



BARRISTERS AND SOLICITORS

The Honourable Paul Swain
Minister of Transport
Executive Wing
Parliament House
Wellington

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26 November 2002

Dear Minister

APPLICATION FOR KIWI SHAREHOLDER'S APPROVAL TO PROPOSED CHANGES TO AIR NEW ZEALAND LIMITED'S CONSTITUTION

1. Introduction

- 1.1 As you are aware, on 25 November 2002 Air New Zealand (**Air NZ**) entered into a Strategic Alliance Agreement and a Subscription Agreement with Qantas Airways Limited (**Qantas**), both of which are conditional upon the approval and consent of the Kiwi Shareholder being obtained in respect of the issue of Equity Securities to Qantas and in respect of certain amendments proposed to be made to Air NZ's constitution.
- 1.2 You will shortly receive an application for Kiwi Shareholder consent from Qantas in relation to it subscribing for up to 22.5% of Air New Zealand's voting capital. Air NZ and Qantas have agreed that certain amendments should be made to Air NZ's constitution to support Qantas' shareholding in Air NZ. The proposed amendments are primarily focused on Qantas' representation on the Air NZ Board and on sub-committees of the Board, and are explained further below. A copy of Air NZ's constitution is **attached** with the proposed amendments highlighted for your attention.
- 1.3 The Reciprocal Board Representation Deed that has been entered into by Qantas and Air NZ is relevant to the proposed amendments to Air NZ's constitution. A copy of the form of that Deed which was executed by the parties on 25 November is also attached for your review.

2. Proposed amendments requiring consent

In accordance with clause 3.5(b) of Air NZ's constitution, your consent as Kiwi Shareholder is requested in respect of the following proposed amendments:

- (a) amending the definition of "Share" to include a reference to the convertible preference shares issued to the Crown on 18 January 2002; and
- (b) amending clause 24.1 to increase the number of permitted directors (excluding any managing director) from eight to nine and a corresponding deletion of the second sentence in that clause which becomes redundant.

3. Proposed amendments that may require consent

In addition to the proposed amendments referred to above, Air NZ proposes to make several additional amendments described below relating to Qantas' board representation. These amendments can be summarised as follows:

3.1 Clause 1.6 – Definitions

New definitions to refer to the attached Reciprocal Board Representation Deed including definitions for “Deed Director” and “Deed Party” which are needed to recognise Qantas’ rights under that deed.

3.2 Clause 27.6 – Quorum

- Increase the number of directors required for a quorum of a meeting of the board to 4 directors
- A quorum must include at least one Deed Director (i.e. a director nominated by Qantas), if there is one, unless the requirement has been waived by the Deed Party who nominated the Deed Director or the Deed Party is excluded from the meeting pursuant to a provision in the Deed (see clause 8 of the Deed).
- If a quorum is not present, the Chairman may adjourn the meeting which may be reconvened on not less than 24 hours notice, in which case any 4 directors will constitute a quorum irrespective of when a Deed Director is in attendance.

3.3 Clause 27.10 – Resolutions in Writing

A resolution in writing must be signed by at least one Deed Director (if there is one) to be valid.

3.4 Clause 27.15 – Quorum for Committees of the Board (new clause)

- The quorum for Board committee meetings must include at least one Deed Director (if there is one) if membership of that committee has been requested by the Deed Party.
- The notice period for the calling of a committee meeting is 5 days.
- If a quorum is not present then the meeting it may be adjourned and reconvened on not less than 24 hours notice, in which case a quorum may be constituted at the reconvened meeting notwithstanding the absence of a Deed Director.
- Where a Deed Director is a member of the board’s audit committee, the Deed Director will be a non-voting member of that committee.

These amendments do not affect those provisions of the constitution expressly stated in clause 3.5(b) as requiring Kiwi Shareholder consent. Accordingly, it is possible that the Kiwi Shareholder could form the view that these amendments are not amendments which require the Kiwi Shareholder’s consent under clause 3.5(b) of Air NZ’s constitution. However, because Board representation matters are a central concern for the Kiwi Shareholder, Air NZ believes an application for consent may be appropriate. Please let us know if you are of the view that Kiwi Shareholder’s consent is not required in order for the proposed amendments discussed above to be implemented.

Please telephone directly if you have any queries in relation to the proposal set out in this letter.

Yours faithfully
Bell Gully

James Gibson
Partner

cc John Blair
General Counsel & Company Secretary
Air New Zealand Limited

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**Constitution
of
Air New Zealand
Limited**

**THIS DOCUMENT IS THE CONSTITUTION OF AIR
NEW ZEALAND LIMITED WHICH WAS ADOPTED
WITH EFFECT FROM 21 DECEMBER 2002 AND
INCLUDES THE AMENDMENTS APPROVED AT THE
ANNUAL MEETING ON 29 OCTOBER 2002.**

**THIS DRAFT HAS BEEN MARKED TO AMENDMENTS
SOUGHT IN RELATION TO AIR NEW ZEALAND
LIMITED'S ENTRY INTO A STRATEGIC ALLIANCE
WITH QANTAS AIRWAYS LIMITED.**

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1. Introduction and interpretation

1.1 Name of Company

The name of the Company shall not be changed from "Air New Zealand Limited" without the prior written consent of the Kiwi Shareholder which may be given on such terms and conditions as the Kiwi Shareholder thinks fit.

1.2 Trading name

The trading name used by the Company in respect of its International Air Services shall include the words "Air New Zealand" unless the Kiwi Shareholder otherwise agrees (and any such agreement may be given on such terms and conditions as the Kiwi Shareholder thinks fit).

1.3 Place of incorporation

The Company shall continue to be incorporated in New Zealand and registered on the New Zealand register kept pursuant to section 360(1)(a) of the Act.

1.4 Principal place of business

The Company's principal place of business in relation to each of its:

- (a) New Zealand domestic airline services; and
- (b) International Air Services,

shall be in New Zealand.

1.5 Location of Head Office

The location of the Head Office of the Company shall be in New Zealand.

1.6 Definitions

In this Constitution, unless the context otherwise requires:

"**Act**" means the Companies Act 1993;

"**Affected Equity Security**" means any Equity Security which is treated as such pursuant to clause 10.4 or clause 10.6;

"**Associated Person**" -

- (a) in clause 3.3 and section 10, has the meaning specified in clause 1.8; and
- (b) in every other clause, has the meaning specified in the Listing Rules;

"**ASX**" means Australian Stock Exchange Limited;

"ASX Listing Rules" means the listing rules of ASX and any other rules of ASX which are applicable while the Company is admitted to the Official List of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

"Board" means Directors who number not less than the required quorum acting together as the board of directors of the Company;

"Business Day" means a day on which the Exchange is open for trading;

"Class" means a class of Securities having identical rights, privileges, limitations and conditions and includes or excludes Securities which the Exchange in its discretion deems to be of or not of that Class (but the Exchange may not deem any Securities to be of the same Class as the Kiwi Share);

"Company" means Air New Zealand Limited;

"Constitution" means this Constitution, as altered from time to time;

"Convert" in respect of a Security, means to convert that Security into, or exchange that Security for, a Security of a different sort, whether at the option of the holder, or of the Company, or otherwise, or to subscribe for or obtain a Security of a different sort pursuant to a right conferred by the first mentioned Security; **"Conversion"** and **"Convertible"** have corresponding meanings;

"Convertible Preference Shares" means the 1,279,866,438 convertible preference shares issued by the Company to the Crown on 18 January 2002;

"Crown" means Her Majesty the Queen in right of New Zealand acting by and through the Minister of Finance;

"Debt Security" means a Security having any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by any person (whether or not the interest or right is secured by a charge over any property) and includes a debenture, debenture stock, bond, note or certificate of deposit;

"Deed" means the Reciprocal Board Representation Deed between the Company and Qantas Airways Limited dated 25 November 2002;

"Deed Director" means a Director who was nominated by a party in accordance with the Deed;

"Deed Party" means the party to the Deed who nominated a Deed Director;

"Director" means a person appointed as a director of the Company;

"Distribution Right" means a right of the nature referred to in paragraphs (a) or (b) of the definition of "Equity Security";

"Employee" 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 any of its subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of or in respect of any pension, superannuation or like fund established for the benefit of any of the above employees or officers;

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"Equity Security" means a Share or other Security which:

- (a) Confers a present or future right to participate in the assets of the Company after payment of all liabilities of the Company other than up to a fixed amount; or
- (b) Confers a present or future right to participate in the income or profits of the Company, other than at a fixed rate or at a rate fixed by reference to a formula or index external to the Company; or
- (c) Carries, or will in future carry, a right to vote at meetings of holders of Securities of the Company other than a right to vote:
 - (i) Solely upon matters of a nature immaterial or inconsequential to the control of the Company, or to the control of any material part of the business or operations of the Company; or
 - (ii) Only when a payment in respect of the Security in question is in arrears or some other default exists, or on a proposal to change the rights attaching to that Security, or in other circumstances of a special or remote nature; or
 - (iii) Attaching to Securities which are not Equity Securities, exercisable only at meetings of holders of those Securities; or
- (d) Carries, or will in future carry, a right to participate in the ultimate control of the Company; or
- (e) May be Converted into a Security of the nature referred to in (a) to (d) above;

and includes an Ordinary Share, and also includes any other Security which the Exchange in its discretion deems to be an Equity Security but does not include the Kiwi Share;

"Exchange" means the New Zealand Stock Exchange and as the context permits includes any delegate of the Exchange including the Panel;

"Head Office" means the place of business of the Company where central management and control is exercised;

"Interest", in relation to Equity Securities, has the meaning set out in clause 1.7;

"International Air Services", in relation to the Company, means the international air services operated by the Company under the Scheduled International Air Service Licence granted to it under the Civil Aviation Act 1990

"Intervening Act" means the refusal, withholding, suspension or revocation of any Operating Right granted to, or enjoyed by, the Company or any Subsidiary of the Company, or the imposition of any conditions or limitations upon any such Operating Right which materially inhibit the exercise thereof, in either case by any state, authority or person in reliance upon any provision, or by reason of any matter or circumstance, relating to the nationality or residence of persons owning or controlling or having an interest (however described and whether direct or indirect) in the Company or an Interest in any of its Equity Securities, where that refusal, withholding, suspension or revocation or that imposition of conditions or limitations has or might be reasonably expected to have a materially adverse effect on the operations or a significant part of the operations of the Company or of the Company and its Subsidiaries taken as a whole;

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"**Kiwi Share**" means the convertible preference share referred to in clause 3.2 which has the rights specified in clause 3.5;

"**Kiwi Shareholder**" means Her Majesty the Queen in right of New Zealand;

"**Listing Rules**" means the New Zealand Stock Exchange Listing Rules in force from time to time;

"**Managing Director**" means a single individual appointed as managing director of the Company pursuant to clause 26.1;

"**Minimum Holding**" has the meaning given in the Listing Rules;

"**Minister**" means a member of the Executive Council of New Zealand for the time being holding the office of a Minister and includes any member of the Executive Council of New Zealand acting on such member's behalf;

"**New Zealand Business**" means:

- (a) A person exempted from the requirements of regulations 5(1) and 8(1) of the Overseas Investment Regulations 1995 by virtue of an exemption notice issued under those regulations;
- (b) Any person named in, or in a Schedule to, any such exemption notice;
- (c) If the regulations referred to in paragraph (a) are revoked;
 - (i) any person falling within that paragraph or paragraph (b) at the date of revocation;
 - (ii) any company or other body corporate or entity that is carrying on business in New Zealand and has established a presence in New Zealand which is of a substance and character that in the opinion of the Board (formed in accordance with criteria approved from time to time by the Kiwi Shareholder) justifies it being regarded as a New Zealand business for the purposes of this Constitution;
- (d) Any subsidiary of any person referred to in paragraph (a) or paragraph (b) or paragraph (c) of this definition;
- (e) Underwriters or sub-underwriters of any offer to the public of Equity Securities for subscription or purchase, being an offer approved by the Board for the purposes of this definition, provided that such underwriters or sub-underwriters shall only be a "New Zealand Business" pursuant to this paragraph in relation to Securities acquired as a result of such an approved offer;

"**New Zealand citizen**" means a person who is a New Zealand citizen in terms of the Citizenship Act 1977;

"**New Zealand National**" means:

- (a) Any New Zealand citizen, or any person who has attained the age of 18 years and is of full capacity who would, in the opinion of the Board, meet the requirements for citizenship set out in section 8(2) or section 8A of the Citizenship Act 1977 (or any provisions enacted in substitution for those sections) if that person made an application for citizenship on the date on which his or her status as New Zealand National is considered for the purposes of this Constitution;

