
Constitution of
Heritage Gold NZ Limited

INTERPRETATION

1 Defined terms

1.1 In this constitution the following expressions have the following meanings:

Act means the Companies Act 1993;

ASX means Australian Stock Exchange Limited, its successors and assigns and, as the context permits, includes any duly authorised delegate of ASX;

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

Company means Heritage Gold NZ Limited;

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

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

NSX means the Stock Exchange of Newcastle Limited, its successors and assigns and, as the context permits, includes any duly authorised delegate of NSX;

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

NZX means New Zealand Exchange Limited, its successors and assigns and, as the context permits, includes any duly authorised delegate of NZX;

NZX Listing Rules means the Listing Rules applying to the NZSX market (or any successor to that market) as amended from time to time;

Rules includes:

- (a) the NZX Listing Rules, for so long as the Company is listed on a market operated by NZX;
- (b) the ASX Listing Rules, for so long as securities in the Company are quoted on the Official List of ASX;
- (c) the NSX Listing Rules, for so long as securities in the Company are quoted on the Official List of NSX;

Share means a share in the Company;

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

1.2 Subject to *clause 1.1*, expressions:

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

2 **Construction**

In this constitution:

- 2.1 headings appear as a matter of convenience and do not affect the interpretation of this constitution;
- 2.2 the singular includes the plural and vice versa, and words importing one gender include the other genders;
- 2.3 a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- 2.4 a reference to a Rule or the Rules includes that Rule or the Rules as from time to time amended or substituted;
- 2.5 a reference to *permitted by the Act* or *permitted by the Rules* means not prohibited by the Act or not prohibited by the Rules;
- 2.6 the Schedules form part of this constitution.

RELATIONSHIP BETWEEN CONSTITUTION AND RULES

3 **Incorporation of Rules while listed**

For so long as the Company is listed, this constitution is deemed to incorporate all provisions of the Rules required under the Rules to be contained or incorporated by reference in this constitution, as those provisions apply from time to time (and as modified by any ruling relevant to the Company).

4 **Company must comply with Rules while listed**

- 4.1 For so long as the Company is listed, the Company must comply with the NZX Listing Rules. If this constitution contains any provision inconsistent with the NZX

Listing Rules, as modified by any ruling relevant to the Company, then the NZX Listing Rules prevail.

- 4.2 For so long as securities in the Company are quoted on the Official List of the ASX, the Company must comply with the ASX Listing Rules to the extent that those rules are applicable to the Company from time to time.
- 4.3 For so long as the securities of the Company are quoted on the Official List of the NSX, the Company must comply with the NSX Listing Rules to the extent that those rules are applicable to the Company from time to time.

5 **NZX's rulings**

If NZX has granted a ruling in relation to the Company authorising any act or omission which in the absence of that ruling would be in contravention of the NZX Listing Rules or this constitution that act or omission will, unless a contrary intention appears in this constitution, be deemed to be authorised by the NZX Listing Rules and by this constitution.

6 **Failure to comply with Rules has limited effect in some cases**

Any failure to comply with the Rules does 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 Rules is not entitled to enforce that transaction or contract. This clause does not affect the rights of any holder of securities of the Company against the Company or the Board arising from failure to comply with the Rules.

7 **Compliance with ASX Listing Rules**

- 7.1 Notwithstanding anything contained in this Constitution, if the ASX Listing Rules prohibit an act being done, the act shall not be done.
- 7.2 Nothing contained in this Constitution prevents an act being done that the ASX Listing Rules require to be done.
- 7.3 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).
- 7.4 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.
- 7.5 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.
- 7.6 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.

SHARES AND SHAREHOLDERS

8 **Company's Shares**

At the time of adoption of this constitution, the Company has 82,009,400 Shares, with the rights set out in section 36 of the Act. No money is payable for calls or otherwise on those Shares.

9 **Board need not comply with statutory pre-emptive rights**

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

10 **Further issues of Shares do not affect rights of existing shareholders**

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

11 **Consolidation and subdivision**

The Board may:

11.1 consolidate and divide Shares or any class of Shares in proportion to those Shares or the Shares in that class; or

11.2 subdivide Shares or any class of Shares in proportion to those Shares or the Shares in that class.

12 **Share register may be divided**

The share register may be divided into 2 or more registers kept in different places.

