpaid on the Share is paid or the Shareholder remedies the default or failure or satisfies the conditions to the satisfaction of the Board in its sole opinion, as and where applicable.

14 Sale price of forfeited Share

- 14.1 The Board shall be entitled to sell or otherwise dispose of a forfeited Share for an amount equal to the volume weighted average sale price for a Share calculated using the most recent 100,000 Shares traded 'on-market' through the share trading platform on which the Shares are traded prior to the date of forfeiture (which must constitute at least two independent transactions), provided that:
- (a) if the sale price calculated based on the above is less than the price at which the Company undertook its most recent Share buy-back, the sale price shall be equal the price of that most recent Share buy-back; and

- (b) the Board may make any adjustment to the sale price calculated under this *clause 14* (including after applying *subclause (a)*) as it considers reasonable, including because it believes that any exceptional or unusual circumstances have artificially affected the volume weighted average sale price calculated.

14.2 The Board will ensure that, at the time the sale price for the forfeited Shares is set under *clause 14.1*, it will have no information that is not publicly available that would, or would be likely to, have a material adverse effect on the realisable price of the Shares if the information was publicly available.

15 **Shareholder whose Shares are forfeited loses rights**

A person whose Shares have been forfeited immediately ceases to be a Shareholder in respect of those Shares notwithstanding any other provision of this constitution, and remains liable to pay the unpaid amount that the Shareholder owes the Company, but that liability shall cease if the Company receives payment in full of all money owing for those Shares.

16 **Evidence of forfeiture**

A certificate signed by a Director that a Share has been duly forfeited on a stated date is conclusive evidence of the facts stated in that certificate.

17 **Company may sell forfeited Share**

The Company may receive the consideration, if any, given for a forfeited Share following a sale or disposition, and may execute a transfer of the Share in favour of the person to whom the Share is sold or disposed of, and register that person as the holder of the Share. That person is not bound to see to the application of the purchase money, if any, nor is the title to the Share affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or disposal of that Share. Any residue after satisfaction of unpaid calls, instalments, premiums or other amounts and interest, and expenses, shall be paid to the previous holder, or to his or her executors, administrators or assigns.

LIEN ON SHARES

18 **Company's lien**

The Company has a lien, ranking in priority over all other equities, on:

18.1 all Shares registered in the name of a Shareholder; and

18.2 all dividends authorised in respect of such Shares; and

18.3 the proceeds of sale of such Shares;

18.4 all amounts payable to a Shareholder,

for:

- 18.5 unpaid calls and instalments payable in respect of any such Shares; and
- 18.6 interest on any such calls or instalments; and
- 18.7 sale expenses owing to the Company in respect of any such Shares; and
- 18.8 any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other legislation in respect of the Shares of that Shareholder, whether the period for payment has arrived or not.
- 18.9 any amount due and payable under an Originator Agreement.

19 Waiver of lien

Registration of a transfer of Shares on which the Company has any lien will operate as a waiver of the lien, unless the Company gives notice to the contrary to the transferee prior to registration.

20 Company may sell Share on which it has a lien

The Company may sell a Share on which it has a lien in such manner as the Board thinks fit, where:

- 20.1 the lien on the Share is for a sum which is presently payable; and
- 20.2 the registered holder of the Share, or the person entitled to it on his or her death or bankruptcy, has failed to pay that sum within 10 working days after the Company has served that registered holder written notice demanding payment of that sum.

21 Company may transfer Share and apply proceeds

- 21.1 The Company may receive the consideration given for a Share sold under *clause 19*, and may execute a transfer of the Share in favour of the person to whom the Share is sold, and register that person as the holder of the Share discharged from all calls due prior to the purchase.
- 21.2 The purchaser is not bound to see to the application of the purchase money, and the purchaser's title to the Share is not affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.
- 21.3 The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, shall (subject to a like lien for sums not presently payable that existed upon the Share before the sale) be paid to the person who held

the Share immediately before the date of sale or to his or her executors, administrators or assigns.