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- (b) The Crown or any department or instrument of the Executive Government of New Zealand or any person acting on behalf of the Crown or any such department or instrument;
- (c) Any municipal, local, statutory or other authority formed or established in New Zealand or any instrument of local government in New Zealand;
- (d) Any New Zealand Business which has been approved by the Board for the purposes of this definition;
- (e) Any company, or other body corporate, that is established in New Zealand and has its registered office in New Zealand and that is substantially owned and effectively controlled by persons coming within any of paragraphs (a) to (d) of this definition;
- (f) Any person in the capacity of a trustee or manager of a trust, fund or other similar entity where the trust, fund or other similar entity is substantially owned and effectively controlled by persons coming within any of paragraphs (a) to (e) of this definition;
- (g) The trustees of any employee share purchase scheme or employee share option scheme operated by way of a trust for the benefit of the employees of the Company or any subsidiary of the Company, where all the trustees are persons coming within any of paragraphs (a) to (e) of this definition or the Company or a Subsidiary of the Company or Directors and where all voting rights in respect of all shares to which the scheme relates are held by the trustees;

"Office" means the registered office for the time being of the Company;

"Operating Right" means all or any part of any authority, permission, licence or privilege, whether granted or enjoyed pursuant to an air services agreement or otherwise, which enables an air service (other than a New Zealand domestic air service operating solely within New Zealand) to be operated;

"Option" means an option to acquire a Security;

"Ordinary Resolution" means a resolution passed by a simple majority of the votes of shareholders of the Company entitled to vote and voting;

"Ordinary Share" means an ordinary share in the capital of the Company;

"Panel" means the Market Surveillance Panel constituted by the Exchange under the Listing Rules and includes any division or duly authorised delegate of the Panel;

"Personal Representative" means:

- (a) in relation to a deceased individual shareholder, the executor, administrator or trustee of the estate of that shareholder;
- (b) in relation to a bankrupt individual shareholder, the assignee in bankruptcy of that shareholder; and
- (c) in relation to any other individual shareholder, a person appointed or deemed to have been appointed to administer property under the Protection of Personal and Property Rights Act 1988, a manager appointed or deemed to have been appointed under that Act, and a donee of an enduring power of attorney complying with that Act;

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"Quotation" means in respect of a Class of Securities, the right for sharebrokers to quote bids and offers for that Class of Securities on the Exchange; **"Quote"** and **"Quoted"** have corresponding meanings;

"Related Body Corporate" has the meaning set out in section 5(7) of the Securities Amendment Act 1988;

"Renounceable" in relation to a Right or offer of Securities means a Right or offer that is transferable by any holder for the time being to another person (whether or not an existing holder of any Securities to which the Right or offer relates);

"Representative" means a person appointed as a proxy or representative under section 18 or a Personal Representative or, in the case of the Kiwi Shareholder, a person appointed as a representative by the person named in the last notice received by the Company under clause 3.5(a) or under the corresponding provision in the previous constitution of the Company;

"Right" means any right to acquire any Security or benefit of any kind, whether conditional or not, and whether Renounceable or not;

"Ruling" has the meaning given in the Listing Rules;

"Security" means any interest or right to participate in any capital, assets, earnings, royalties, or other property of any person and includes:

- (a) Any renewal or variation of the terms or conditions of any existing security;
- (b) Any Debt Security; and
- (c) Any Option or Right;

"Share" means an Ordinary Share, [a Convertible Preference Share](#), the Kiwi Share, and any other share in the capital of the Company from time to time (as the context requires) on issue;

"Share Register" means the register of shareholders required to be kept pursuant to the Act;

"Shareholders' Funds" means the amount disclosed as equity (whether described as equity, shareholders' funds, or otherwise) by the most recent published financial statements of the Company, or, if the Company has Subsidiaries, the most recent published group financial statements of the Company and its Subsidiaries provided that if at any time at which Shareholders' Funds is required to be determined:

- (a) The Company has not published financial statements; or
- (b) Since the date of the most recent published statements there has been a material decline in the equity of the Company or, if the Company has Subsidiaries, of the consolidated equity of the Company and its Subsidiaries;

then Shareholders' Funds at that time shall be determined by reference to the position which would be disclosed if financial statements were prepared at that time;

"Special Resolution" means a resolution passed by a majority of 75% or more of the votes of the shareholders entitled to vote and voting;

"Subsidiary" means:

- (a) a subsidiary within the meaning of section 5 of the Act (read together with sections 6 to 8 of the Act); and
- (b) an entity treated as a subsidiary or in substance subsidiary within the meaning of Statement of Standard Accounting Practice Number 8 issued by the New Zealand Society of Accountants or within the meaning of any financial reporting standard approved in terms of the Financial Reporting Act 1993;

"Takeovers Code" means the takeovers code approved under the Takeovers Code Approval Order 2000 or any takeovers code approved under section 28 of the Takeovers Act 1993 which amends or replaces that code;

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

"**Voting Right**" means any right to vote on all matters or any matter at a meeting of the shareholders of the Company, not being a right that is exercisable only in one or more of the following circumstances:

- (a) During a period in which a dividend (or part of a dividend) in respect of the Security which confers the right is in arrears being a dividend of an amount or rate fixed at the time of issue of the Security;
- (b) On a proposal that affects rights attached to the Security;
- (c) On a proposal to liquidate the Company;
- (d) On a proposal for the disposal of the principal business undertaking of the Company or of the Company and its Subsidiaries taken as a whole;
- (e) During the liquidation of the Company.

1.7 Meaning of "Interest"

In this Constitution:

- (a) A person has an **Interest** in an Equity Security (whether or not that person is the registered holder of it) if that person:
 - (i) Is a beneficial owner of the Equity Security; or
 - (ii) Has the power to exercise any right to vote attached to the Equity Security; or
 - (iii) Has the power to control the exercise of any right to vote attached to the Equity Security; or
 - (iv) Has the power to acquire or dispose of the Equity Security; or
 - (v) Has the power to control the acquisition or disposition of the Equity Security by another person; or

- (vi) Under, or by virtue of, any trust, agreement, arrangement, or understanding relating to the Equity Security (whether or not that person is a party to it):
 - (A) May at any time have the power to exercise any right to vote attached to the Equity Security; or
 - (B) May at any time have the power to control the exercise of any right to vote attached to the Equity Security; or
 - (C) May at any time have the power to acquire or dispose of the Equity Security; or
 - (D) May at any time have the power to control the acquisition or disposition of the Equity Security by another person.
- (b) Where a person has an Interest in an Equity Security by virtue of paragraph (a) and:
 - (i) That person or its directors are accustomed or under an obligation, whether legally enforceable or not, to act in accordance with the directions, instructions, or wishes of any other person in relation to:
 - (A) The exercise of the right to vote attached to the Equity Security; or
 - (B) The control of the exercise of any right to vote attached to the Equity Security; or
 - (C) The acquisition or disposition of the Equity Security; or
 - (D) The exercise of the power to control the acquisition or disposition of the Equity Security by another person; or
 - (ii) Another person has the power to exercise the right to vote attached to 20 percent or more of the voting securities of that person; or
 - (iii) Another person has the power to control the exercise of the right to vote attached to 20 percent or more of the voting securities of that person; or
 - (iv) Another person has the power to acquire or dispose of 20 percent or more of the voting securities of that person; or
 - (v) Another person has the power to control the acquisition or disposition of 20 percent or more of the voting securities of that person; or
 - (vi) That person acts jointly or in concert with another person in respect of the exercise of the rights attaching to that Equity Security;

that other person also has an Interest in the Equity Security.
- (c) A body corporate or other body has an Interest in an Equity Security in which a Related Body Corporate of that body corporate or other body has an Interest.
- (d) A person who has, or may have, a power referred to in any of paragraphs (ii) to (vi) of paragraph (a), has an Interest in an Equity Security regardless of whether the power:

- (i) Is expressed or implied;
 - (ii) Is direct or indirect;
 - (iii) Is legally enforceable or not;
 - (iv) Is related to a particular Equity Security or not;
 - (v) Is subject to restraint or restriction or is capable of being made subject to restraint or restriction;
 - (vi) Is exercisable presently or in the future;
 - (vii) Is exercisable only on the fulfilment of a condition;
 - (viii) Is exercisable alone or jointly with another person or persons.
- (e) A power referred to in paragraph (a) exercisable jointly with another person or persons is deemed to be exercisable by either or any of those persons.
- (f) A reference to a power includes a reference to a power that arises from, or is capable of being exercised as the result of, a breach of any trust, agreement, arrangement, or understanding, or any of them, whether or not it is legally enforceable.
- (g) No account shall be taken of an Interest of a person in an Equity Security if:
- (i) The ordinary business of the person who has the Interest consists of, or includes, the lending of money or the provision of financial services, or both, and that person has the Interest only as security given for the purposes of a transaction entered into in the ordinary course of the business of that person; or
 - (ii) That person has the Interest by reason only of acting for another person to acquire or dispose of that security on behalf of the other person in the ordinary course of business of a sharebroker; or
 - (iii) That person has the Interest by reason only that he or she has been authorised by resolution of the directors or other governing body of a body corporate to act as its representative at a particular meeting of members, or class of members, of a public issuer, and a copy of the resolution is deposited with the public issuer not less than 48 hours before the meeting; or
 - (iv) That person has the Interest solely by reason of being appointed as a proxy to vote at a particular meeting of members, or of a class of members, of the public issuer and the instrument of that person's appointment is deposited with the public issuer not less than 48 hours before the meeting; or
 - (v) That person:
 - (A) Is a trustee corporation within the meaning of section 2 of the Securities Amendment Act 1988; and
 - (B) Has the Interest by reason only of acting for another person in the ordinary course of business of that trustee corporation.

For the purposes of this clause 1.7 **"voting security"** has the meaning given to that term in section 2 of the Securities Amendment Act 1988.

1.8 Meaning of **"Associated Person"**

In clause 3.3 and section 10, a person is an **"Associated Person"** of another person if:

- (a) They are acting jointly or in concert; or
- (b) Either person acts, or is accustomed to act, in accordance with the wishes of the other person; or
- (c) They are Related Bodies Corporate; or
- (d) Either person is able, directly or indirectly, to exert a substantial degree of influence over the activities of the other; or
- (e) They are both, directly or indirectly, under the control of the same person.

1.9 Construction

In this Constitution, unless the context otherwise requires:

- (a) The headings appear as a matter of convenience and shall not affect the construction of this Constitution;
- (b) In the absence of an express indication to the contrary, references to sections, clauses or paragraphs are to sections, clauses and paragraphs of this Constitution;
- (c) A reference to any statute, statutory regulations or other statutory instrument includes the statute, statutory regulations or instrument as from time to time amended or re-enacted or substituted;
- (d) A reference to a Listing Rule includes that Listing Rule as from time to time amended or substituted;
- (e) The singular includes the plural and vice versa and one gender includes the other genders;
- (f) The words **"written"** and **"writing"** include facsimile and email communications and any other means of communication resulting in or capable of permanent visible reproduction;
- (g) The word **"person"** includes any association of persons whether corporate or unincorporate, and any state or government or department or agency thereof, whether or not having separate legal personality;
- (h) References to the Company's previous articles of association or previous constitution include those articles of association or that constitution as amended from time to time;
- (i) Words or expressions defined in the Act, the Listing Rules or the Securities Act 1978 have the same meaning in this Constitution, except as otherwise expressly provided in this Constitution.

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1.10 Powers of Shareholders

Unless otherwise specified in the Act or this Constitution any power reserved to shareholders may be exercised and any approval of shareholders may be given by Ordinary Resolution.

1.11 Crown and Kiwi Shareholder

Nothing done by the Crown solely in its capacity as the holder of Shares (other than the Kiwi Share) or the holder of other Securities shall constitute the action of the Crown as Kiwi Shareholder and, conversely, nothing done by the Crown solely in its capacity as the Kiwi Shareholder shall constitute the action of the Crown in its capacity as the holder of Shares (other than the Kiwi Share) or the holder of other Securities.

2. The Companies Act and the Listing Rules

2.1 Companies Act

The Company, the Board, each Director and each shareholder of the Company have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

2.2 Compliance with Listing Rules

Subject to:

- (a) The terms of any Ruling from time to time given by the Exchange; and
- (b) The requirements of the Act and any other applicable legislative or regulatory requirement,

the Company shall, for so long as any of its Equity Securities are listed on the Exchange, comply with the Listing Rules.

2.3 Exchange Rulings

If the Exchange has granted a Ruling in relation to the Company authorising any act or omission which in the absence of the Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission will be deemed to be authorised by the Listing Rules and this Constitution provided that, unless the consent in writing of the Kiwi Shareholder has first been obtained, that act or omission will not be deemed to be so authorised if such act or omission contravenes or fails to comply with clause 3.5 or clause 3.6 or any of the provisions of this Constitution referred to in clause 3.5 (b).

2.4 Effect of failure to comply

Failure to comply with:

- (a) The Listing Rules; or
- (b) The provisions of clauses 17.1, 17.2, 22.1 to 22.4 or 23;

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

2.5 Compliance with ASX Listing Rules

- (a) Notwithstanding anything contained in this Constitution, if the ASX Listing Rules prohibit an act being done, the act shall not be done.
- (b) Nothing contained in this Constitution prevents an act being done that the ASX Listing Rules require to be done.
- (c) If the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (d) If the ASX Listing Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.
- (e) If the ASX Listing Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
- (f) If any provision of this Constitution is or becomes inconsistent with the ASX Listing Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.
- (g) This clause 2.5 is subject to clauses 3.5 and 3.6 and, in particular, no provision of the ASX Listing Rules that would contravene, fail to comply with, or be inconsistent with clause 3.5 or 3.6 or any of the provisions of this Constitution referred to in clause 3.5(b) shall have effect in relation to this Constitution or the Company.