13 **Record date for shareholder voting**

The Board may determine in a notice of meeting for the purpose of voting at that meeting that those registered shareholders as at 5 p.m. on a day not more than 2 working days before the meeting will be the only persons entitled to exercise the right to vote at that meeting.

14 **Registration of separate parcels**

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

15 **Board may refuse or delay transfer**

The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares (subject to their terms of issue) if permitted to do so by the Act or the Rules. Without limiting this *clause 15*:

- 15.1 Restricted securities (as defined in the ASX Listing Rules) cannot be disposed of during the relevant escrow period except as permitted by the ASX Listing Rules;
- 15.2 The Board will refuse to acknowledge a disposal (including registering a transfer) of restricted securities during the relevant escrow period except as permitted by the ASX Listing Rules or the ASX;
- 15.3 During a breach of ASX Listing Rules relating to restricted securities or a breach of a restriction agreement, the holder of the restricted securities will not be entitled to any dividend or distribution, or voting rights, in respect of the restricted securities.

16 **Compulsory sale of less than minimum holdings**

- 16.1 The Company may at any time give written notice (a *Notice*) to a security holder holding less than a minimum holding (an *Eligible Holder*) that if, at the expiration of 3 months after the date the notice is given, securities then registered in the name of the holder are less than a minimum holding the Company may sell those securities through NZX, another Recognised Stock Exchange, or in some other manner approved by NZX.
- 16.2 The Notice must state that the securities referred to in the notice may be sold by the Company unless, by the date specified in the Notice, being a date not less than 6 weeks after the date the relevant notice is despatched to the Eligible Holder (the *Relevant Date*), the security holder advises the Company that this *clause 15* is not to apply to those securities.
- 16.3 Every Eligible Holder may, by notice in writing and delivered to the registered office of the Company or the office of the share registrar before the Relevant Date, require the Company not to sell the securities in accordance with *clause 16*, in which event no sale of that Eligible Holder's securities may be undertaken by the Company under *clause 16*.
- 16.4 The Company may receive consideration for any securities sold under this *clause 16* and may execute a transfer of the securities in favour of the person to whom the securities are sold, and register that person as the holder of the securities.
- 16.5 The Company (or the purchaser) will bear all costs, including brokerage and stamp duty, associated with the sale of any securities under this clause.
- 16.6 The Board may authorise the transfer of the securities sold under this clause to a purchaser of the securities through NZX or in some other manner approved by NZX, and the holder is deemed to have authorised the Company to act on behalf of the holder and to sign all necessary documents relating to the sale. The purchaser is not bound to see to the application of the purchase money, nor shall the title to the securities be affected by any irregularity or invalidity in the procedures under this constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.

16.7 The proceeds of the sale of any securities sold under this clause must be applied as follows:

- (a) first, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the securities.
- (b) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.
- (c) if the security holder has been issued a certificate by the Company in respect of the securities sold under clause 16, then the Company may retain the proceeds of sale until the security holder has delivered to the Company or the office of the share registrar, the certificate relating to such securities or other documentation as the Board may require to show that such certificate has been lost or destroyed.

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

16.9 The procedure for sale of less than a minimum holding set out in *clause 16* (the *Procedure*) may only be invoked by the Company once in any 12 month period after its adoption.

16.10 If, after the Procedure has been invoked by the Board, the Company receives a notice of a takeover offer made under the Takeovers Code (or any other Takeovers Code approved under Section 28 of the Takeovers Act 1993), no more sales of securities may be made under *clause 16* until after the close of the offer period. After such close of offers, the Procedure may then be invoked again.

17 Board may make calls on Shares

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

18 Forfeiture of Shares where calls or other amounts unpaid

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

18.1 a call, or an instalment of a call, on those Shares; or

18.2 any amount that is payable under this constitution or the terms of issue of those Shares or any contract for the issue of the Shares.

19 Company's lien

The Company has a lien on Shares and dividends in respect of such Shares on the terms set out in the First Schedule.

20 Company may acquire and hold Shares

Subject to this constitution and the Rules, the Company may:

20.1 purchase or otherwise acquire Shares issued by the Company and may hold Shares as treasury stock; and

20.2 make an offer to one or more holders of Shares to acquire Shares issued by the Company in such number or proportions as it thinks fit,

in accordance with the Act and the Rules.

21 Company may issue and redeem Shares

Subject to this constitution and the Rules, the Company may:

21.1 issue or redeem redeemable Shares; and

21.2 exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares,

in accordance with the Act and the Rules.

