

Certificate of Incorporation

FISHER FUNDS MANAGEMENT LIMITED

903800

NZBN: 9429037864354

This is to certify that FISHER FUNDS MANAGEMENT LIMITED was incorporated under the Companies Act 1993 on the 9th day of April 1998.



Registrar of Companies
2nd day of August 2022



Released under the Official Information Act 1982

Constitution

Fisher Funds Management Limited

This document is the Constitution of Fisher Funds Management Limited, as adopted by the Company by Special Resolution passed on the _____ day of _____ 2017.

Certified as the Constitution of the Company.

Director

BELL GULLY

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Constitution of Fisher Funds Management Limited

1. Interpretation

1.1 Definitions

In this Constitution, unless the context otherwise requires:

Act means the Companies Act 1993;

Appointing Entity(ies) has the same meaning given to it in the Shareholders' Agreement;

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 (not being a Saturday or Sunday) on which trading banks are open for business in Auckland, New Zealand;

Class means a class of Shares having attached to them identical rights, privileges, limitations and conditions;

Company means Fisher Funds Management Limited;

Company Group Member has the meaning given to it in the Shareholders' Agreement;

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

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

Interested has the meaning set out in section 139 of the Act (and **Interest** shall be interpreted accordingly);

Interest Group has the meaning set out in section 116 of the Act;

Investor Shareholder has the meaning given to it in the Shareholders' Agreement;

Investor Shareholder Director has the meaning given to it in the Shareholders' Agreement;

Ordinary Resolution means a resolution passed by a simple majority of the votes of Shareholders entitled to vote and voting on the resolution;

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 thereunder, and a donee of an enduring power of attorney complying with that Act;

Representative means a person appointed as a proxy or representative under clause 19 or a Personal Representative;

Securities has the meaning given to it in the Shareholders' Agreement;

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

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

Shareholders' Agreement means the shareholders' agreement between TSB Group Investments Limited, TSB Group Capital Limited, the Investor Shareholder and the Company dated on or about the date of this Constitution;

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

Treasury Stock means Shares which have been acquired by the Company and are held by the Company as treasury stock in accordance with the Act;

TSB Director has the meaning given to it in the Shareholders' Agreement; and

TSB Shareholders has the meaning given to it in the Shareholders' Agreement.

1.2 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 **clauses or paragraphs** are to 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) the **singular** includes the plural and vice versa and one gender includes the other genders;
- (e) the words **written** and **writing** include facsimile communications and any other means of communication resulting in permanent visible reproduction;
- (f) 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; and
- (g) **words or expressions** defined in the Act have the same meaning in this Constitution.

2. Companies Act 1993 and Shareholders' Agreement

2.1 Companies Act

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

2.2 Shareholders' Agreement

- (a) The provisions of this Constitution are to be construed having regard to the terms of the Shareholders' Agreement and to the extent of any inconsistency between the terms of this Constitution and the Shareholders' Agreement, the provisions of the Shareholders' Agreement are to prevail. The Shareholders must pass such resolutions as may be necessary to amend the provisions of this Constitution to make it consistent with the Shareholders' Agreement.
- (b) Notwithstanding clause 2.2(a), the Shareholders' Agreement will have no effect on the matters contemplated by this Constitution until the Shareholders' Agreement comes into force by execution and delivery by the Shareholders. At any time prior to the effective date and time of the Shareholders' Agreement, all references to the "Shareholders' Agreement" in this Constitution are deemed to not be operative and where a matter is expressed to be carried out in accordance with, or in compliance with, the Shareholders' Agreement that matter shall instead be carried out in accordance with the applicable provisions of the Companies Act.

3. Rights attaching to Shares

3.1 Shares

Subject to the rights of holders of Shares which confer special rights, each Share confers on the holder the following rights and entitlements:

- (a) the right to receive notice of and attend every meeting of the Shareholders;
- (b) subject to the Shareholders' Agreement, the right to vote at a meeting of the Shareholders on any resolution, including any resolution to:
 - (i) appoint or remove a Director or auditor; or
 - (ii) adopt a constitution; or
 - (iii) alter the Company's constitution; or
 - (iv) approve a major transaction; or
 - (v) approve an amalgamation of the Company under section 221 of the Act; or
 - (vi) put the Company into liquidation;
- (c) the right to an equal share in dividends authorised by the Board on a per share basis; and
- (d) the right to an equal share in the distribution of the surplus assets of the Company on a per share basis.