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3. Rights and limitations attaching to Shares and Equity Securities

3.1 Existing Ordinary Shares

Each Ordinary Share at the time of adoption of this Constitution confers on the holder the following rights (in addition to the rights set out elsewhere in this Constitution):

- (a) Subject to section 17 and to the rights of holders of any Shares or Equity Securities which confer special voting rights, the right to one vote on a poll at a meeting of the Company on any resolution, including any resolution referred to in section 36(1)(a) of the Act; and
- (b) Subject to the rights of holders of any Shares or Equity Securities which confer special rights as to dividends, the right to an equal share in dividends authorised by the Board; and
- (c) Subject to the rights of holders of any Shares or Equity Securities which confer special rights as to surplus assets, the right to an equal share in the distribution of surplus assets of the Company.

3.2 **Classes of Shares**

At the time of adoption of this Constitution, the Company's issued share capital consists of Ordinary Shares, [the Convertible Preference Shares](#) and one special rights convertible preference share (the "**Kiwi Share**").

3.3 **Limitation on airline ownership**

No person that owns or operates an airline business, nor any other person where the first-mentioned person and that other person are Associated Persons, may hold or have an Interest in an Equity Security unless the prior written consent of the Kiwi Shareholder has been given to such holding or Interest, and any such consent may be given on such terms and conditions as the Kiwi Shareholder thinks fit.

3.4 **Limitation on ownership by non-New Zealand Nationals**

No person who is not a New Zealand National may hold or have an Interest in Equity Securities which confer 10 percent or more of the total Voting Rights for the time being unless the prior written consent of the Kiwi Shareholder has been given to such holding or Interest, and any such consent may be given on such terms and conditions as the Kiwi Shareholder thinks fit.

3.5 **Kiwi Share**

The following rights and limitations shall attach to the Kiwi Share:

- (a) The Kiwi Share may be held only by, and shall be registered in the name of, the Kiwi Shareholder. Any Minister may from time to time give written notice to the Company of the person who is entitled to exercise the rights and powers of the Kiwi Shareholder. The Company shall regard as the person entitled to exercise the rights and powers of the Kiwi Shareholder, the person named in the last such notice received by the Company (including any such notice given under the corresponding provision in the previous constitution of the Company);
- (b) Notwithstanding any provision of this Constitution to the contrary, none of the following sections, clauses and definitions shall be amended, removed, or altered in effect, without the written consent of the Kiwi Shareholder:

Clause 1.1 : Name of Company

Clause 1.2 : Trading Name

Clause 1.3 : Place of Incorporation

Clause 1.4 : Principal Place of Business

Clause 1.5 : Location of Head Office

The following definitions in clause 1.6:

"Affected Equity Security", "Board", "Class", "Crown", "Director", "Equity Security", "Head Office", "Interest", "International Air Services", "Intervening Act", "Kiwi Share", "Kiwi Shareholder", "Managing Director", "Minister", "New Zealand Business", "New Zealand citizen", "New Zealand National", "Operating Right", "Ordinary Share", "Related Body Corporate", "Representative", "Share", "Share Register", "Voting Right"

Clause 1.7: Meaning of "Interest"

Clause 1.8: Meaning of "Associated Person"

Clause 2.3: Exchange Rulings

Clause 2.5(g): Compliance with ASX Listing Rules

Clause 1.9: The construction of "person"

Section 3: Rights and Limitations Attaching to Shares and Equity Securities

Clause 9.6: Shareholder Disclosure Register

Clause 9.7(d) and (e): Power to Refuse to Register

Clause 9.8: Transfers in Contravention of Clause 3.3 or 3.4

Clause 9.9: Registration of Transfer shall not Affect Kiwi Shareholder

The last sentence of Clause 9.10 which states that the provisions relating to the sale of less than Minimum Holdings do not apply to the Kiwi Share

Section 10: Powers of Board and Kiwi Shareholder in Relation to Equity Securities

Clause 12.2(a): Meetings of Other Groups

Clause 22.5: Kiwi Shareholder Approval for Sale of Main Undertaking

Section 24: Appointment and Removal of Directors

Clause 25.1: Appointment of Alternate Directors

Clause 27.8: Chairperson

Clause 27.9: Voting at meetings of Directors

- (c) Notwithstanding any provision of this Constitution to the contrary, except with the written consent of the Kiwi Shareholder no act or omission to act that contravenes or fails to comply with any of the sections or clauses specified in paragraph (b) above shall be valid or effective, whether or not the act or omission is that of the Board or the shareholders and whether or not the act or omission has been approved by a special resolution of shareholders;
- (d) For the avoidance of doubt, each of the matters referred to in paragraphs (b) and (c) above is deemed to be action which affects the rights attached to the Kiwi Share and accordingly is not effective without the approval of the Kiwi Shareholder in accordance with section 117 of the Act;
- (e) The Kiwi Shareholder shall be entitled to receive notice of and, either by the person named in the last notice given pursuant to paragraph (a) above (or the corresponding provision in the previous constitution of the Company) or by that person's representative, to attend any meeting of shareholders or any meeting of any class of

shareholders, and to speak on any matter relating to rights attaching to the Kiwi Share but the Kiwi Share shall carry no right to vote or any other rights at any such meeting;

- (f) In a distribution of surplus assets upon the liquidation of the Company, the Kiwi Shareholder shall be entitled to repayment of any money paid up on the Kiwi Share in priority to any distribution of surplus assets to any other shareholder. The Kiwi Share shall confer no other right to participate in the surplus assets of the Company;
- (g) The Kiwi Shareholder may convert the Kiwi Share into an Ordinary Share at any time, by notice in writing to the Company, which notice shall be accompanied by the share certificate for the Kiwi Share. In that event the Kiwi Share shall be converted into an Ordinary Share as from the date of receipt of the notice by the Company, that Ordinary Share shall have the same rights and limitations as and rank equally with all other Ordinary Shares, there shall cease to be a Kiwi Share and a Kiwi Shareholder and all references to the Kiwi Share and the Kiwi Shareholder in this Constitution shall cease to have any application;
- (h) Notwithstanding any provision of this Constitution to the contrary, no Share or Equity Security may be issued which:
 - (i) Has the same rights as those attached to the Kiwi Share; or
 - (ii) Ranks equally with the Kiwi Share for the purposes of any provision of this Constitution which requires that the consent of the Kiwi Shareholder be obtained;
- (i) Nothing in clauses 3.7(a), 3.9, 3.10 and 9.10 applies to or in respect of the Kiwi Share;
- (j) Notwithstanding any other provision of this Constitution, the Kiwi Shareholder shall, for the purposes of this Constitution and the Act, in relation to any of the matters referred to in paragraphs (b) and (c) above, constitute a separate interest group.

3.6 Kiwi Shareholder consent

Notwithstanding any other provision of this Constitution, and without limiting section 117 of the Act, the rights attached to the Kiwi Share under clause 3.5 shall not be altered without the consent in writing of the Kiwi Shareholder.

3.7 New Shares

Subject to this section 3 and section 4, further Shares in the Company (including different Classes of Shares) may be issued which have any one or more of the following features:

- (a) Rank equally with, or in priority to, existing Shares in the Company; or
- (b) Have deferred, preferred or other special rights or restrictions, whether as to voting rights or distributions or otherwise; or
- (c) Confer preferential rights to distributions of capital or income; or
- (d) Confer special, limited or conditional voting rights; or
- (e) Do not confer voting rights; or
- (f) Are redeemable in accordance with section 68 of the Act; or

- (g) Are Convertible;

Sections 45(1) and 45(2) of the Act shall not apply to the issue of Shares by the Company.

3.8 Modification of rights of Security holders

The Company shall comply with sections 116 and 117 of the Act in respect of Shares of the Company and shall also comply with those sections in respect of Equity Securities which are not Shares on the basis that those sections shall be deemed to be modified so that:

- (a) References in those sections to "shares" shall (subject to clause 3.10) be deemed to include references to all Equity Securities of the Company and references to "holders of shares" and "shareholders" are deemed to be modified accordingly; and
- (b) In respect of Equity Securities of the Company which are not Shares of the Company:
 - (i) References to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and
 - (ii) References to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.

3.9 Issue of prior or equally ranking Shares or Equity Securities

The issue by the Company of any further Shares or Equity Securities which rank equally with, or in priority to, any existing Shares or Equity Securities, whether as to voting rights or distributions, shall:

- (a) Be permitted (subject to clauses 3.3 to 3.6 and section 4); and
- (b) Not be deemed to be action affecting the rights attached to those existing Shares or Equity Securities; and
- (c) Not be subject to the provisions of clause 3.8.

3.10 Further exceptions to clause 3.8

Clause 3.8 shall not require the Company to comply with sections 116 and 117 of the Act in respect of actions that affect the rights attached to:

- (a) Equity Securities which are not Quoted; or
- (b) Equity Securities which are not Shares of the Company if:
 - (i) Those Equity Securities were issued before 30 April 1995; or
 - (ii) Those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the prior approval of holders of those Equity Securities, and those terms were clearly disclosed in the Offering Document (if any) pursuant to which those Equity Securities were offered.

3.11 Section 118 of the Act

Clause 3.8 shall not have the effect of deeming section 118 of the Act to apply to any Securities other than Shares of the Company.

3.12 Actions not invalid

The taking of any action by the Company affecting the rights attached to any Quoted Equity Securities other than Shares shall not be invalid by reason only that the action was not approved in accordance with the provisions of clause 3.8.

4. Issue of new Equity Securities

4.1 Requirements for issue

The Company shall not issue any Equity Securities unless:

- (a) The precise terms and conditions of the specific proposal have been approved (subject to clause 4.3) by separate resolutions (passed by a simple majority of votes) of holders of each Class of Quoted Equity Securities of the Company whose rights or entitlements could be affected by the issue and the issue is completed within the time specified in clause 4.2; or
- (b) The issue is made in accordance with any of clauses 4.4 to 4.8.

4.2 Time limit

An issue of Equity Securities authorised by a resolution passed pursuant to clause 4.1(a) shall be completed:

- (a) If that issue is made solely to Employees, within 12 months after the passing of those resolutions; or
- (b) In all other circumstances, within six months after the passing of those resolutions;

provided that nothing in this clause or clause 4.1(a) shall require the Board to issue all or part of the Equity Securities approved for issue pursuant to clause 4.1(a), if the issue of such Equity Securities is at the discretion of the Board.

4.3 Exception to requirement for separate resolutions

A resolution pursuant to clause 4.1(a) of the holders of a Class of Securities shall not be required if:

- (a) The terms of issue of those Securities expressly reserved the right to make the issue of the new Equity Securities, and specified at least the maximum number, and Class, of new Equity Securities which could be issued, and the time within which they could be issued; or
- (b) Those Securities were issued on terms that the holders of those Securities would vote together with the holders of another Class or Classes of Equity Securities on a resolution of the nature referred to in clause 4.1(a) and the issue is approved by a

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resolution (passed by a simple majority of votes) of holders of all the relevant Classes voting together; or

- (c) Those Securities were issued before 1 September 1994 on terms that the holders of those Securities would not be entitled to vote on a resolution of the nature referred to in clause 4.1(a).

4.4 Pro rata issues

The Board may issue Equity Securities if:

- (a) Those Equity Securities are offered to holders of existing Equity Securities 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 Equity Securities) to votes and to Distribution Rights, and that offer is Renounceable; or
- (b) Those Equity Securities are issued to holders of existing Equity Securities as fully paid Securities on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Equity Securities) to votes and to Distribution Rights.

Notwithstanding paragraphs (a) and (b), the Board may:

- (c) Issue any Equity Securities 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 Equity Securities are not materially more favourable to the persons to whom they are issued than the terms of the original offer;
- (d) Offer and issue Equity Securities to the holders of existing Securities in accordance with specific rights attached to those existing Securities to participate in issues of Equity Securities, notwithstanding that the effect may be that existing proportionate rights to votes and Distribution Rights are not maintained;
- (e) Authorise a disproportionate offer to the extent necessary to round up holdings of Equity Securities to a Minimum Holding, or to avoid the creation of holdings which are not Minimum Holdings; and
- (f) Not offer or issue Equity Securities to holders of existing Equity Securities the terms of which existing Equity Securities expressly exclude the right to participate in the relevant offer or issue.

4.5 Issues within 10% limit

The Board may issue Equity Securities if:

- (a) The issue is not made in whole or part to any Director, Associated Person of a Director, or Employee; and
- (b) The total number of Equity Securities issued, and all other Equity Securities of the same Class issued pursuant to this clause 4.5 or pursuant to the corresponding provision in the previous constitution of the Company during the period of 12 months preceding the date of the issue will not exceed the aggregate of:

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- (i) 10% of the total number of Equity Securities of that Class on issue at the commencement of that period; and
 - (ii) 10% of the number of the Equity Securities of that Class issued during that period pursuant to any of clauses 4.1(a), 4.4, 4.6 and 4.8 or any of the corresponding provisions in the previous constitution of the Company; and
 - (iii) Any Securities of that Class issued pursuant to this clause 4.5 or the corresponding provision in the previous constitution of the Company during that period, the issue of which has been ratified by an Ordinary Resolution;
- less
- (iv) 10% of the number of Equity Securities of that Class which have been acquired or redeemed by the Company during that period (other than Equity Securities held as Treasury Stock).