22 Board deductions from distribution

The Board may, at its discretion, deduct from any dividend or other distribution payable to a shareholder any amount owed by the shareholder to the Company in respect of which the Company has a lien over the specific Shares on which the dividend or other distribution is payable. The Board must deduct from any dividend or other distribution payable to any shareholder any amount it is required by law to deduct, including withholding and other taxes.

23 Distributions do not bear interest

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

24 Unclaimed distributions

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

25 Proceedings at meetings of shareholders and interest groups

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

DIRECTORS

26 Appointment of Directors

- 26.1 Any natural person who is not disqualified under the Act and, if required under the Rules, who has been nominated within the time limits under the Rules, may be appointed as a Director by an ordinary resolution of security holders.
- 26.2 The Board may appoint any person who is not disqualified under the Act to be a Director to fill a casual vacancy or as an addition to the existing Directors. Any Director appointed under this clause (including any person who subsequent to his or her appointment as a Director becomes an executive Director) may hold office only until the next annual meeting, and is then eligible for election, but must not be taken into account in determining the Directors who are to retire by rotation at that meeting.
- 26.3 The persons holding office as directors of the Company on adoption of this constitution continue in office and are deemed to have been appointed as Directors pursuant to this constitution. Similarly the chairperson of the Board continues in office and is deemed to have been appointed as chairperson pursuant to this constitution.

27 Rotation of Directors

- 27.1 At the annual meeting in each year at least 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, but shall be eligible for re-election at that meeting. The following Directors are exempt from this particular obligation to retire:
- (a) Directors appointed by the Board pursuant to *clause 26.2* (who are offered for election under that clause); and
 - (b) one executive Director nominated by the Board.

The Directors referred to in paragraph (b) shall be included in the number of Directors upon which the calculation for the purposes of this clause is based. The Directors referred to in paragraph (a) shall be excluded from that number.

- 27.2 The Directors to retire at an annual meeting will be those Directors who have been longest in office since their last election. Persons who became Directors on the same day must retire in the order determined by lot, unless the Board resolves otherwise.
- 27.3 A retiring Director continues to hold office:
- (a) until he or she is re-elected; or
 - (b) if he or she is not re-elected, until the meeting of security holders at which he or she retires (or any adjournment of that meeting) elects someone in his or her place; or

- (c) if the meeting of security holders does not elect someone in his or her place, until the end of the meeting or any adjournment of the meeting.

27.4 The security holders may by ordinary resolution fill the office vacated by a Director who is retiring in accordance with this clause by electing a person who is not disqualified under the Act to that office at the annual meeting at which the outgoing Director retires. If no new Director is elected and if the retiring Director (not being disqualified under the Act) is offering himself or herself for re-election, the retiring Director shall be deemed to be re-elected unless it is expressly resolved by ordinary resolution not to fill the vacated office or a resolution for the re-election of that Director is put to the meeting and lost.

28 No shareholding qualification for Directors

There is no shareholding qualification for Directors.

29 Election of chairperson of the Board and term of office

29.1 The Directors may elect one of their number as chairperson of the Board.

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

30 Office of Director vacated in certain cases

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

30.1 dies; or

30.2 becomes disqualified from being a director pursuant to the Act; or

30.3 retires from office and is not re-elected or deemed to have been re-elected under this constitution.

31 Meetings of the Board

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

32 Written resolutions of Board permitted

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

33 Written resolutions may be in counterparts

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

34 Board delegates to comply with regulations

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

35 Committee proceedings

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

36 Reimbursement of expenses

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

37 Directors may appoint and remove alternate Directors

Every Director may:

37.1 appoint any person who is not a Director and is not disqualified by the Act or this constitution from being a Director, and whose appointment has been approved in writing by a majority of the other Directors, to act as an alternate Director in his or her place either for a specified period, or generally during the absence or inability to act from time to time of such Director; and

37.2 remove his or her alternate Director from that office,

by giving written notice to that effect to the Company. A majority of the other Directors may similarly remove an alternate of a Director from that office.

38 Alternate Director has powers of appointer

While acting in the place of the Director who appointed him or her, an alternate Director:

38.1 has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, and participate in a meeting, of the Board, and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director);

38.2 is also subject to the same terms and conditions of appointment as that Director, except that he or she is not entitled to receive remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointer as the appointer may direct by notice in writing to the Company.