THIRD SCHEDULE: PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**INTERPRETATION****1 Construction**

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.2 A reference in this Schedule to a Shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a Shareholder, a representative of a corporate Shareholder, an attorney of a Shareholder, and any person who may lawfully act on behalf of a Shareholder.

NOTICE**2 Notice must be given to Shareholders, Directors and auditors**

Notice of the time and place of a meeting of Shareholders may be given in writing or electronically in accordance with the provisions of the Act. That notice shall be given to all Shareholders entitled to notice of the meeting and the Directors and auditor of the Company not less than 10 working days before the date of the meeting.

3 Service of notices outside New Zealand

If a Shareholder has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices must be posted or sent electronically to that Shareholder at such address and shall be deemed to have been received by that Shareholder 24 hours after the time of posting.

4 Notice must state nature of business

The notice must:

- 4.1 state 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;
- 4.2 state the text of any special resolution to be submitted to the meeting;
- 4.3 state the text of any resolution for the purposes of section 207I or 207J of the Act to be submitted to the meeting;
- 4.4 state in the case of special resolutions required by section 106(1)(a) or 106(1)(b) of the Act, the right of a Shareholder under section 110 of the Act; and

4.5 contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice.

Without limiting this clause, notices in respect of proposed changes to this constitution must be sufficiently explicit to enable the effect of such changes to be understood without reference to the existing or proposed constitution.

5 Proxy form must be sent with notice

A proxy form must be sent by mail or electronically with each notice of meeting.

6 Irregularities in notice may be waived

Any 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.

7 Company's accidental failure to send notice does not invalidate meeting

The accidental omission to send notice of a meeting to, or the failure to receive notice by, any person entitled to that notice, does not invalidate the proceedings at that meeting.

8 Notice of an adjournment

8.1 If a meeting is adjourned for less than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place.

8.2 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

MEETING AND QUORUM

9 Methods of holding meetings

9.1 A meeting of Shareholders may be held by a number of Shareholders, who constitute a quorum:

- (a) being assembled together at the place, date and time appointed for the meeting; or
- (b) if determined by the Board:
 - (i) participating in the meeting by means of audio, audio and visual, or electronic communication; or
 - (ii) by a combination of both of the methods described in *clauses 9.1(a) and 9.1(b)(i)*.

- 9.2 The Company is not required to hold meetings of Shareholders in the manner specified in *clause 9.1(b)(i) or 9.1(b)(ii)*. Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so. For clarity, if a meeting is held in the manner specified in *clause 9.1(b)(i) or 9.1(b)(ii)*, a Shareholder participating in a meeting by means of audio, audio and visual, or electronic communication is present at the meeting and part of the quorum.
- 10 **Business to be transacted only if a quorum is present**
Subject to *clauses 12 and 13*, business may be transacted at a meeting of Shareholders only if a quorum is present at the time when the meeting proceeds to business.
- 11 **Quorum for meeting of Shareholders**
A quorum for a meeting of Shareholders is present if five or more Shareholders are present having the right to vote at the meeting.
- 12 **Meeting convened at request of Shareholders dissolved if no quorum**
If a quorum is not present within 30 minutes after the time appointed for the meeting convened on the written request of Shareholders holding Shares together carrying at least 5% of the voting rights entitled to be exercised, the meeting will be dissolved automatically.
- 13 **Other meetings to be adjourned if no quorum**
If a quorum is not present within 30 minutes after the time appointed for a meeting (other than a meeting convened under *clause 80.2* of this constitution or a meeting of an Interest Group), the meeting will be adjourned to the same day in the following week at the same time and place, or to such other day, time, and place as the Directors may appoint. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the Shareholders present will constitute a quorum.