For the purposes of paragraph (b), Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will or may Convert. Where the Conversion ratio of those Securities is fixed by reference to the market price of the underlying Securities, the market price, unless otherwise specified in the terms of the issue, shall be the average end of day market price over the Business Days in the calendar month before the earlier of the day the issue is made or announced to the market.

4.6 Employee share issues

The Board may issue Equity Securities if:

- (a) The issue is made to Employees; and
- (b) The issue is of a Class of Securities already on issue; and
- (c) The total number of Securities issued, and all other Equity Securities of the same Class issued to Employees pursuant to this clause 4.6 or the corresponding provision in the previous constitution of the Company during the period of 12 months preceding the date of the issue and which remain on issue, does not exceed 2% of the aggregate of:
 - (i) The total number of Equity Securities of that Class on issue at the commencement of that period; and
 - (ii) The total number of Equity Securities of that Class issued during that period pursuant to any of clauses 4.1(a), 4.4, 4.5 and 4.8; and
- (d) The total number of Securities issued, and all other Equity Securities of the same Class issued to Employees pursuant to this clause 4.6 or the corresponding provision in the previous articles of association or constitution of the Company during the period of five years preceding the date of the issue and which remain on issue, does not exceed 5% of the total number of Equity Securities of that Class on issue immediately preceding the date of the issue.

For the purposes of this clause, Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert.

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Directors and Associated Persons of Directors shall not participate in any such issue unless the scheme for such participation and the precise levels of entitlement for each such person have been previously approved by an Ordinary Resolution.

4.7 **Exception for scheme trustees**

For the purposes of clause 4.6, an issue to a Director, or an Associated Person of a Director, solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be an issue to a Director or Associated Person of a Director, or an issue in which Directors or Associated Persons participate.

4.8 **Other issues**

The Board may issue Equity Securities if:

- (a) The issue is made as consideration in an offer made by the Company or any of its subsidiaries in accordance with:
 - (i) The Takeovers Code; or
 - (ii) Provisions of the constitution or governing document of another issuer which is listed on the Exchange which comply with the relevant requirements of the Listing Rules; or
 - (iii) Any takeover law regime of a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in the opinion of the Exchange is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in paragraphs (i) or (ii),

and that offer is made to all holders (other than the Company and its Related Companies) of Equity Securities in any company or other entity listed on the Exchange or on a Recognised Stock Exchange which is not a company or other entity that is an Associated Person of the Company or of any Director; or

- (b) The issue is made upon Conversion of any Securities from time to time issued by the Company if the terms of issue of those Securities provided for Conversion to Equity Securities of the kind issued; or
- (c) The issue is made to an existing holder of Equity Securities in order to bring that holder's holding up to a Minimum Holding; or
- (d) The issue is made pursuant to an arrangement, amalgamation, or compromise effected pursuant to Part XIII or Part XV of the Act; or
- (e) The issue is made pursuant to a plan for the issue of Securities in lieu of dividends.

4.9 **Treasury Stock**

The transfer by the Company of Treasury Stock of the Company shall for the purposes of this section 4 be deemed to constitute the issue of Equity Securities.

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4.10 Entitlements to third party securities

Entitlements conferred by the holding of Equity Securities, to Securities of a third party (whether or not that third party is an issuer listed on the Exchange), shall not be created or conferred other than in compliance with clauses 4.1 to 4.9, as if such Securities comprised an issue of Equity Securities of the Company.

4.11 Issues of Securities affecting control

Notwithstanding the other provisions of this section 4 or the provisions of section 5, no issue, acquisition, or redemption of Securities shall be made by the Company if:

- (a) There is a significant likelihood that the issue, acquisition, or redemption will result in any person or group of Associated Persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and
- (b) That person or group of Associated Persons is entitled before the issue, acquisition, or redemption to exercise or direct the exercise of, not less than 1% of the total votes attaching to Securities of the Company;

unless the precise terms and conditions of the issue, acquisition or redemption have been approved by an Ordinary Resolution.

4.12 Consolidation and subdivision of Shares

Subject to any applicable provisions of this Constitution, the Board may:

- (a) Consolidate and divide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class; or
- (b) Subdivide the Shares or Shares of any Class in proportion to those Shares or the Shares in that Class.

4.13 Bonus issues

Subject to any applicable provisions of this section 4, the Board may resolve to apply any amount which is available for distribution to shareholders either:

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

or partly in one way and partly in the other.

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4.14 **Board may otherwise issue**

Subject to the Act and the other provisions of this Constitution, the Board may issue Securities to any person and in any number it thinks fit on such terms and for such consideration or considerations as it shall determine.

5. **Buybacks of Equity Securities and financial assistance**

5.1 **Power**

The Company may in accordance with the provisions of the Act and this Constitution:

- (a) Purchase or otherwise acquire Shares issued by it from one or more shareholders;
- (b) Purchase or otherwise acquire Equity Securities;
- (c) Hold any Shares or Equity Securities so purchased or acquired; and
- (d) Redeem any redeemable Shares or Equity Securities.

5.2 **Prohibition on acquisition**

Subject to clause 5.3 the Company shall not acquire any Equity Securities unless the acquisition is in accordance with the provisions of the Act and is:

- (a) Effected by offers made by the Company through the Exchange's order matching market, or through the order matching market of a Recognised Stock Exchange; or
- (b) Effected in compliance with section 60(1)(a) (read together with section 60(2)) of the Act; or
- (c) An acquisition of the nature referred to in section 61(7) of the Act; or
- (d) Approved in accordance with clause 5.7; or
- (e) Required by a shareholder of the Company pursuant to section 110 or section 118 of the Act; or
- (f) Effected in compliance with section 60(1)(b)(ii) (read together with section 61) of the Act and;
 - (i) is made only from any person who is not a Director, Associated Person of a Director or Employee; and
 - (ii) the total number of Equity Securities acquired, together with all other Equity Securities of the same Class acquired pursuant to this paragraph (f) during the period of 12 months preceding the date of the acquisition will not exceed 10% of the total number of Equity Securities of that Class on issue at the commencement of that period.

For the purposes of paragraph (f) Securities which will, or may, Convert to other Equity Securities shall be deemed to be of the same Class as, and to correspond in number to, the Equity Securities into which they will, or may, Convert. Where the Conversion ratio of those

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Securities is fixed by reference to the market price of the underlying Securities, the market price for the purposes of paragraph (f) shall be the average end of day market price over the Business Days in the calendar month before the earlier of the day the acquisition is entered into or announced to the market.

5.3 Prior notice of acquisition

Before the Company acquires Equity Securities other than an acquisition from a holder who holds less than a Minimum Holding, the Company shall give at least 3 Business Days notice to the Exchange specifying :

- (a) A period of time not exceeding 12 months from the date of the notice within which the Company will acquire Equity Securities; and
- (b) The Class and maximum number of Equity Securities to be acquired in that period.

The Company may at any time by 3 Business Days notice to the Exchange vary any notice so given and may cancel any such notice at any time.

5.4 Prohibition on redemption

The Company shall not redeem Equity Securities, other than a redemption from a holder who holds less than a Minimum Holding, unless:

- (a) Those Equity Securities were issued in compliance with clause 4.1(a) or clause 4.4 and the Company is bound or entitled to redeem those Equity Securities pursuant to the terms of their issue; or
- (b) Those Equity Securities are redeemed in compliance with section 69(1)(a) of the Act; or
- (c) Those Equity Securities are Debt Securities which may be Converted into Shares in the Company, and, before that Conversion, they are redeemed in cash; or
- (d) The redemption of those Equity Securities is approved in accordance with clause 5.7; or
- (e) Those Equity Securities were issued before 1 September 1994 and the Company is bound or entitled to redeem those Equity Securities pursuant to their terms of issue.

5.5 Prohibition on financial assistance

The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of Equity Securities issued or to be issued by the Company unless the giving of that assistance is in accordance with the provisions of the Act and:

- (a) Complies with clause 5.6; or
- (b) Is approved in accordance with clause 5.7.

5.6 Permitted financial assistance

The Company may give financial assistance of the nature referred to in clause 5.5 if:

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- (a) The financial assistance is not given in whole or in part to any Director, Associated Person of a Director, or Employee, and the amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (a) by the Company during the period of 12 months preceding the date of giving of the financial assistance does not exceed 5% of Shareholders' Funds; or
- (b) The financial assistance is given to Employees and:
 - (i) The amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (b) by the Company during the period of 12 months preceding the date of giving of the financial assistance does not exceed 2% of Shareholders' Funds; and
 - (ii) The amount of the financial assistance, together with the amount of all other financial assistance given under this paragraph (b) during the period of five years preceding the date of giving of the financial assistance does not exceed 5% of Shareholders' Funds; and
 - (iii) The financial assistance is not given to any Director or Associated Person of a Director; or
- (c) The financial assistance is offered or given so that all holders of Equity Securities are treated, or given the opportunity to be treated, on the same basis.

5.7 Acquisition, redemption or assistance with approval of holders

The Company may acquire Equity Securities under clause 5.2(d) or redeem Equity Securities under clause 5.4(d), or give financial assistance under clause 5.5(b), if the precise terms and conditions of the specific proposal to acquire or redeem those Equity Securities, 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 Quoted Equity Securities whose rights or entitlements are materially affected in a similar way by the proposal. Any such acquisition shall be completed within 12 months, and redemption or financial assistance completed or given within six months, after the passing of the relevant resolutions.

5.8 Exception for scheme trustees

For the purposes of clause 5.6(b)(iii) financial assistance given to a Director or an Associated Person of a Director solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or Associated Person has no beneficial interest, shall be deemed not to be financial assistance given to a Director or Associated Person of a Director.

5.9 Acquisition of Equity Securities other than Shares

Equity Securities which are not shares may be acquired pursuant to clauses 5.2(b), (c) and (f) or redeemed pursuant to clause 5.4(b) if the Company complies with the sections of the Act referred to in the relevant clause, on the basis that references in those sections of the Act to:

- (a) "shares" shall be deemed to be references to all Equity Securities of the Class of Equity Securities which is the subject of the acquisition or redemption and references to "shareholders" shall be read accordingly; and
- (b) "constitution" shall be deemed to be references to the document which governs the rights attaching to those Equity Securities.

6. Calls on Shares

6.1 Board's power

The Board may, by notice in writing to a shareholder or shareholders, make calls in respect of all moneys unpaid on Shares and which are not, by the terms applicable to the Shares, payable at fixed times. The Board may revoke or postpone a call before payment is received.

6.2 Liability to pay

Each relevant shareholder shall be liable (jointly and severally in the case of joint shareholders) to pay, in accordance with the relevant notice, every call and shall remain liable to do so notwithstanding the subsequent transfer of the relevant Shares.

6.3 Differential calls

Calls may be made in respect of certain Shares and not others and for different amounts in respect of certain Shares from others. The Board may, at the time of issue of any Shares, differentiate between the holders as to the amount of calls to be paid and the time of payment.

6.4 Instalments

The Board may determine that a call is payable by instalments.

6.5 Time call is made

A call shall be deemed to have been made at the time the resolution of the Board authorising the call was passed.

6.6 Interest on overdue amounts

A call not paid when due shall bear interest from the due date to the date of actual receipt by the Company at the rate fixed in the notice of call or the terms applicable to the relevant Shares or, if there is no such rate, as the Board determines. The Board may waive payment of interest wholly or in part.

6.7 Unpaid instalments

Any amount payable on issue of a Share or on any fixed date or as an instalment of a call shall be deemed to be a call and if not paid, the provisions of this section 6 and sections 7 and 8 shall apply as if that sum had become payable by the making of a call.

6.8 Calls in advance

The Board may, in its discretion, receive any moneys uncalled and unpaid upon any Shares in advance of its due date and, may pay interest on the amount received at such rate (if any) and on such terms as the Board determines.

6.9 Evidence

In any proceedings for the recovery of moneys due in respect of any call a statutory declaration by a Director or any other person authorised by the Board that:

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- (a) The name of the shareholder is entered in the Share Register as the holder (or one of the holders) of the relevant Shares;
- (b) The resolution making the call is recorded in the records of the Company; and
- (c) Notice of the call was sent to the shareholder;

shall be conclusive evidence of the indebtedness of the shareholder to the Company in respect of the call.

6.10 Cancellation of unpaid amounts

No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an Ordinary Resolution.

7. Lien on Shares

7.1 Lien on unpaid and partly paid Shares

The Company shall have a first and paramount lien on every Share which is not a fully paid Share (and any dividends or other distributions in respect of that Share) for:

- (a) All unpaid calls, instalments, or other amounts, and any interest payable on those amounts, relating to that Share; and
- (b) Any amounts the Company may be called upon to pay under any legislation in respect of that Share.