39 Termination of appointment of alternate Director

The appointment of an alternate Director terminates automatically if the Director who appointed him or her ceases to be a Director or if an event occurs which

would cause him or her to vacate office if he or she were a Director. A Director retiring by rotation and being re-elected is not to be treated as having ceased to be a Director for the purposes of this clause.

40 Board may appoint Managing Director

The Board may appoint one of the Directors to the office of Managing Director (by whatever name called) for a term not exceeding 5 years and on such other terms as the Board thinks fit. A Managing Director may be re-appointed at any time within 3 months before expiry of a term of appointment for a further period not exceeding 5 years, and may be re-appointed for a further term of 5 years in the same manner. Subject to the terms of any agreement entered into between the Board and the Director concerned, the Board may revoke the appointment. The appointment of a Managing Director shall terminate automatically if he or she ceases to be a Director.

41 Remuneration of Managing Director

A Managing Director will receive in addition to remuneration for services as a Director such remuneration and benefits as the Board may determine.

42 Powers conferred on Managing Director

Subject to the restrictions on delegation in the Act, the Board may:

42.1 confer on a Managing Director any of the powers exercisable by the Board; and

42.2 without affecting the powers of a Managing Director to act as a member of the Board, impose such terms and conditions and such restrictions as the Board thinks fit; and

42.3 alter or revoke any of the powers it confers under this clause.

43 Managing Director has no power to appoint alternate Managing Director

The power to appoint an alternate Director conferred on Directors by this constitution does not confer on any Managing Director the power to appoint an alternate Managing Director.

GENERAL

44 Company may indemnify directors and employees for certain liabilities

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

45 Company may effect insurance for directors and employees

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

46 Manner of execution

An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by a Director, or any other person authorised by the Board, whose signature must be witnessed, or as otherwise permitted by the Act.

47 Distribution of surplus assets in kind

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

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

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

and

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

but so that no shareholder is compelled to accept any shares or other securities on which there is any liability.

FIRST SCHEDULE: CALLS, FORFEITURE AND LIENS**INTERPRETATION**

- 1 **Construction**
Unless stated otherwise, references to clauses are references to clauses in this Schedule.

CALLS ON SHARES

- 2 **Shareholders must pay calls**
Every shareholder on receiving at least 30 working days' notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any Shares that shareholder holds. The Board may revoke or postpone a call, or require a call to be paid by instalments.
- 3 **Call made when Board resolution passed**
A call is regarded as having been made at the time when the Board resolution authorising the call was passed.
- 4 **Joint holders are jointly and severally liable**
The joint holders of a Share are jointly and severally liable to pay all calls for that Share.
- 5 **Unpaid calls will accrue interest**
If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. Subject to the Rules, the Board may waive some or all of the payment of that interest.
- 6 **Amounts payable under terms of issue treated as calls**
Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of Shares or under a contract for the issue of Shares, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this constitution will apply as if the amount had become payable by virtue of a call made in accordance with this constitution.
- 7 **Board may differentiate between shareholders as to calls**
On the issue of Shares, the Board may differentiate between shareholders as to the amount of calls to be paid and the times of payment.
- 8 **Board may accept payment in advance for calls**
 - 8.1 Where a shareholder is willing to advance some or all of the money unpaid and uncalled on any Share of that shareholder, the Board may accept the amount advanced on the Company's behalf. The Board may pay interest on that amount at a rate agreed between the Board and that shareholder for the period between

the date that the amount is accepted and the date that the amount becomes payable pursuant to a call or the date specified for its payment.

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

FORFEITURE OF SHARES

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

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

10 **Notice of forfeiture must satisfy certain requirements**

The notice served on a shareholder under *clause 9* must specify a date not earlier than 28 working days after the date the notice is served by which the payment is to be made. The notice must also state that in the event of non-payment by the appointed time, the Shares to which the call, instalment, or other amount relates, will be liable to be forfeited by the shareholder.

11 **Failure to comply with notice may lead to forfeiture**

Where a valid notice under *clause 9* is served on a shareholder and the shareholder fails to comply with the notice, then the Board may resolve that any Share for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited.

12 **Board may deal with forfeited Share**

A forfeited Share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit. However, the Board may cancel the forfeiture at any time before the sale or other disposition on such terms as the Board thinks fit if the call, instalment or other amount which remains unpaid on the Share is paid.