4. Issue, consolidation, subdivision and repurchase of Shares

4.1 Issue of Shares

Subject to the Shareholders' Agreement and clause 5 of this Constitution, the Board may issue further Shares in the Company (including different Classes of Shares) which:

- (a) rank equally with, or in priority to, existing Shares; 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.

4.2 Consolidation and subdivision of Shares

Subject to the Shareholders' Agreement, the Board may, with the unanimous approval of each of the TSB Directors and the Investor Shareholder Directors:

- (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.

4.3 Bonus issues

Subject to the Shareholders' Agreement, the Board may, with the unanimous approval of each of the TSB Directors and the Investor Shareholder Directors, 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 other Shares held by those Shareholders referred to in clause 4.3(a)(i),

or partly in one way and partly in the other.

4.4 Shares in lieu of dividends

Subject to the Shareholders' Agreement, the Board may, with the unanimous approval of each of the TSB Directors and the Investor Shareholder Directors, exercise the right conferred by section 54 of the Act to issue Shares to any Shareholders who have agreed to accept the issue of Shares, wholly or partly, in lieu of proposed dividends or proposed future dividends.

4.5 Share repurchases

Subject to the Shareholders' Agreement, the Company may purchase or otherwise acquire Shares issued by it from one or more Shareholders and hold its own Shares.

5. Pre-emptive rights on issue of Shares

5.1 Pre-emptive rights

All Shares proposed to be issued by the Company must be offered for acquisition in the manner set out in clause 6 of the Shareholders' Agreement.

5.2 Treasury Stock

The provisions of this clause 5 also apply to the transfer of Shares held by the Company in itself as if the transfer was an issue of Shares by the Company.

5.3 Section 45 not to apply

Section 45 of the Act will not apply to the Company.

6. Alteration of Shareholders rights

6.1 Special Resolution required

Subject to the Shareholders' Agreement, any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution, the Act, or the terms on which the Shares were issued, must be approved by Special Resolution of each Interest Group and the unanimous approval of each of the TSB Directors and the Investor Shareholder Directors.

6.2 Meetings of Interest Groups

The provisions of this Constitution relating to meetings of Shareholders shall apply to separate meetings of the Shareholders in each Interest Group, except that the necessary quorum shall be a Shareholder or Shareholders or their Representatives holding or representing the holders of not less than one third of the Shares of the relevant Interest Group. Any Shareholder in the Interest Group present in person or by Representative may demand a poll.

6.3 Issue of further Shares

The issue of further Shares ranking equally with, or in priority to, existing Shares whether as to voting rights, distribution or otherwise, is deemed not to be an action affecting the rights attaching to the existing Shares of that Class provided the issue is made in accordance with clause 5 of this Constitution and the Shareholders' Agreement.

7. Share certificates

7.1 Issue of share certificates

The Company may issue share certificates in respect of all or any Shares and must, within 20 business days after receiving an application by a Shareholder, send to that Shareholder a share certificate, in accordance with section 95 of the Act.

7.2 Replacement Share certificates

The Company:

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

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

8. Calls on Shares

8.1 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.

8.2 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.

8.3 Differential calls

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.

8.4 Instalments

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

8.5 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.

8.6 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.

8.7 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 clause 8 and clauses 9 and 10 shall apply as if that sum had become payable by the making of a call.

8.8 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.

8.9 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:

- (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.

9. Lien on Shares

9.1 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.

9.2 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) subject to the Shareholders' Agreement, the Company may sell the Share as if it constituted an issue of Shares; 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.

9.3 **Absolute title of purchaser**

The title of a purchaser of any Shares sold pursuant to clause 9.2 shall not be affected by any irregularity or invalidity in any sale.

9.4 **Application of sale proceeds**

The net proceeds of sale of any Share sold pursuant to clause 9.2, 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.

10. **Forfeiture of Shares**

10.1 **Notice**

If a call on a Share is not paid when due, the Board 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.

10.2 **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.

10.3 **Sale of forfeited shares**

Subject to the Shareholders' Agreement, a forfeited Share may be sold or otherwise disposed of as if it constituted an issue of Shares. 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.

10.4 **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 9.4.

10.5 **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.

10.6 **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.

10.7 **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.

11. Transfer of Securities

11.1 Restrictions on transfer

Securities may only be transferred in accordance with the provisions of the Shareholders' Agreement.

11.2 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.