7.2 Power of sale

If any amount due in respect of a Share on which the Company has a lien is unpaid for more than 14 days after notice in writing demanding payment has been given to the shareholder or the person entitled to receive notices in respect of that Share:

- (a) The Company may sell the Share on such terms as the Board determines; and
- (b) To give effect to any such sale, the Board may authorise any person to execute a transfer of the Share to, or at the direction of, the purchaser.

7.3 Absolute title of purchaser

The title of a purchaser of any Shares sold pursuant to clause 7.2 shall not be affected by any irregularity or invalidity in any sale.

7.4 Application of sale proceeds

The net proceeds of sale of any Share sold pursuant to clause 7.2, after deducting expenses of sale shall be applied in and towards satisfaction of any unpaid calls, instalments or other amounts and any interest on those amounts and the balance (if any) shall be paid to the person entitled to the Share at the date of sale.

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8. Forfeiture of Shares

8.1 Notice

If a call on a Share is not paid when due, the Directors may give 14 days notice to the shareholder requiring payment of the call, together with interest on the amount of the call. The notice shall specify the place of payment and state that if the notice is not complied with the relevant Share will be liable to be forfeited.

8.2 Forfeiture

If the notice is not complied with the Share may, before payment of the overdue amount has been made, be forfeited by resolution of the Board.

8.3 Sale of forfeited Shares

A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board determines. To give effect to any sale or disposal the Board may authorise any person to execute any relevant documentation. The Board may, at any time before the sale or disposal, cancel the forfeiture.

8.4 Application of sale proceeds

The net proceeds of sale of any forfeited Share shall be applied in the same manner as set out in clause 7.4.

8.5 Absolute title of purchaser

The title of a purchaser of a forfeited Share shall not be affected by any irregularity or invalidity in the forfeiture, sale or other disposal of the share.

8.6 Consequences of forfeiture

A person whose Shares have been forfeited shall cease to be a shareholder in respect of those Shares and shall surrender the share certificate for cancellation but shall remain liable to the Company for all moneys due to the Company at the date of forfeiture in respect of the Shares together with interest thereon.

8.7 Evidence of forfeiture

A statutory declaration by a Director or any other person authorised by the Board that a Share has been forfeited on a specified date shall be conclusive evidence of that forfeiture.

9. Transfer of Shares

9.1 Transferor to remain holder until registration

The transferor of a Share shall remain the holder of the Share until the name of the transferee is entered in the Share Register.

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9.2 Authorised transactions

Any Shares disposed of by an "authorised transaction" or a "stock exchange transaction" within the meaning of the Securities Transfer Act 1991 may be transferred by an instrument of transfer complying with the provisions of that Act or by an instrument complying with clause 9.4.

9.3 Transfer executed outside New Zealand

Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or otherwise in any usual manner for execution by such a corporation, or in any other case if the signature of the transferor has been witnessed by a person who has added his or her occupation and address after his or her signature.

9.4 Form of transfer

Every instrument of transfer of Shares not falling within clauses 9.2 and 9.3 shall comply with the following provisions:

- (a) The form of the instrument of transfer shall be any usual or common form or any other form which the Board may approve;
- (b) The instrument of transfer must be signed or executed by or on behalf of the transferor; and
- (c) Where the Shares being transferred are not fully paid up, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

9.5 Power to require declaration in respect of transferee's shareholding

When a transfer of any Shares has been lodged with or presented to the Company for registration (including under a share transfer system referred to in clause 9.12), the Board may, by notice in writing, require the transferee to lodge with the Company within 20 working days of the date on which the notice is delivered by hand, fax or email or posted to the transferee, a statutory declaration (or other disclosure required by the Board) as to the following matter or matters (as the case may require):

- (a) When:
 - (i) the transfer concerned relates to Shares comprising one half of 1% or more of the issued Shares of any Class; or
 - (ii) transfers to the same transferee are lodged or presented for registration within any one period of 12 months and relate in aggregate to 1% or more of the issued Shares of the Class transferred by the latest transfer,

the declaration or disclosure shall set out the total number of Shares held or beneficially owned by such transferee or (if the transferee is not the beneficial owner of all such Shares) by the beneficial owners of the Shares dealt with in such transfer; and

- (b) When such declaration or disclosure made under this clause 9.5 discloses a holding (whether by the transferee or any other person) of Shares representing in aggregate 5%

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or more of the issued Shares of any Class, the declaration or disclosure shall also set out the identity of the beneficial owner or owners of such Shares.

9.6 Shareholder disclosure register

The Company:

- (a) May (and must on the written request of the Kiwi Shareholder) keep a register containing all information obtained by it from statutory declarations or other disclosure provided under clause 9.5 or 10.1;
- (b) Must provide to the Kiwi Shareholder a copy of the whole or any part of that register on written request by the Kiwi Shareholder; and
- (c) Must ensure that the register is kept confidential to the Board, the Kiwi Shareholder and any person nominated by the Board or the Kiwi Shareholder for the purposes of this paragraph.

9.7 Power to refuse to register

The Board may decline to register any transfer of Shares where:

- (a) The Company has a lien on any of the Shares; or
- (b) The transfer is not accompanied by the certificate (if any) for the Shares to which it relates or other evidence as the Board may reasonably require to show the right of the transferor to make the transfer; or
- (c) The transfer is in respect of more than one Class; or
- (d) The transfer relates to Shares which, in the opinion of the Board, would, upon transfer, become, or be capable of being treated as, Affected Equity Securities; or
- (e) The Board has required the transferee or registered holder by notice in writing under clause 9.5 or 10.1 to lodge with the Company a declaration or disclosure in accordance with that clause and that declaration or disclosure has not been received by the Company from the transferee or registered holder within 20 working days of the date on which the notice is delivered by hand, fax or email or posted to the transferee or registered holder, or that declaration or disclosure has been received by the Company but has not been completed in all material respects to the satisfaction of the Board or is or may be in the opinion of the Board materially incorrect or misleading; or
- (f) Registration, together with the registration of any further transfer then held by the Company and awaiting registration, would result in the proposed transferee holding Shares of less than a Minimum Holding,

provided that the Board resolves to exercise its powers under this clause within 30 working days after receipt or presentation of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five working days of the resolution being passed by the Board.

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9.8 Transfers in contravention of clause 3.3 or 3.4

The Board shall decline to register a transfer of Equity Securities if it is aware that those Equity Securities have been transferred in contravention of clause 3.3 or 3.4 or of clause 3.5(d) of the previous constitution of the Company.

9.9 Registration of transfer shall not affect Kiwi Shareholder

The registration by the Board of any transfer shall not prejudice or affect in any way the powers exercisable by the Kiwi Shareholder or the Board under section 10.

9.10 Sale of less than Minimum Holding

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

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

This clause 9.10 shall not apply to the Kiwi Share.

9.11 Registration of transfers

Every instrument of transfer shall be delivered to the Company's share registrar, together with the share certificate (if any) for the Shares to be transferred. If there is no share certificate for those Shares or if the share certificate has been lost, damaged or destroyed, the transferee shall provide such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer.

9.12 Participation in share transfer systems

The Company may participate in any share transfer system approved under the Securities Transfer Act 1991 and implemented by the Exchange or in any share transfer system which operates in relation to trading in securities on any other stock exchange on which the Company's shares are traded and, in so participating, it shall comply with the requirements of the Exchange or of the relevant share transfer system. The Board may register any transfer of Securities presented for registration in accordance with the requirements of any such system and will not be obliged to enquire as to the due execution of any transfer effected by reason of such system.

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9.13 **Power to divide Share Register**

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

9.14 **Transfer of Securities other than Shares**

This section 9 shall apply to transfers of Securities of the Company other than Shares with any necessary modifications.

10. **Powers of Board and Kiwi Shareholder in relation to Equity Securities**

10.1 **Nationality declaration required on request**

The Board may at any time or times (and must on the written request of the Kiwi Shareholder to do so in respect of any persons who are registered as the holders of 1% or more of the Equity Securities of any Class), by notice in writing, require the registered holder or holders of any or all Equity Securities to lodge with the Company within 20 working days of the date on which the notice is delivered by hand, fax or email or posted to the holder, a statutory declaration (or other disclosure required by the Board) stating:

- (a) Whether or not that holder is a New Zealand National; and
- (b) Whether or not any person other than a New Zealand National has an Interest in any Equity Security registered in the name of that holder and, if so, in respect of each such person the name, address and nationality of that person, the number and Class of Equity Securities concerned and the nature of that Interest.

10.2 **Protection of Company and constitution**

The provisions of clauses 10.3 to 10.15 inclusive shall apply if either the Board determines, at its sole discretion, or the Kiwi Shareholder determines, after consultation with the Board, either that a registered holder of any Equity Securities has not complied with clause 10.1 or that it is necessary to:

- (a) Take steps in order to protect any Operating Right of the Company or any subsidiary because an Intervening Act has taken place or there is a reasonable likelihood that an Intervening Act may occur; or
- (b) Take steps in order to protect the status of the Company as a company that is substantially owned and effectively controlled by New Zealand Nationals; or
- (c) Establish whether any person that owns or operates an airline business, or any other person where the first-mentioned person and that other person are Associated Persons, holds or has an Interest in any Equity Securities in contravention of clause 3.3 or of clause 3.5(d) of the previous constitution of the Company; or
- (d) Establish whether any person other than a New Zealand National holds or has an Interest in any Equity Securities in contravention of clause 3.4; or
- (e) Establish whether any person has acted in contravention of or failed to comply with any of the terms or conditions of a consent given by the Kiwi Shareholder under clause 3.3 or 3.4 or under clause 3.5(d) of the previous constitution of the Company.

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Where the Kiwi Shareholder makes such a determination and the Board fails to act pursuant to the following provisions of section 10 within such period of time as the Kiwi Shareholder considers is reasonable, or fails (in the opinion of the Kiwi Shareholder) to act in a manner which remedies the basis of the determination, the Kiwi Shareholder may act pursuant to the following provisions of this section 10 and those provisions shall apply as if every reference therein to the Board was a reference to the Kiwi Shareholder, and the Company, the Board and every officer of the Company shall do everything necessary on its, his, or her part to enable the exercise by the Kiwi Shareholder of the powers given to the Kiwi Shareholder under those provisions.

10.3 Registered holders to lodge statutory declaration

After such determination, if the Board considers it necessary or desirable to do so it may, by notice in writing, require the registered holder or holders of any or all Equity Securities to lodge with the Board within 20 working days of the date on which the notice is delivered by hand, fax or email or posted to the holder, a statutory declaration (or other disclosure required by the Board) giving such information as the Board may reasonably require for the purposes of determining whether to exercise its powers under this section 10.

10.4 Equity Securities treated as Affected Equity Securities

Where the registered holder of any Equity Securities does not comply with clause 10.1 or 10.3, or the Board in its discretion considers that any declaration or disclosure required by clause 10.1 or 10.3 or other information reveals that

- (a) Any person that owns or operates an airline business or any Associated Person of any such person, without the written consent of the Kiwi Shareholder, holds or has an Interest in any Equity Securities in contravention of clause 3.3 or of clause 3.5(d) of the previous constitution of the Company; or
- (b) Any person other than a New Zealand National holds or has an Interest in any Equity Securities in contravention of clause 3.4; or
- (c) Any person has acted in contravention of or failed to comply with any of the terms or conditions of a consent given by the Kiwi Shareholder under clause 3.3 or 3.4 or under clause 3.5(d) of the previous constitution of the Company,

the Board may determine that those Equity Securities shall be treated as Affected Equity Securities and immediately after making any such determination shall give a notice to that effect to the registered holder of the Equity Securities.

10.5 Intervening Act

Where the Board considers that an Intervening Act has occurred or there is a reasonable likelihood that an Intervening Act will occur, then the Board may identify those Equity Securities which gave rise or are likely to give rise to that Intervening Act.

10.6 Notice of Affected Equity Securities to registered holder

The Board shall give notice to the registered holder of any Equity Securities identified under clause 10.5 of its intention of treating those Equity Securities as Affected Equity Securities. The holder may make representations to the Board as to why any such Equity Securities should not be treated as Affected Equity Securities, within seven days of receiving the abovementioned notice from the Board. If any representation is made to the effect that an Intervening Act has not occurred and there is no reasonable likelihood that an Intervening Act will occur, the Board shall consult with the Kiwi Shareholder as to whether or not such act has

occurred or there is such a reasonable likelihood. If after taking into consideration any such representations, the Board in its discretion (and, if required, after consultation with the Kiwi Shareholder) determines that such Equity Securities shall be treated as Affected Equity Securities, it shall immediately give notice to that effect to the registered holder of the Equity Securities.

10.7 Determination as to voting or sale

At the time when, or at any time after, the Board determines under clause 10.4 or 10.6 that any Equity Securities are to be treated as Affected Equity Securities and before that determination is withdrawn, the Board may determine either or both of the following:

- (a) That clause 10.8 applies to the Equity Securities during such period (which may be unlimited) as the Board determines;
- (b) That clause 10.9 applies to the Equity Securities,

and the Board shall immediately give notice of the determination to the registered holder of the Equity Securities.