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

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

14 **Evidence of forfeiture**

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

15 Company may sell forfeited Share

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

LIEN ON SHARES**16 Company's lien**

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

16.1 all Shares registered in the name of a shareholder; and

16.2 all dividends authorised in respect of such Shares; and

16.3 the proceeds of sale of such Shares,

for:

16.4 unpaid calls and instalments payable in respect of any such Shares; and

16.5 interest on any such calls or instalments; and

16.6 sale expenses owing to the Company in respect of any such Shares; and

16.7 any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other legislation in respect of the Shares of that shareholder, whether the period for payment has arrived or not.

17 Waiver of lien

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

18 Company may sell Share on which it has a lien

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

18.1 the lien on the Share is for a sum which is presently payable; and

18.2 the registered holder of the Share, or the person entitled to it on his or her death or bankruptcy, has failed to pay that sum within 10 working days after the Company has served that registered holder written notice demanding payment of that sum.

19 Company may transfer Share and apply proceeds

- 19.1 The Company may receive the consideration given for a Share sold under *clause 18*, and may execute a transfer of the Share in favour of the person to whom the Share is sold, and register that person as the holder of the Share discharged from all calls due prior to the purchase.
- 19.2 The purchaser is not bound to see to the application of the purchase money, and the purchaser's title to the Share is not affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.
- 19.3 The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, shall (subject to a like lien for sums not presently payable that existed upon the Share before the sale) be paid to the person who held the Share immediately before the date of sale or to his or her executors, administrators or assigns.

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

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

NOTICE**2 Written notice must be given to shareholders, Directors and auditors**

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 any auditor of the Company not less than 10 working days before the meeting.

3 Notice must state nature of business

The notice must:

- 3.1 state the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- 3.2 state the text of any special resolution to be submitted to the meeting; and
- 3.3 contain or be accompanied by sufficient explanation to enable a reasonable person to understand the effect of the resolutions proposed in the notice; and
- 3.4 for so long as the Company is listed, comply with the requirements of the Rules.

4 Proxy form must be sent with notice

A proxy form must be sent with each notice of meeting.

5 Irregularities in notice may be waived

Any irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or if all such shareholders agree to the waiver.

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

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

7 **Notice of an adjournment**

- 7.1 If a meeting is adjourned for less than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place.
- 7.2 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

MEETING AND QUORUM

8 **Methods of holding meetings**

A meeting of shareholders may be held either:

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

The Company is not required to hold meetings of shareholders in the manner specified in *clause 8.2*. Meetings will be held in that manner only if the notice of meeting so specifies or the Board otherwise decides that the Company should do so.

9 **Business to be transacted only if a quorum is present**

Subject to *clauses 11 and 12*, business may be transacted at a meeting of shareholders only if a quorum is present at the time when the meeting proceeds to business.

10 **Quorum for shareholders' meeting**

A quorum for a meeting of shareholders is present if 2 or more shareholders are present having the right to vote at the meeting.

11 **Meeting convened at shareholders' request dissolved if no quorum**

If a quorum is not present within 30 minutes after the time appointed for the meeting convened on the written request of shareholders holding Shares together carrying at least 5 percent of the voting rights entitled to be exercised, the meeting will be dissolved automatically.

12 **Other meetings to be adjourned if no quorum**

If a quorum is not present within 30 minutes after the time appointed for a meeting (other than a special meeting convened under the Act or a meeting of an interest group), the meeting will be adjourned to the same day in the following week at the same time and place, or to such other day, time, and place as the Directors may appoint. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present will constitute a quorum.

CHAIRPERSON

13 Chairperson of Board to be chairperson of meeting

The chairperson of the Board, if one has been elected by the Directors and is present at a meeting of shareholders, will chair the meeting.

14 Directors may elect chairperson if chairperson of Board not available

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

15 As a last resort shareholders may elect chairperson

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

16 Chairperson's power to adjourn meeting

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

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

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

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

17 Chairperson may dissolve or adjourn unruly meetings

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

18 Dissolved meetings - unfinished business

If the chairperson proposes to dissolve a meeting pursuant to *clause 17*, and there is any item of unfinished business of the meeting which in his or her opinion requires to be voted upon, then that item shall be dealt with by the chairperson directing it to be put to the vote by a poll without further discussion.