11.3 Form of transfer

Every instrument of transfer of Shares 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, the instrument of transfer must also be signed or executed by or on behalf of the transferee.

11.4 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 Shares are not fully paid up; or
- (c) 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
- (d) the Board has notice of any agreement by the Shareholder to transfer the Shares only to some specified person or subject to some specified condition; or
- (e) the transferor has not complied with the provisions of the Shareholders' Agreement or this Constitution with respect to the transfer,

provided that the Board resolves to exercise its powers under this clause 11.4 within 30 business days after receipt of the relevant transfer and notice of the resolution is sent to the transferor and to the transferee within five business days of the resolution being passed by the Board.

11.5 Registration of transfers

Every instrument of transfer shall be delivered to the Company's Share register, 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.

11.6 Power to divide Share register

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

11.7 Transfer of Securities

This clause 11 shall also apply to transfers of Securities with any necessary modifications.

11.8 Limits to Board's power to refuse registration of share transfers

Notwithstanding clause 11.4 or any other provision of this Constitution or the Act to the contrary, the Board may not refuse or delay the registration of any transfer of any Share to any person where:

- (a) that transfer is pursuant to or otherwise arises as a direct result of the enforcement of any security interest over or in respect of that Share by any financier or financiers of the Company or one or more of its Shareholders; or
- (b) that transfer is made to a person who purchases the Shares from any financier or financiers of the Company or one or more of its Shareholders pursuant to or otherwise as a direct result of the enforcement of any security interest over or in respect of that Share by any financier or financiers of the Company or one or more of its Shareholders.

12. Transmission of Shares

12.1 Transmission on death of Shareholder

Subject to the Shareholders' Agreement, if a Shareholder dies the survivor, if the deceased was a joint Shareholder, or the Shareholder's Personal Representative, shall be the only person recognised by the Company as having any title to or interest in the Shares of the deceased Shareholder. Nothing in this clause 12.1 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.

12.2 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 clause 12.2(b).

12.3 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.

12.4 Change of trustees

Shares in the Company standing in the name of the Personal Representative of a deceased Shareholder may be transferred to the new Personal Representative upon any change of Personal Representative of the deceased Shareholder.

12.5 Transfer of Shares by Personal Representatives

The Personal Representative of a deceased Shareholder must transfer all the Shares held by the deceased Shareholder in accordance with the provisions of the Shareholders' Agreement.

13. Exercise of powers of Shareholders

13.1 Methods of holding meetings

Subject to the Shareholders' Agreement and clause 14.7, a meeting of Shareholders may be held by a number of Shareholders, who constitute a quorum:

- (a) being assembled together at the time and place appointed for the meeting; or
- (b) participating in the meeting by means of audio, audio and visual, or electronic communication; or
- (c) by a combination of both of the methods described in clauses 13.1(a) and 13.1(b).

13.2 Exercise of power by meeting or written resolution

Subject to the Shareholders' Agreement, a power reserved to the Shareholders by the Act or by this Constitution may be exercised either:

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

13.3 Powers of Shareholders

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

14. Meetings of Shareholders

14.1 Annual meetings

Subject to clauses 14.2 and 14.4, the Company shall hold an annual meeting not later than:

- (a) six months after the balance date of the Company; and
- (b) 15 months after the previous annual meeting.

The Company need not hold its first annual meeting in the calendar year of its registration but shall hold that meeting within 18 months of its registration.

14.2 **No Annual meeting**

It is not necessary for the Board to call, or for the Company to hold, an annual meeting under clause 14.1, if:

- (a) there is nothing required to be done at that meeting; and
- (b) the Board has resolved that it is in the interests of the Company to rely on this clause 14.2 (having regard to whether there is any particular issue that the Shareholders should be given an opportunity to discuss, comment on, or ask questions about).

14.3 **Time and place of annual meeting**

Each annual meeting shall be held at such time and place as the Board appoints.

14.4 **Resolution in lieu of annual meeting**

It is not necessary for the Company to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Act and the Shareholders' Agreement.

14.5 **Special meetings**

All meetings other than annual meetings shall be called special meetings.

14.6 **Calling of special meetings**

A special meeting:

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

14.7 **Shareholder participation in meetings by electronic means**

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

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

15. Notice of meetings of Shareholders

15.1 Written notice

Written notice of the time 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 (if any) not less than 10 business days before the meeting.