10.8 Holders of Affected Equity Securities cannot vote

A registered holder of Affected Equity Securities to whom a notice under clause 10.7 stating that this clause applies to those Equity Securities has been delivered by hand, fax or email or posted shall not (unless the notice is withdrawn) be entitled to vote in respect of those Equity Securities at any annual, special or Class meeting of the Company or at any meeting of the holders of Securities in an Interest Group (as defined in the Act) and in that event the votes attached to those Equity Securities shall vest in and may be exercised by the chairman of any such meeting who may act entirely at his or her discretion. This voting restriction shall be without prejudice to the right of any such registered holder to attend any meeting referred to in this clause.

10.9 Disposal of Affected Equity Securities

A registered holder of Affected Equity Securities to whom a notice under clause 10.7 stating that this clause applies to those Equity Securities has been delivered by hand, fax or email or posted shall, within three months (or such longer period as the Board may determine) of the date on which the notice is delivered by hand, fax, email or posted, ensure that either the Affected Equity Securities or Interest therein is disposed of so that they cease to be Affected Equity Securities and if, after three months (or such longer period as aforesaid), the Board is not satisfied that a suitable disposal has been made, the Board may arrange for the sale of the Affected Equity Securities on behalf of the registered holder at the best price reasonably obtainable at the relevant time, based upon advice obtained by it for the purpose, so that they are no longer capable of being treated as Affected Equity Securities. For this purpose, the registered holder shall be deemed to have appointed, and does hereby appoint, the Company as its agent and its attorney, in each case with full authority to act on its behalf in relation to the sale of the Affected Equity Securities and to sign all documents relating to such sale and transfer of the Affected Equity Securities and the Board may register a transfer of the Affected Equity Securities 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 Equity Securities. The person to whom such Equity Securities are transferred shall not be bound to see to the application of the purchase money, nor shall his, her or its title to the Equity Securities be affected by any irregularity or invalidity in the proceedings relating to the sale of those Equity Securities. The net proceeds of sale shall be held on trust by the Company for and paid (together with interest at such rate as the Board deems appropriate) to the former registered holder on surrender of the certificate (if any) for the Affected Equity Securities.

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10.10 Identifying Affected Equity Securities

In deciding which Equity Securities are to be identified for the purposes of clause 10.5 the Board shall have regard to which Interests, in its opinion, have caused the act referred to in that clause to arise or be capable of arising and otherwise shall have regard to such other criteria as it may, in its discretion, consider appropriate and equitable.

10.11 Enquiries if Equity Securities are Affected Equity Securities

If, at any time, when a determination under this section 10 has been made and not withdrawn, anyone enquires of the Board whether any Equity Securities which he, she or it proposes to buy or in which he, she or it proposes to acquire any Interest would, in the opinion of the Board, be capable on acquisition of becoming Affected Equity Securities, the Board shall, on sufficient information being given to it, notify the enquirer whether in its opinion the Equity Securities would in such circumstances be capable of becoming Affected Equity Securities. Such notification shall not, however, be binding on the Board or the Company.

10.12 Withdrawal or amendment of determination

If the Board considers that any determination made under clause 10.4, 10.6, or 10.7 should be withdrawn or amended, it may do so, and shall give notice of the withdrawal or amendment to the registered holder of the Equity Securities concerned.

10.13 Absence of notice does not invalidate

The Board shall not be obliged to give, deliver or post any notice required under this section to be given, delivered or posted to any person if it does not know either the identity or address of the person. The absence of such a notice in such circumstances, and any accidental error in or failure to give, deliver or post any notice to any person to whom notice is required to be given, delivered or posted under this section shall not prevent the implementation of or invalidate any procedure under this section.

10.14 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 Chairman of any meeting under or pursuant to this section 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 this section 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.

10.15 Certificate conclusive

A certificate signed by a Director and countersigned by a second Director, or signed by the Kiwi Shareholder, that a power of sale under this section has arisen and is exercisable by the Board, or that an Equity Security has been duly transferred under this section on the date stated therein, shall be conclusive evidence of the facts stated therein.

11. Transmission of Shares

11.1 Transmission on death of shareholder

If a shareholder dies the survivor, if the deceased was a joint shareholder, or the shareholder's Personal Representative, shall be the only persons recognised by the Company as having any

title to or interest in the Shares of the deceased shareholder. Nothing in this clause shall release the estate of a deceased joint shareholder from any liability in respect of any Share or constitute a release of any lien which the Company may have in respect of any Share.

11.2 Rights of Personal Representatives

A shareholder's Personal Representative:

- (a) Is entitled to exercise all rights (including without limitation the rights to receive distributions, to attend meetings and to vote in person or by representative), and is subject to all limitations, attached to the Shares held by that shareholder; and
- (b) Is entitled to be registered as holder of those Shares, but such registration shall not operate as a release of any rights (including any lien) to which the Company was entitled prior to registration of the Personal Representative pursuant to this paragraph.

11.3 Joint personal representatives

Where a Share is subject to the control of two or more persons as Personal Representatives, they shall, for the purposes of this Constitution, be deemed to be joint holders of the Share.

12. Meetings of shareholders

12.1 Methods of holding meetings

A meeting of shareholders may be held either:

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

12.2 Meetings of other groups

A meeting of the holders of Securities in an Interest Group (as defined in the Act) or of the holders of a Class of Shares may be called by the Board at any time, and shall be called on the written request of persons holding Securities 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 of the Class or group in question. All the provisions of this Constitution relating to meetings of shareholders apply, with all necessary modifications, to a meeting of a Class or a group of Security holders, except that:

- (a) The necessary quorum is two persons holding, or representing the holders of, Securities of the Class or group except where the Kiwi Shareholder is the sole holder in the Class or group in which case the Kiwi Shareholder shall comprise a quorum;
- (b) If the Board so elects, one meeting may be held of holders constituting more than one Class or group, so long as voting at that meeting is by way of a poll, and proper arrangements are made to distinguish between the votes of members of each Class or group; and

- (c) Any holder of Securities in the Class or group, present in person or by Representative, may demand a poll.

13. Notice of meetings of shareholders

13.1 Written notice

Written notice of the time, date and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every Director and the auditor of the Company not less than 10 working days before the meeting.

13.2 Rights of Equity Security Holders and Directors

Equity Security holders 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 Securities carrying votes. Each Director who is not also a shareholder shall have the same rights.

13.3 Contents of notice

The notice must state:

- (a) The nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- (b) The text of any special resolution to be submitted to the meeting.

13.4 Irregularity in notice

An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver. The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person will not invalidate the proceedings at the meeting.

13.5 Adjourned meetings

If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time, date and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

14. Chairperson of meeting of shareholders

14.1 Chairperson of the Board to act

If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of shareholders, that Director must chair the meeting.

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14.2 Other Chairperson

If no chairperson of the Board has been elected or if at any meeting of shareholders the chairperson of the Board is not present within 15 minutes of the time appointed for the commencement of the meeting or the chairperson is unwilling or unable to act, the Directors present, if any, may elect one of their number to be chairperson of the meeting. If 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 choose one of their number to be chairperson.

14.3 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in this Constitution, the chairperson may regulate the proceedings at meetings of shareholders.

15. Quorum for meetings of shareholders

15.1 Quorum required

Subject to clause 15.3 no business may be transacted at a meeting of shareholders if a quorum is not present.

15.2 Size of quorum

A quorum for a meeting of shareholders is present if three shareholders who are entitled to vote at the meeting are present in person or by Representative.

15.3 Lack of quorum

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

- (a) In the case of a meeting called by shareholders under section 121(b) of the Act, the meeting is dissolved;
- (b) In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time, and place as the Directors may appoint and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the shareholders or their Representatives present will constitute a quorum.

16. Voting at meetings of shareholders

16.1 Meetings in one place

In the case of a meeting of shareholders held under clause 12.1(a), unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson:

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

16.2 Audio-visual meetings

In the case of a meeting of shareholders held under clause 12.1(b), unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.

16.3 Postal votes

Unless the Board determines otherwise, shareholders may not exercise the right to vote at a meeting by casting postal votes. If the Board determines that 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.

16.4 Number of votes

Subject to the provisions of clauses 10.8, 17.1 and 17.3 and subject to any rights or restrictions attached to any Share:

- (a) Where voting is by voice or a show of hands, every shareholder present in person or by Representative has one vote;
- (b) On a poll every shareholder present in person or by Representative has:
 - (i) One vote in respect of every fully paid Share held by that shareholder;
 - (ii) In respect of each Share held by that shareholder which is not fully paid, a fraction of the vote or votes which would be exercisable if that Share was fully paid. That fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amount paid and payable (excluding amounts credited and amounts paid in advance of a call).

16.5 Declaration of Chairperson conclusive

A declaration by the chairperson that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 16.6.

16.6 Right to demand poll

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

- (a) Not less than five shareholders having the right to vote at the meeting; or
- (b) 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
- (c) A shareholder or shareholders holding Shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all Shares that confer that right; or
- (d) The chairperson.

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.

16.7 Time of demand for poll

A poll may be demanded either before or after the vote is taken on a resolution. The demand for a poll may be withdrawn.

16.8 Timing of poll

The chairperson may determine the time and manner in which a poll is to be taken and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

16.9 Counting of votes on poll

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 Representative and voting.

16.10 Scrutineers

If a poll is taken the scrutineers shall be the auditors of the Company for the time being unless they are unable or unwilling to act or unless the chairperson directs to the contrary in which case the scrutineers shall be appointed by the chairperson.

16.11 Declaration of result

The chairperson shall be entitled to declare the result of a poll upon the receipt of a certificate from the auditors setting out the maximum number of votes which could be cast at the meeting and upon receipt of notice from the scrutineers that, in the light of the auditors' certificate, sufficient votes to determine the result of the resolution have been counted. The auditors' certificate may set out the maximum number of votes which could be cast at the meeting if all persons entitled to attend and vote at the meeting did so, or it may set out the maximum number of votes which could be cast at the meeting if all persons at the meeting who are entitled to vote did vote.

16.12 Chairperson's casting vote

The chairperson of the meeting is entitled to a casting vote.

16.13 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 must be accepted to the exclusion of the votes of the other joint holders.

16.14 Validity of votes

In the case of any dispute as to the admission or rejection of a vote the chairperson shall determine the same and such determination shall be conclusive.

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17. Voting restrictions

17.1 Restriction

Notwithstanding anything to the contrary in this Constitution or the Listing Rules, a person is not entitled to cast a vote in favour of a resolution when that person is disqualified from voting in favour of the resolution by the voting restrictions contained in Listing Rule 9.3.

17.2 Deadline for challenge

Without prejudice to any remedy (other than those which take legal effect against the Company) which any holder of Securities may have against any disqualified person who casts a vote at a meeting in breach of clause 17.1, no resolution of, or proceeding at, that meeting shall be impugned on the basis of a breach of clause 17.1. Any objection by a holder of Securities to the accuracy or completeness of any list of holders of Securities who are disqualified from voting on a resolution pursuant to clause 17.1 which has been supplied by the Company to the Exchange or any holder of Equity Securities pursuant to the Listing Rules shall 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.

17.3 No vote if amounts unpaid

No shareholder shall be entitled to vote at any meeting in respect of Shares on which any call or other moneys are due and unpaid.

18. Proxies and corporate representatives

18.1 Proxies permitted

A shareholder may exercise the right to vote either by being present in person or by proxy. A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.

18.2 Form of Proxy

A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

18.3 Lodging proxy

No proxy is effective in relation to a meeting unless the proxy form is received by or on behalf of the Company at any place specified for the purpose in the notice of meeting not later than 48 hours before the start of the meeting.

18.4 Proxy form to be sent with notice of meeting

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

- (a) Shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the Security holder to instruct the proxy as to the casting of the vote; and

- (b) Shall not be sent with any name or office (eg chairperson of directors) filled in as proxy holder.

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

18.5 Validity of proxy vote

A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or mental disorder of the principal or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the Share in respect of which the proxy is given, if no written notice of such death, mental disorder, revocation, or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

18.6 Corporate 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. A representative shall have the same rights and powers as if the representative were a proxy.

19. Minutes of shareholder meetings

The Board must ensure that minutes are kept of all proceedings at meetings of shareholders. Minutes which have been signed correct by the chairperson are prima facie evidence of the proceedings.

20. Shareholder proposals

20.1 Notice to the Board

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.

20.2 Notice to shareholders at Company's expense

If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, 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.

20.3 Notice to shareholders at proposing shareholder's expense

If the notice is received by the Board not less than 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.

20.4 Late 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.

20.5 Proposing shareholder's right to give written 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 1,000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.

20.6 Defamatory, frivolous or vexatious statements

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.

20.7 Deposit of costs by proposing shareholder

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.

21. Adjourned meetings and disorderly meetings

21.1 Chairperson's discretion to adjourn meetings

The chairperson may, in his or her sole discretion, at any time during the meeting adjourn from time to time and place to place (including either to a later time at the same meeting or to an adjourned meeting):

- (a) The meeting; or
- (b) Any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion in relation to any of those matters.