VOTING

19 Voting by show of hands or voice vote at meeting

In the case of a meeting of shareholders held under *clause 8.1*, unless a poll is demanded, voting at the meeting will be by a show of hands or by voice vote, as the chairperson may determine.

20 Voting by voice if audio-conference meeting

In the case of a meeting of shareholders held under *clause 8.2*, unless a poll is demanded, voting at the meeting will be by the shareholders signifying individually their assent or dissent by voice or by such other manner as the chairperson may decide.

21 Votes of joint holders

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

22 Shareholder loses certain voting rights if calls unpaid

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

23 Chairperson not allowed casting vote

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

24 Chairperson's declaration of result

Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote or by such other manner as the chairperson may have decided under *clause 20* is carried by the requisite majority or lost, shall be conclusive evidence of that fact.

POLLS**25 Poll may be demanded by chairperson or shareholder**

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

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

25.2 at least 5 shareholders having the right to vote at the meeting; or

25.3 a shareholder or shareholders having the right to exercise at least 10 percent of the total votes entitled to be exercised on the business to be transacted at the meeting; or

25.4 a shareholder or shareholders holding Shares that confer a right to vote at the meeting and on which the total amount paid up is at least 10 percent of the total amount paid up on all the Shares that confer that right.

26 Time at which polls to be taken

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

27 Counting votes cast in a poll

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

28 Declaration of poll result

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

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

29 Proxy allowed to demand a poll

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

SHAREHOLDER PROPOSALS**30 Shareholder proposals by written notice**

A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote. The provisions of clause 9 of the first schedule to the Act apply to any notice given pursuant to this clause.

PROXIES**31 Proxies permitted**

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

32 Proxy to be treated as shareholder

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

33 Appointment of proxy must be in writing and specify restrictions

A proxy must be appointed by a notice in writing that is signed by the shareholder, and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a shareholder of the Company.

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

No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

35 Form of notice of proxy

- 35.1 A notice appointing a proxy shall be in such form as the Board may direct.
- 35.2 Proxy form must provide for two-way voting on all resolutions, enabling the shareholder to instruct the proxy as to the casting of the vote, and must not be sent with any name or office (e.g. "chairman of directors") filled in as proxy holder.
- 35.3 So far as reasonably practicable, resolutions must be framed in a manner which facilitates two way voting instructions for proxy holders.

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

Where:

- 36.1 the shareholder has died or become incapacitated; or
- 36.2 the proxy, or the authority under which the proxy was executed, has been revoked; or
- 36.3 the Share in respect of which the notice of proxy is given has been transferred,

before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

POSTAL VOTES**37 Postal votes are not permitted**

A shareholder may not exercise the right to vote at a meeting by casting a postal vote.

CORPORATE REPRESENTATIVES**38 Corporations may act by representative**

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

MINUTES**39 Board must keep minutes of proceedings**

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

OTHER PROCEEDINGS

40 Chairperson may regulate other proceedings

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

THIRD SCHEDULE: PROCEEDINGS OF THE BOARD**NOTICE OF MEETING**

- 1 Director's power to convene meetings**

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.
- 2 Notice to be sent to Director's address**

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

The notice of meeting must include the date, time and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters.
- 4 Period of notice required to be given to Directors**

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

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

Any irregularity in the notice of a meeting, or failure to comply with *clauses 1 to 5* of this Schedule is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

MEETING AND QUORUM

7 Methods of holding meetings

A meeting of the Board may be held either:

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

7.2 By means of audio, or audio and visual, communication by which all Directors participating can simultaneously hear each other throughout the meeting.

8 Quorum for Board meeting

Unless otherwise determined by the Board, the quorum necessary for the transaction of business at a meeting of the Board is 3 Directors. No business may be transacted at a meeting of the Board unless a quorum is present.

9 Meeting adjourned if no quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the following working day at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

CHAIRPERSON

10 Chairperson to chair meetings

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

VOTING

11 Voting on resolutions

Each Director has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it. A Director must not vote where that Director is not permitted to vote by the Rules or this constitution. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

12 Chairperson does not have a casting vote

The chairperson of the Board does not have a casting vote, except in the case of an equality of votes where two Directors form a quorum, the chairperson at a meeting at which only two Directors are present does not have a casting vote.

MINUTES**13 Board must keep minutes of proceedings**

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

OTHER PROCEEDINGS**14 Board may regulate other proceedings**

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