15.2 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;
- (b) the text of any Special Resolution to be submitted to the meeting;
- (c) the text of any resolution for the purposes of section 207I or 207J of the Act to be submitted to the meeting; and
- (d) in the case of Special Resolutions required by section 106(1)(a) or (b) of the Act, the right of a Shareholder under section 110 of the Act.

15.3 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.

15.4 Adjourned meetings

Subject to the Shareholders' Agreement, the chairperson may, and if directed by the meeting must, adjourn the meeting to a new time and place. No business can be transacted at any adjourned meeting other than unfinished business at the original meeting.

16. Chairperson of meetings of Shareholders

16.1 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.

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

16.3 Regulation of procedure

Subject to the provisions of the Act, and except as otherwise provided in the Shareholders' Agreement and this Constitution, the chairperson may regulate the proceedings at meetings of Shareholders, provided that such regulation is on an impartial basis.

17. Quorum for meetings of Shareholders

17.1 Quorum required

No business may be transacted at a meeting of Shareholders if a quorum is not present.

17.2 Size and lack of quorum

The quorum requirements for a meeting of the Shareholders, and the consequences of a lack of quorum, are set out in the Shareholders' Agreement.

18. Voting at meetings of Shareholders

18.1 Meetings in one place

In the case of a meeting of Shareholders held under clause 13.1(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.

18.2 Audio-visual meetings

In the case of a meeting of Shareholders held under clause 13.1(b) or 13.1(c), unless a poll is demanded, voting at the meeting shall be by any method permitted by the chairperson of the meeting.

18.3 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.

18.4 Number of votes

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; and
- (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; and

- (ii) in respect of each Share held by that Shareholder which is not fully paid, a proportion of the vote or votes which would be exercisable if that Share was fully paid equivalent to the proportion of the total issue price of that Share which has been paid (disregarding any payment in advance).

18.5 Chairperson does not have casting vote

The chairperson does not have a casting vote.

18.6 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 18.7.

18.7 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 18.7, 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.

18.8 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.

18.9 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.

18.10 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.

18.11 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.

18.12 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 made in good faith shall be conclusive.

18.13 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.

19. Proxies and corporate Representatives

19.1 Proxies permitted

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

19.2 Form of proxy

A proxy must be appointed by notice in writing signed by or, in the case of an electronic notice, sent by the Shareholder and the notice must state whether the appointment is for a particular meeting or a specified term.

19.3 Lodging proxy

No proxy is effective in relation to a meeting unless the proxy form is produced before the start of the meeting.

19.4 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.

19.5 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 corporate Representative shall have the same rights and powers as if the Representative were a proxy.

20. 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.

21. Shareholder proposals

21.1 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.

21.2 Notice to Shareholders at Company's expense

If the notice is received by the Board not less than 20 business 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.

21.3 Notice to Shareholders at proposing Shareholder's expense

If the notice is received by the Board not less than five business days and not more than 20 business 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.

21.4 Late notice

If the notice is received by the Board less than five business 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, 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.

21.5 Proposing Shareholder's right to give written statement

If the Directors intend that Shareholders may vote on the proposal by proxy or 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.

21.6 Defamatory, frivolous or vexatious statements

The Board is not required to include in or with the notice given by the Board:

- (a) any part of a statement prepared by a Shareholder that the Directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous, or vexatious; or
- (b) any part of a proposal or resolution prepared by a Shareholder that the Directors consider to be defamatory (within the meaning of the Defamation Act 1992).

21.7 **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.

22. **Appointment and removal of Directors**

22.1 **Number**

Subject to the Shareholders' Agreement, the maximum number of directors is eight or such other number as the TSB Directors and the Investor Shareholder Directors may unanimously determine from time to time.

22.2 **Existing Directors**

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

22.3 **Sections 153(2) and 156 of the Act does not apply**

Sections 153(2) and 156 of the Act shall not apply to the Company.

22.4 **Appointment and removal**

The Appointing Entity(ies) will have the right to appoint, remove and replace Directors in accordance with the provisions of clause 3 of the Shareholders' Agreement.

22.5 **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 automatically ceases to be a Director under the Shareholders' Agreement;
- (c) dies; or
- (d) resigns from office by notice in writing to the Company; or
- (e) is removed from office pursuant to this Constitution, the Shareholders' Agreement or the Act.

23. **Alternate Directors**

Alternate directors are to be appointed and removed in accordance with the Shareholders' Agreement.