In addition, if at any meeting a motion or proposal to adjourn the meeting has been defeated, the chairperson has an absolute discretion whether or not to accept and put to the meeting any further motion or proposal to adjourn the meeting.

21.2 Direction to adjourn

If directed by the meeting, the chairperson must adjourn the meeting.

21.3 Provisions relating to adjourned meetings

No business can be transacted at any adjourned meeting other than the unfinished business at the original meeting. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same manner as the original meeting. Otherwise, it is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

21.4 Adjournment of disorderly meetings

If any meeting becomes so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may, in his or her sole and absolute discretion and without giving reasons, either adjourn or dissolve the meeting.

21.5 Completion of unfinished business

If any meeting is dissolved by the chairperson pursuant to clause 21.4, the unfinished business of the meeting shall be dealt with as follows:

- (a) In respect of any resolution concerning the approval or authorisation of a Distribution, the Board may, in the exercise of the powers conferred on it by the Act, authorise the Distribution;
- (b) In respect of any resolution concerning the remuneration of the auditors, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the auditors;
- (c) The chairperson may direct that any item of business which is uncompleted at the meeting, and which in his or her opinion requires to be voted upon, be put to the vote by a poll in accordance with clauses 16.8 to 16.14 or in such other manner as the chairperson determines without further discussion.

22. Disposal or acquisition of assets

22.1 Restriction

The Company shall not (subject to clause 22.2) enter into any transaction or series of linked or related transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the Company or assets to be held by the Company:

- (a) Which would change the essential nature of the business of the Company; or
- (b) In respect of which the gross value is in excess of 50% of the lesser of the Average Market Capitalisation or the Gross Value of the Assets of the Company,

unless the transaction or series of transactions is first approved by an Ordinary Resolution (or a Special Resolution if section 129 of the Act applies to the transaction or transactions).

22.2 Exception

Clause 22.1 shall not apply to any transaction entered into by the Company with a Bank (as defined in the Listing Rules), on arms length terms and in the ordinary course of banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank.

22.3 Conditional arrangements

Clause 22.1 shall not prevent the Company entering into any agreement or arrangement to do any of the things to which that clause relates if the agreement or arrangement is conditional upon the approval of an Ordinary Resolution (or a Special Resolution if section 129 of the Act applies) and the agreement or arrangement is not completed until that approval is obtained.

22.4 Application to Group

References to the Company in clauses 22.1, 22.2, 22.3 and 22.6 shall, where the context permits, be extended to the group comprised of the Company and its Subsidiaries.

22.5 Kiwi Shareholder approval for sale of main undertaking

The Company may not sell or dispose of the Company's principal business undertaking, or the principal business undertaking of the Company and its Subsidiaries taken as a whole, except with the prior written consent of the Kiwi Shareholder, which may be given on such terms and conditions as the Kiwi Shareholder thinks fit.

22.6 Definitions

In sections 22 and 23 of this Constitution:

- (a) **"Average Market Capitalisation"** means the average end of day market capitalisation over the Business Days in the calendar month before the earlier of the day the transaction is entered into or is announced to the market; and
- (b) **"Gross Value of Assets"** and **"Aggregate Gross Value"** shall be calculated as the greater of the gross tangible asset backing value (from the most recently published financial statements) or market value (in both cases irrespective of and ignoring any liabilities attributable to the assets or of any Subsidiaries or other entities through which the assets are held).

23. Transactions with Related Parties

23.1 Restriction

The Company shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) A direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) In the case of a guarantee or other transaction of the nature referred to in paragraph (c) of clause 23.2, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution.

23.2 Definition of Material Transaction

For the purposes of clause 23.1, "**Material Transaction**" means a transaction whereby the Company:

- (a) Purchases or otherwise acquires, gains, leases (as lessor or lessee) or sells or otherwise disposes of, assets having an Aggregate Gross Value in excess of 5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company;
- (b) Borrows, lends, pays, or receives, money, or incurs an obligation, of an amount in excess of 5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company;
- (c) Enters into any guarantee, indemnity, or similar obligation, or gives any security, for or of obligations which could expose the Company to liability in excess of 5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company;
- (d) Provides or obtains any services (including without limitation the underwriting of Securities or services as an employee) in respect of which the actual gross cost to the Company in any financial year (ignoring any returns or benefits in connection with such services) is likely to exceed an amount equal to 0.5% of the lesser of Shareholders' Funds or the Average Market Capitalisation of the Company; or
- (e) amalgamates, except for amalgamations of a wholly owned Subsidiary of the Company with another wholly owned Subsidiary of the Company or with the Company.

23.3 Definition of Related Party

For the purposes of clause 23.1, "**Related Party**" means a person who is at the time of a Material Transaction, or was at any time within six months before a Material Transaction:

- (a) A director or officer of the Company or any of its Subsidiaries; or
- (b) A substantial security holder (as defined in the Securities Amendment Act 1988) of the Company; or
- (c) An Associated Person of the Company or any of the persons referred to in paragraphs (a) or (b) of this clause other than a person who becomes an Associated Person as a consequence of the Material Transaction itself (or an intention or proposal to enter into the Material Transaction itself); or
- (d) A person in respect of whom there are arrangements other than the Material Transaction itself intended to result in that person becoming a person described in any of paragraphs (a), (b) or (c) of this clause, or of whom the attainment of such a status may reasonably be expected, other than as a consequence of the Material Transaction itself,

but excludes a wholly owned Subsidiary of the Company other than a wholly owned Subsidiary which:

- (e) is a party to a Material Transaction of the type described in clause 23.2(d); and
- (f) the Company intends to sell, or otherwise dispose of to a Related Party.

23.4 Exceptions

Clause 23.1 shall not apply to:

- (a) Any transaction entered into by the Company with a Bank (as defined in the Listing Rules) which is a Related Party of the Company, on arms length terms and in the normal course of banking business, as a result of which transaction the Company has recourse to the credit risk of a Bank; or
- (b) The issue, acquisition or redemption by the Company of Securities of the Company, or the giving by the Company of financial assistance for the purposes of, or in connection with, the purchase of Securities, or the payment of a distribution to holders of Securities, if all holders of Securities of the Class in question are treated in the same way, so that each such holder has an opportunity to receive the same benefit in respect of each Security held by that holder. For the purposes of this paragraph, the transfer, by the Company of shares held by the Company in itself, shall be deemed to constitute an issue of Securities; or
- (c) any employment or service contracts which are Material Transactions under clause 23.2(d) where the Exchange is satisfied that the terms of the contract have been set on an arms' length, commercial basis; or
- (d) any transaction indemnifying any Director or Employee of the Company or a related company which would be a Material Transaction under clause 23.2(d), where such Director or Employee, at the time the indemnity is to be granted, has not been involved in any proceedings, threatened proceedings or circumstances in any capacity which are likely to result in a claim by the Director or Employee under the proposed indemnity; or
- (e) arrangements, amalgamations or compromises pursuant to Part XV of the Act.

23.5 Conditional arrangements

Clause 23.1 shall not prevent the Company entering into any agreement or arrangement to do any of the things to which that clause relates if that agreement or arrangement is conditional upon the approval of an Ordinary Resolution and the agreement or arrangement is not completed until that approval is obtained.

23.6 Application to Group

References to the Company in clauses 23.1 to 23.5 shall, where the context permits, be extended to the group comprised of the Company and its Subsidiaries.

24. Appointment and removal of Directors

24.1 Number and residence

The number of Directors (excluding any Managing Director), must not at any time be more than ~~89~~ nor less than 5 and subject to these limitations the maximum number of Directors to hold office shall be fixed from time to time by Ordinary Resolution. ~~At the time of adoption of this Constitution the maximum number of Directors to hold office for the time being is deemed to have been fixed by Ordinary Resolution at 8 (excluding any Managing Director).~~ At least three Directors must be ordinarily resident in New Zealand.

24.2 Existing Directors to continue in office

The Directors in office at the time of adoption of this Constitution will continue in office and will be deemed to have been appointed pursuant to this Constitution.

24.3 Majority of Board to be New Zealand citizens

A person who is not a New Zealand citizen shall not be eligible for appointment or election as a Director unless, immediately after his or her appointment or election as such, more than one half of the total number of directors then in office (including any Managing Director) would be New Zealand citizens and any appointment or election of a Director in breach of this clause is void. If at any time the number of Directors who are New Zealand citizens is not more than one half of the total number of Directors then in office (including any Managing Director), the Board shall ensure (whether by exercising its powers under clause 24.5 or otherwise) that as soon as practicable sufficient Directors are appointed so that more than one half of the total number of Directors then in office (including any Managing Director) are New Zealand citizens.

24.4 Appointment and removal by Ordinary Resolution

A Director may be appointed by Ordinary Resolution. All Directors shall be subject to removal from office as director by Ordinary Resolution.

24.5 Appointment by Board

Subject to clauses 24.1 and 24.4, the Board may at any time (but is not obliged to) appoint a person to be a Director to fill a vacancy in the maximum number of Directors fixed, or deemed fixed, by Ordinary Resolution under clause 24.1. A Director appointed by the Board shall hold office only until the next annual meeting of the Company but shall be eligible for re-election at that meeting.

24.6 Nominations

No person (other than a Director retiring at a meeting by rotation or following appointment under clause 24.5) shall be elected as a Director at a meeting unless that person has been nominated by a Security holder entitled to attend and vote at the meeting by written notice to the Company accompanied by the consent in writing of that person to the nomination. Nominations must be received by the Company between the date four months before the date of the meeting and the date two months before the date of the meeting. Notice of every valid nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of meeting. There shall be no nomination requirements for a Director retiring at a meeting by rotation or following appointment under clause 24.5.

24.7 Rotation

One third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year but shall be eligible for re-election at that meeting. The Directors to retire shall be those who have been longest in office since they were last elected or deemed elected at a meeting of shareholders. In the case of Directors who were last elected or deemed elected Directors on the same day, those to retire shall be determined by agreement between those Directors or, if they cannot agree, by lot.

24.8 Exceptions to rotation

The provisions of clause 24.7 shall be read subject to the following exceptions:

- (a) A Director appointed pursuant to clause 24.5 and who is subject to retirement pursuant to that clause shall not be subject to retirement by rotation at the next annual meeting of the Company following that Director's appointment pursuant to clause 24.5. That Director shall not be included in the number of Directors upon which the calculation of the number of Directors to retire by rotation at that annual meeting is made;
- (b) If the Company has a Managing Director, that Managing Director shall not be subject to retirement by rotation. That Managing Director shall be included in the number of Directors upon which the calculation of the number of Directors to retire by rotation is made

24.9 Appointment of Directors to be voted on individually

No resolution to appoint or elect a Director (including a resolution to re-elect a Director under clause 24.5) shall be put to the holders of Securities unless:

- (a) The resolution is for the appointment of one Director; or
- (b) The resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has first been passed without a vote being cast against it.

Nothing in this clause prevents the election of two or more Directors by ballot or poll.

24.10 Re-election of retiring Director

At a meeting at which a Director retires, the Company may elect a person to fill the vacated office. If no other person is elected, the retiring Director shall, if standing for re-election, be deemed to have been re-elected unless it is resolved not to fill the vacated office or unless a resolution for the re-election of that Director is put to the meeting and lost.

24.11 Vacation of office

A Director shall cease to hold office as a Director if the Director:

- (a) Becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally; or
- (b) Becomes disqualified from being a Director pursuant to Section 151 of the Act; or
- (c) Resigns from office by notice in writing to the Company; or
- (d) Is removed from office pursuant to this Constitution or the Act; or
- (e) Has for more than six months been absent without permission of the Board from meetings of the Board held during that period; or
- (f) If he or she was a New Zealand citizen when first appointed or elected as a Director, ceases to be a New Zealand citizen and that would result in the provisions of clause 24.3 not being complied with; or
- (g) Is a Managing Director or other executive Director and the Board resolves that he or she should cease to hold office as a Director.

24.12 Timing of retirement and appointment

If:

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

24.13 Election procedures

Subject to the other clauses of this section, the procedures for the election or re-election of Directors shall be determined by the chairperson of the meeting and may be conducted by a resolution or resolutions or by a ballot or ballots according to rules determined by the chairperson.

25. Alternate Directors

25.1 Appointment

Each Director may from time to time appoint any person who is not already a Director and who is approved by a majority of the other Directors to be the Director's alternate Director (an "**Alternate Director**"). No Director may appoint a deputy or agent otherwise than by way of appointment of an Alternate Director.

25.2 Form of appointment and removal

Any appointment or removal of an Alternate Director must be by notice in writing to the Company signed by the relevant Director.

25.3 Rights of Alternate Director

Each Alternate Director will be entitled to:

- (a) Receive notices of all meetings of the Board if the Director who appointed the Alternate Director is known to be either outside of New Zealand or otherwise unavailable to attend meetings;
- (b) Attend and vote at any such meeting at which the Director who appointed the Alternate Director is not personally present; and
- (c) In the absence of the Director who appointed the Alternate Director, perform all the functions, and exercise all the powers, of that Director.