CHAIRPERSON

- 14 **Chairperson of Board to be chairperson of meeting**
The chairperson of the Board, if one has been elected by the Directors and is present at a meeting of Shareholders, will chair the meeting.
- 15 **Directors may elect chairperson if chairperson of Board not available**
If no chairperson of the Board has been elected or, if at any meeting of Shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or is unwilling to act, the deputy chairperson of the Board (if any) shall be the chairperson, or failing him or her, the Directors present may elect one of their number to be chairperson of the meeting.

16 As a last resort Shareholders may elect chairperson

If at any meeting of Shareholders, no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting, the Shareholders present may elect one of their number to be chairperson of the meeting.

17 Chairperson's power to adjourn meeting

The chairperson of a meeting at which a quorum is present:

17.1 may adjourn the meeting with the consent of the Shareholders present who are entitled to attend and vote at that meeting; and

17.2 must adjourn the meeting if directed by the meeting to do so.

The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

18 Chairperson may dissolve or adjourn unruly meetings

The chairperson may adjourn or dissolve the meeting if in his or her opinion the meeting has become so unruly, disorderly or inordinately protracted, that the business of the meeting cannot be conducted in a proper and orderly manner. The chairperson may exercise this power without the consent of the meeting and without giving reasons.

19 Dissolved meetings - unfinished business

If the chairperson proposes to dissolve a meeting pursuant to *clause 18*, and there is any item of unfinished business of the meeting which in his or her opinion requires to be voted upon, then that item shall be dealt with by the chairperson directing it to be put to the vote by a poll without further discussion.

VOTING**20 Voting by show of hands or voice vote at meeting**

In the case of a meeting of Shareholders held under *clause 9.1(a)*, unless a poll is demanded, voting at the meeting will be by a show of hands or by voice vote, as the chairperson may determine.

21 Voting by voice if audio-conference meeting

In the case of a meeting of Shareholders held under *clause 9.1(b)*, unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson of the meeting.

22 Voting by electronic means

To the extent permitted by the Act, the Company may allow Shareholders to vote by signifying their assent or dissent by electronic means (including, for the avoidance of

doubt, voting on a personal computer or other electronic device, with such vote being transmitted to the meeting), instead of the Shareholder voting by another method permitted by the Act or this Constitution.

23 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 Shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting shall be those set out in clause 7 of the First Schedule to the Act together with any other procedures determined by the Board. In addition, if the Board determines that Shareholders may cast postal votes by electronic means, these must reach the person who is authorised to receive and count postal votes at least 48 hours before the start of the meeting. For clarity, a postal vote may be cast using electronic means permitted by the Board.

24 Votes of joint holders

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

25 Shareholder loses certain voting rights if calls unpaid

If a sum due to the Company in respect of any Share registered in a Shareholder's name has not been paid then that Share may be voted at a meeting of an interest group but not at any other meeting of Shareholders.

26 Chairperson not allowed casting vote

In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson does not have a casting vote.

27 Chairperson's declaration of result

Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote or by such other manner as the chairperson may have decided under *clause 21* or *22* is carried by the requisite majority or lost, shall be conclusive evidence of that fact.

28 Shareholder participation in meetings by electronic means

A Shareholder, or the Shareholder's proxy or corporate representative, may participate in a meeting (including by casting votes on resolutions) by means of audio, audio and visual, or electronic communication if:

- (a) the Board approves those means;
- (b) the Shareholder, proxy or corporate representative complies with any conditions imposed by the Board in relation to the use of those means (including, for example, conditions relating to the identity of the Shareholder, proxy or corporate representative and that person's approval or

authentication (including electronic authentication) of the information communicated by electronic means).

For clarity, participation in a meeting includes participation in any manner specified in Schedule 1 of the Act or this constitution.

POLLS

29 Poll may be demanded by chairperson or Shareholder

At a meeting of Shareholders, a poll may be demanded, either before or after a vote by show of hands or voice vote, by:

29.1 the chairperson, at his or her absolute discretion; or

29.2 at least five Shareholders having the right to vote at the meeting; or

29.3 a Shareholder or Shareholders having the right to exercise at least 10% of the total votes entitled to be exercised on the business to be transacted at the meeting; or

29.4 a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the total amount paid up is at least 10% of the total amount paid up on all the Shares that confer that right.