24. Powers of Directors

24.1 Management of Company

Subject to the Shareholders' Agreement, the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

24.2 Exercise of powers by Board

- (a) The Board may exercise all the powers of the Company which are not required, either by the Act, this Constitution or the Shareholders' Agreement, to be exercised by the Shareholders.
- (b) Subject to clause 24.2(c) and the Shareholders' Agreement, all resolutions at Board meetings must be decided by a simple majority of the votes of the Board entitled to vote and voting on the matter.
- (c) The Company and each Shareholder (to the extent that they are able to do so) must ensure that neither the Board nor any Company Group Member does or permits anything specified in Schedule 3 of the Shareholders' Agreement except with the unanimous approval of the TSB Directors and the Investor Shareholder Directors.

24.3 Delegation of powers

- (a) The Board may delegate to a committee of Directors, a Director, an employee of the Company, or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Act or any decisions to be made in relation to any matter set out in Schedule 3 of the Shareholders' Agreement.
- (b) The Board may revoke or vary any power delegated under clause 24.3(a).

24.4 Appointment of attorney

The Company may exercise the power conferred by section 181 of the Act to appoint a person as its attorney, either generally or in relation to a specified matter. Any such power of attorney may contain such provisions for the protection of persons dealing with the attorney as the Board thinks fit, and may also authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

24.5 Ratification by Shareholders

Subject to the provisions of section 177 of the Act (relating to ratification of directors' actions) the Shareholders, or any other person in whom a power is vested by this Constitution or the Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised. The purported exercise of a power that is ratified under this clause 24.5 is deemed to be, and always to have been, a proper and valid exercise of that power.

25. Proceedings of the Board

25.1 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.

25.2 Notice of meeting

Subject to the Shareholders' Agreement:

- (a) 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;
- (b) unless all Directors (other than any Director on a leave of absence) agree otherwise, at least five business days' prior written notice of any meeting of Directors must be given to:
 - (i) every Director; and
 - (ii) any Alternate Director who is an alternate of a Director who is known to be unavailable to attend the meeting; and
- (c) unless all Directors (other than any Director on a leave of absence) agree otherwise, the Board cannot pass a resolution unless notice of the subject of that resolution was included in the applicable notice of meeting.

25.3 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.

25.4 Quorum

The quorum requirements for a meeting of the Board, and the consequences of a lack of quorum, are set out in the Shareholders' Agreement.

25.5 Insufficient number of Directors

The Directors may act notwithstanding any vacancy in their body.

25.6 Chairperson

The chairperson of the Board shall be appointed or temporarily appointed, removed and replaced in accordance with the Shareholders' Agreement.

25.7 Votes

Subject to the Shareholders' Agreement:

- (a) each Director is entitled to one vote on a Board resolution;
- (b) in addition to a Director's individual voting rights, a Director has the right to vote on behalf of each Director in respect of which he or she is an alternate where his or her appointer is not present at the meeting;
- (c) if the number of TSB Directors present and entitled to vote on a given matter is less than the maximum number of TSB Directors that the TSB Shareholders are entitled to appoint under the Shareholders' Agreement, then the TSB Directors who are present and entitled to vote on that matter will be entitled, collectively, to votes equal to that maximum number;
- (d) if the number of Investor Shareholder Directors present and entitled to vote on a given matter is less than the maximum number of Investor Shareholder Directors that the Investor Shareholder is entitled to appoint under the Shareholders' Agreement, then the Investor Shareholder Directors who are present and entitled to vote on that matter will be entitled, collectively, to votes equal to that maximum number;
- (e) 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; and
- (f) the chairperson does not have a casting vote on a Board resolution in addition to any other votes he or she may be entitled to exercise.

25.8 Resolutions in writing

A resolution in writing is as valid and effective as if it had been passed at a meeting of the Board duly convened and held provided that:

- (a) if the Shareholders' Agreement was not in force at the time of resolution, the resolution was signed or assented to by a majority of the Directors; and
- (b) if the Shareholders' Agreement was in force at the time of the resolution, the resolution was signed or assented to in accordance with clause 4.11 of the Shareholders' Agreement.

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.

25.9 Minutes

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

25.10 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 any person acting as a Director; or

- (b) that they or any of them were disqualified; or
- (c) any irregularity in a notice of meeting.

25.11 Other procedures

Except as set out in this clause 25 and the Shareholders' Agreement, 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.