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25.4 Remuneration and expenses

Each Alternate Director's:

- (a) Remuneration (if any) must be paid by the Director who appointed the Alternate Director; and
- (b) Expenses incurred in attending meetings of the Directors and otherwise in relation to the discharge of duties will be paid by the Company.

25.5 Cessation of appointment

An Alternate Director will cease to be an Alternate Director:

- (a) If the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment; or
- (b) On the occurrence of any event relating to the Alternate Director which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director; or
- (c) If a majority of the other Directors resolve to revoke the Alternate Director's appointment.

26. Managing Director

26.1 Appointment and removal

The Board may from time to time appoint one individual who is or will upon appointment be in the fulltime employment of the Company or any Subsidiary of the Company to be a Managing Director either for a fixed term (but not exceeding five years) or otherwise and on such other terms (including remuneration) as the Board determines. The Board may from time to time remove the Managing Director and appoint another in his or her place. A Managing Director who is removed by resolution of the Board shall have no right or claim to continue in office and his or her only remedy against the Company (if any) shall be in damages.

26.2 Resignation

The Managing Director shall, subject to the provisions of any contract between him or her and the Company, be subject to the same provisions concerning resignation, removal and disqualification as the other Directors. If the Managing Director ceases to hold the office of Director from any cause he or she immediately ceases to be Managing Director.

27. Proceedings of the Board

27.1 Methods of holding meetings

A meeting of the Board may be held either:

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

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

27.2 Convening of meetings

A Director or, if requested by a Director to do so, an employee of the Company approved by the Board for this purpose, may convene a meeting of the Board by giving notice in accordance with this clause and clauses 27.3 and 27.4. Notice may be given to a Director in any of the following ways:

- (a) By delivery of the notice to the Director, in which case the notice will be deemed to be given when delivered; or
- (b) By sending the notice by facsimile transmission or other method of electronic communication to the facsimile number or other address given by the Director to the Company for the purpose of receiving notices, in which case the notice will be deemed to be given when sent; or

By posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice will be deemed to be given three days after it is posted.

27.3 Contents of notice

A notice of a meeting must specify 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. The notice must specify the general nature of the business to be conducted at the meeting.

27.4 Notice of meetings

The following periods of notice shall apply to the convening of meetings of the Board:

- (a) Except in the case of urgency falling within paragraph (b) of this clause, the minimum period of notice for convening a meeting of the Board shall be 7 days;
- (b) In the case of urgency where, in the opinion of the chairperson (or, failing him or her, the deputy chairperson or acting chairperson) and one other director, a meeting of the Board is required in the interests of the Company to be convened on less than 7 days' notice, the meeting may be convened on shorter notice.

27.5 Waiver of irregularity

An irregularity in a notice of meeting is waived if all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

27.6 Quorum

(a) A quorum for a meeting of the Board is ~~three~~four Directors and, if there is a Deed Director, must include at least one Deed Director unless:

- (i) that requirement is waived in relation to a notified meeting or meetings notified in writing by the Deed Party who nominated the Deed Director; or

(ii) the Deed Director is excluded from the meeting pursuant to a provision in the Deed.

(b) No business may be transacted at a meeting of the Board unless a quorum is present.

(c) If at any time a quorum is not present at a meeting then the meeting will be adjourned by the chairperson. A meeting adjourned due to lack of quorum may be reconvened by the chairperson on not less than 24 hours' notice given to all Directors. At such reconvened meeting, any four Directors present shall constitute a quorum regardless of the attendance or otherwise of a Deed Director.

27.7 Insufficient number of Directors

The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below 5, the continuing Directors may act for the purpose of increasing the number of Directors to 5 or of summoning a general meeting of the Company, but for no other purpose.

27.8 Chairperson

The Directors may elect one of their number, who must be a New Zealand citizen and (while the Crown is a substantial security holder in the Company within the meaning of section 2 of the Securities Amendment Act 1988 through being the beneficial owner of Equity Securities) a person approved for this purpose by the Minister of Finance, as chairperson of the Board and determine the period for which the chairperson is to hold office. If no chairperson is elected, or if at any meeting the chairperson is not present within 15 minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number to be chairperson of the meeting.

27.9 Votes

Subject to clauses 27.13 and 27.14 every Director has one vote. The chairperson does not have a casting vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.

27.10 Resolutions in writing

A resolution in writing, signed or assented to by three quarters or more of the Directors (including one Deed Director (if there is a Deed Director)), is as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Notice of the form of the proposed resolution shall be given to each Director in accordance with paragraph (a) or (b) of clause 27.2. Any such resolution may consist of several documents (including facsimile or other similar means of communication) in like form, each signed or assented to by one or more Directors. A copy of any such resolution must be entered in or kept with the records of Board proceedings.

27.11 Minutes

The Board must ensure that minutes are kept of all proceedings at meetings of the Board.

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27.12 Validity of acts

All acts done by any meeting of the Board or of a committee of Directors or by any person acting as a Director are valid notwithstanding:

- (a) Any defect in the appointment of any Director or person acting as a Director; or
- (b) That they or any of them were disqualified; or
- (c) Any irregularity in a notice of meeting.

27.13 Interested Directors may not vote

Subject to clause 27.14 a Director may not vote at a meeting of the Board in respect of a matter in which the Director is interested, and the Director shall not be counted in the quorum for the purposes of consideration of that matter. In this clause and clause 27.14 the word "interested" has the meaning given to that word in section 139 of the Act.

27.14 Exception to voting prohibition

Notwithstanding clause 27.13 a Director may vote in respect of and be counted in the quorum for the purposes of a matter in which the Director is interested if the matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

27.15 Quorum for Committees of the Board

(a) If:

(i) there is a Deed Director: and

(ii) the Deed Party has made a written request that a Deed Director be a member of a certain committee of the Board (a **Specified Committee**), then the quorum for meetings of each Specified Committee must include at least one Deed Director, unless in respect of any particular Specified Committee or any particular meeting of a Specified Committee a Deed Director is not required to be included in the quorum in accordance with the terms of the Deed.

(b) If at any time a quorum of a Specified Committee is not present at a meeting then the meeting will be adjourned by the chairperson. A meeting of a Specified Committee adjourned due to lack of quorum may be reconvened by the chairperson on not less than 24 hours' notice given to all members of the Specified Committee. At such reconvened meeting, the members of the Specified Committee present will constitute a quorum regardless of the attendance or otherwise of a Deed Director.

(c) The following periods of notice shall apply to convening meetings of Specified Committees:

(i) Except in the case of urgency falling within subparagraph (ii) of this clause, the minimum period of notice for convening a meeting of a Specified Committee shall be 5 days.

(ii) In the case of urgency where, in the opinion of the chairperson of the Specified Committee, a meeting of the Specified Committee is required in the interests of

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the Company to be convened on less than 5 days' notice, the meeting may be convened on shorter notice.

- (d) Where a Deed Director is a member of the audit committee, that Deed Director will be a non-voting member of the audit committee.

27.1527.16 **Other procedures**

Except as set out in this section 27, the Board may regulate its own procedure. The provisions of the Third Schedule of the Act shall not apply to proceedings of the Board except to the extent that those provisions are included in this Constitution.

28. Directors' remuneration

28.1 Fixing remuneration

No remuneration shall be paid to a Director in his or her capacity as a Director unless that remuneration has been authorised by an Ordinary Resolution. Each such resolution shall express Directors' remuneration as a monetary sum per annum payable to either:

- (a) All Directors taken together; or
- (b) Any person who from time to time holds office as a Director.

28.2 Increase in number of Directors

If remuneration is expressed in accordance with paragraph (a) of clause 28.1, then in the event of an increase in the total number of Directors holding office, the Directors 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 non-executive Directors (other than the chairperson).

28.3 Notice of increase

No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a meeting of the Company unless notice of the amount of increase has been given in the notice of meeting.

28.4 Board's discretion

If remuneration is expressed in accordance with paragraph (a) of clause 28.1, the remuneration may be distributed among the Directors in such manner as the Board from time to time determines.

28.5 Executive Directors

Nothing in clauses 28.1 to 28.3 shall affect the remuneration of executive Directors in their capacity as executives.

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28.6 Expenses

Each Director is entitled to be paid for all reasonable travelling, accommodation and other expenses incurred by the Director in connection with the Director's attendance at meetings or otherwise in connection with the Company's business.

28.7 Special remuneration

Notwithstanding clause 28.1 but subject to section 23 of this Constitution, the Board may authorise special remuneration to any Director who is or has been engaged by the Company to carry out any work or perform any services which is not in the capacity of a director.

28.8 Payments upon cessation of office

The Company may make a payment to a Director or former Director, or his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if:

- (a) The total amount of the payment (or the base for the pension) does not exceed the total remuneration of the Director in his or her capacity as a Director in any three years chosen by the Board; or
- (b) The payment is authorised by an Ordinary Resolution.

Nothing in this clause shall affect any amount paid to an executive Director upon or in connection with the termination of his or her employment with the Company or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

29. Indemnity and insurance for Directors and employees

29.1 Indemnity for Directors

Every Director shall be indemnified by the Company for any costs referred to in section 162(3) of the Act and any liability or costs referred to in section 162(4) of the Act.

29.2 Other indemnities and insurance

In addition to the indemnity set out in clause 29.1, the Company may:

- (a) Indemnify a director or employee of the Company or a related company for any costs referred to in section 162(3) of the Act;
- (b) Indemnify a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(4) of the Act; and
- (c) Effect insurance for a director or employee of the Company or a related company in respect of any liability or costs referred to in section 162(5) of the Act.

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29.3 Interpretation

Words given extended meanings by section 162(9) of the Act have those extended meanings in this section.

30. Dividends

30.1 Method of payment

Any dividend or other money payable to a holder of Securities may be paid by cheque sent through the post to the registered address of the holder or in any other manner determined by the Board and directed by the person entitled to the payment. In the case of joint holders, cheques may be sent to the registered address of the person first named on the Share Register.

30.2 Currency of payment

The Board may, in its discretion, differentiate between shareholders as to the currency in which dividends are to be paid. In exercising that discretion the Board may have regard to the registered address of a shareholder, the register on which a shareholder's Shares are registered or any other matter the Board considers appropriate. In any case where a dividend is to be paid to a shareholder in a currency other than New Zealand currency, the Board must first obtain the written consent of that shareholder to the payment of the dividend in the relevant currency. In such a case the amount payable will be converted from New Zealand currency in a manner, at a time and at an exchange rate determined by the Board.

30.3 Deductions

The Board may deduct from dividends payable to any shareholder in respect of any Shares any:

- (a) Unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific Shares; and
- (b) Amounts the Company may be called upon to pay under any legislation in respect of the specific Shares.

30.4 Entitlement date

Dividends and other distributions or payments to holders of Securities of the Company will be payable to the persons who are the registered as holders of those Securities on an entitlement date fixed by the Board.

30.5 Unclaimed dividends

Dividends or other monetary distributions unclaimed for one year after having been authorised may be used for the benefit of the Company until claimed. All dividends or other monetary distributions unclaimed for five years after having been authorised may be forfeited by the Board for the benefit of the Company. The Company shall nevertheless annul the forfeiture and agree to pay a claimant who produces evidence of entitlement.

31. Notices

31.1 Method of service

All notices, reports, accounts or documents required to be sent to a shareholder shall be delivered, posted or sent in the manner set out in section 391 of the Act provided that:

- (a) where the Crown has provided the Company with an address for service (which address will be recorded in the Share Register) then notices to the Crown shall be delivered, posted or sent to the Crown at that address; and
- (b) where the Kiwi Shareholder has provided the Company with an address for service then notices to the Kiwi Shareholder shall be delivered, posted or sent to the Kiwi Shareholder at that address.

Notices to any other person shall be sent in the same manner as if that person was a shareholder.

31.2 Service of notices outside New Zealand

If a Quoted Security holder 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 shall be posted to the holder at that address and shall be deemed to have been received by the holder 24 hours after the time of the posting.

31.3 Joint holders

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

32. Inspection of records

Except as provided in the Act or unless the Board determines otherwise in any particular case, no holder of Securities shall be entitled to:

- (a) Inspect any records, books, papers, correspondence or documents of the Company; or
- (b) Require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

33. Liquidation

33.1 Distribution of surplus

Subject to the rights of the holders of any Securities in the Company and to clauses 33.2 and 33.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the shareholders in proportion to their shareholding. If any shareholder's Shares are not fully paid up the liquidator of the Company may require those Shares to be fully paid up before the shareholder receives any distribution of the surplus assets of the Company in respect of those Shares.

33.2 Distribution in kind

With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator of the Company may divide amongst the shareholders in kind the whole or any part of the surplus assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:

- (a) Attribute values to assets as the liquidator considers appropriate; and
- (b) Determine how the division will be carried out as between the shareholders or different classes of shareholders.

33.3 Trusts

With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of shareholders of the Company. The liquidator may determine the terms of the trust.

34. Execution of Deeds

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

- (a) Two or more Directors; or
- (b) Any Director and a person authorised by the Board, whose signatures must be witnessed; or
- (c) One or more attorneys appointed by the Company in accordance with section 181 of the Act.

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