30 Time at which polls to be taken

A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. A poll demanded on any other question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

31 Counting votes cast in a poll

If a poll is taken, votes must be counted according to the votes attached to the Shares of each Shareholder present and voting.

32 Declaration of poll result

32.1 The chairperson of the meeting may declare the result of a poll either at or after the meeting, and when the outcome of the poll is known, may do so regardless of whether all votes have been counted.

32.2 The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.

33 Proxy allowed to demand a poll

The instrument appointing a proxy to vote at a meeting confers authority to demand, or join in demanding a poll, and a demand by a person as proxy for a Shareholder has the same effect as a demand by the Shareholder.

34 Auditor of Company to be scrutineer

The auditor of the Company (including employees and agents of the auditor) for the time being, or if the auditor of the Company is unable or unwilling to act, then such person as the chairperson nominates, shall act as scrutineer for the purposes of a poll.

SHAREHOLDER PROPOSALS**35 Shareholder proposals by written notice**

A Shareholder may give written notice to the Board of a matter the Shareholder proposes to raise for discussion or resolution at the next meeting of Shareholders at which the Shareholder is entitled to vote.

36 Board to give notice of proposal at expense of Company

If the Board receives the notice at least 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

37 Board to give notice of proposal at expense of Shareholders

If the Board receives the notice at least five working days and not more than 20 working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board must, at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

38 Board may give notice of proposal on short notice

If the notice is received by the Board less than five working days before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the Shareholder, give notice of the Shareholder proposal and the text of any proposed resolution to all Shareholders entitled to receive notice of the meeting.

39 Proposing Shareholder may include statement

If the Directors intend that Shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

40 Board may exclude statement in some cases

The Board is not required to include in or with the notice given by the Board a statement prepared by a Shareholder which the Directors consider to be defamatory, frivolous or vexatious.

41 Shareholder to give security for costs for proposal with short notice

Where the costs of giving notice of the Shareholder proposal and the text of any proposed resolution are required to be met by the proposing Shareholder, the proposing Shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

PROXIES**42 Proxies permitted**

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

42.2 A Shareholder may appoint more than one proxy for a particular meeting provided that more than one proxy is not appointed to exercise the rights attached to a particular Share held by that Shareholder.

43 Proxy to be treated as Shareholder

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

44 General Proxy

A Shareholder may give a general proxy to the Company that applies to every meeting of Shareholders of the Company and is valid until the earlier of the date when it is revoked by the Shareholder giving it, or the Shares of that Shareholder are transferred, or the Shareholder dies.

45 Appointment of proxy must be in writing and specify restrictions

A proxy must be appointed by a notice in writing that is signed by the Shareholder or, in the case of an electronic notice, sent by the Shareholder, or by appointing the proxy online as per the Company's instructions in a notice of meeting and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a Shareholder of the Company.

46 Notice of proxy to be produced at least 48 hours before meeting

No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. The notice of meeting may provide for different matters for different kinds of proxies (for example, a different specified time for the receipt of a proxy by electronic means). If the written notice appointing a proxy is signed under power of

attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

47 Form of notice of proxy

- 47.1 A notice appointing a proxy shall be in any form acceptable to the Board generally or in a particular case or otherwise as the Board may direct.
- 47.2 Such proxy form must provide for two-way voting on all resolutions, enabling the Shareholder to instruct the proxy as to the casting of the vote, and must not be sent with any name or office (e.g. "chairperson of directors") filled in as proxy holder.
- 47.3 So far as reasonably practicable, resolutions must be framed in a manner which facilitates two way voting instructions for proxy holders.