26. Directors' Interests

26.1 Disclosure of Interests

A Director shall comply with the provisions of section 140 of the Act (relating to disclosure of Interest of directors) but failure to comply with that section does not affect the operation of clause 26.2.

26.2 Personal involvement of Directors

Notwithstanding any rule of law or equity to the contrary, but subject to:

- (a) the Shareholders' Agreement; and
- (b) sections 107(3) and 141 of the Act (relating to avoidance of transactions in which a director is Interested) and section 36 of the Financial Reporting Act 2013 (prohibiting a director of a company from acting as auditor of that company),

a Director may:

- (c) contract with the Company in any capacity;
- (d) be a party to any transaction with the Company;
- (e) have any direct or indirect personal involvement or Interest in any transaction or arrangement to which the Company is a party or in which it is otherwise directly or indirectly interested or involved;
- (f) become a director or other officer of, or otherwise interested in, any company promoted by the Company or in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (g) retain any remuneration, profit or benefits in relation to any of the foregoing,

and no contract or arrangement of any kind referred to in this clause 26.2 may be avoided by reason of a Director's Interest.

26.3 Interested Directors may vote

Subject to the Shareholders' Agreement, a Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

- (a) vote on any matter relating to the transaction;

- (b) attend a meeting of the Board at which any matter relating to the transaction arises and be included among the Directors present at the meeting for the purposes of a quorum;
- (c) sign a document relating to the transaction on behalf of the Company; and
- (d) do any other thing in his or her capacity as a Director in relation to the transaction, as if the Director was not Interested in the transaction.

26.4 Interests of Shareholders

Subject to the Shareholders' Agreement, any Director may, when exercising powers or performing duties as a Director, act in a manner which he or she believes is in the best interests of a Shareholder or Shareholders, even though it may not be in the best interests of the Company.

27. Directors' remuneration and other benefits

Subject to the Shareholders' Agreement, the Board may exercise the power conferred by section 161 of the Act to authorise any payment or other benefit of the kind referred to in that section.

28. Indemnity and insurance

28.1 Indemnity for Directors

Subject to the Shareholders' Agreement, 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.

28.2 Indemnities and insurance

Subject to the Shareholders' Agreement, in addition to the indemnity set out in clause 28.1, 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.

28.3 Interpretation

Words given extended meanings by section 162(9) of the Act have those extended meanings in this clause 28.

29. Dividends

29.1 Power to authorise

The Board may, subject to the Shareholders' Agreement, the Act and this Constitution, authorise the payment of dividends by the Company at times, and of amounts, and in such form as it thinks fit and may do everything which is necessary or expedient to give effect to the payment of such dividends. Prior to authorising the payment of a dividend, the Board must be satisfied on reasonable grounds that the Company will immediately after payment of the dividend satisfy the solvency test.

29.2 Method of payment

A dividend or other distribution payable in cash may be paid in such manner as the Board thinks fit to the entitled Shareholders or, in the case of joint holders, to the holder named first in the register, or to such other person and in such manner as the holder or joint holders may direct.

29.3 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 in a currency other than New Zealand currency, 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.

29.4 Deductions

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

- (a) unpaid calls, instalments, premiums 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.

29.5 Entitlement date

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

29.6 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 Board may, nevertheless, agree to pay a claimant who produces evidence of entitlement.

30. Notices

30.1 Method of service

Subject to the Shareholders' Agreement, all notices, reports, accounts or documents required to be sent to a Shareholder shall be sent in the manner set out in section 391 of the Act. Notices to any other person shall be sent in the same manner as if that person was a Shareholder.

30.2 Joint holders

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

31. Inspection of records

Except as provided in the Act or the Shareholders' Agreement 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.

32. Liquidation

32.1 Distribution of surplus

Subject to the rights of any Shareholders, the Shareholders' Agreement and to clauses 32.2 and 32.3, 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.

32.2 Distribution in kind

With the approval of the Shareholders by Ordinary Resolution, and subject to the Shareholders' Agreement, the liquidator of the Company may divide amongst the Shareholders in kind the whole or any part of the 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.

32.3 Trusts

With the approval of the Shareholders 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. The liquidator may determine the terms of the trust.

33. Method of contracting

33.1 Deeds

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

- (a) two or more Directors; or
- (b) if there is only one Director, by that Director whose signature must be witnessed; or
- (c) one or more attorneys appointed by the Company; or
- (d) any Director and a person authorised by the Board whose signature must be witnessed.

33.2 Other written contracts

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

33.3 Other obligations

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