48 Vote by proxy valid where no notification before meeting of disqualified proxy

Where:

- 48.1 the Shareholder has died or become incapacitated; or
- 48.2 the proxy, or the authority under which the proxy was executed, has been revoked; or
- 48.3 the Share in respect of which the notice of proxy is given has been transferred, before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

CORPORATE REPRESENTATIVES

49 Corporations may act by representative

A body corporate which is a Shareholder may appoint a representative to attend any meeting of Shareholders on its behalf in the same manner as that in which it could appoint a proxy. The representative shall be entitled to attend and be heard at a meeting of Shareholders as if the representative were the Shareholder.

50 General Appointment

A Shareholder that is a body corporate may appoint a representative to attend all Shareholder meetings of the Company. If that appointment specifies that it is applicable to all Shareholder meetings it shall remain valid until revoked by the corporate Shareholder giving that notice. The provisions of *clause 49* of this Schedule shall apply to that representative.

MINUTES**51 Board must keep minutes of proceedings**

The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders and that a record is kept of all written resolutions of Shareholders. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

OTHER PROCEEDINGS**52 Chairperson may regulate other proceedings**

Except as provided in this Schedule, the chairperson of a meeting of Shareholders may regulate the proceedings at the meeting.

FOURTH SCHEDULE: PROCEEDINGS OF THE BOARD**NOTICE OF MEETING****1 Director's power to convene meetings**

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

2 Notice to be sent to Director's address

The notice of meeting must be a written notice delivered by hand to the Director, or sent to the address, or an electronic mail message sent to the electronic mail address, which the Director provides to the Company for that purpose, or if an address, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or last email address known to the Company.

3 Notice to contain certain details

The notice of meeting must include:

- (a) the date, time and place of the meeting and, if the meeting is to be by means of audio or audio and visual communication, the manner in which the Director will be contacted to participate at the time of the meeting; and
- (b) the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters.

4 Period of notice required to be given to Directors

At least two days' notice of a meeting of the Board must be given unless the chairperson (or, in the chairperson's absence from New Zealand, the deputy chairperson (if any), and in the deputy chairperson's absence, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hours' notice is given. Any such shorter notice may be given by telephone communication to each Director at the telephone number provided to the Company by each Director provided that written notice shall be given to the Directors within the shorter notice period where it is practicable to do so.

5 Absent Directors

If a Director, who is for the time being absent from New Zealand, supplies the Company with an address, or electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that Director. Otherwise notice need not be given to any Director for the time being absent from New Zealand. However, if he or she has an alternate Director who is in New Zealand, then notice must be given to that person.

6 Directors may waive irregularities in notice

Any irregularity in the notice of a meeting, or failure to comply with *clauses 1 to 5* of this Schedule is waived if all Directors entitled to receive notice of the meeting attend

the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

MEETING AND QUORUM

7 Methods of holding meetings

A meeting of the Board may be held either:

- 7.1 by a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 7.2 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.

8 Quorum for Board meeting

Unless otherwise determined by the Board, the quorum necessary for the transaction of business at a meeting of the Board is a majority of the Directors including at least two of the Directors appointed by election by the Shareholders. The Shareholders may change the number of Directors required for a quorum by ordinary resolution. No business may be transacted at a meeting of the Board unless a quorum is present.

9 Meeting adjourned if no quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the chairperson will adjourn the meeting to a specified day, time and place, the day being within the next two days. If no such adjournment is made the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

CHAIRPERSON

10 Chairperson to chair meetings

The chairperson or, in the absence of the chairperson, the deputy chairperson of the Board will chair all meetings of the Board. If no chairperson or deputy chairperson is elected, or if at a meeting of the Board the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, then the Directors present may elect one of their number to be chairperson of the meeting.

VOTING

11 Voting on resolutions

Each Director has one vote. 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. A Director must not vote where that Director is not permitted to vote by the Rules or

this constitution. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

12 Chairperson does not have a casting vote

The chairperson of the Board does not have a casting vote.

MINUTES

13 Board must keep minutes of proceedings

The Board must ensure that minutes are kept of all proceedings of meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

OTHER PROCEEDINGS

14 Board may regulate other proceedings

Except as set out in this Schedule, the Board may regulate its own procedure.