

The Companies Act 1993

Constitution

of

SHOPPING CENTRE INVESTMENTS LIMITED

This Constitution contains regulations relating to the conduct of the company's affairs and must be read in conjunction with the Companies Act 1993

SCHEDULE

1 Rights attaching to, consideration for and terms on which shares are to be issued (clause 1.2)

(Default All shares are standard shares with a nil consideration unless otherwise specified)

Here specify and define variations to the standard share including consideration and terms of issue and special voting quorum distribution and other class rights.

2 Other Provisions

(Add other provisions and clauses as may be required)

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INTERPRETATION

In this constitution, unless the context otherwise requires:

“**Act**” means the Companies Act 1993.

“**s**” means section references in the Act.

“**§**” refers to comparable sections of the Act which may or may not be the same as the corresponding provision in this constitution.

“**Schedule**” means the Schedule to this constitution.

“**Stock Exchange**” means a financial product market that is licensed under Part 5 of the Financial Market Conduct Act 2013, or other financial product trading platform which is permitted under it, or any exemption issued under it.

Definitions in Act - Words or expressions used in this constitution bear the same meaning as in the Act.

Masculine, feminine, and neuter - Words which import any gender include the other genders.

Singular and plural - Words which import the singular and plural number include the plural and singular number respectively.

References to legislation - A reference to legislation includes any amendments, re-enactments, or replacements of it.

Conflict –

If there is a conflict between the provisions of this constitution and a mandatory provision of the Act, the Act shall prevail, and if there is a conflict between any provision set out in the Schedule and any other provision in this constitution, the Schedule shall prevail. Further, if there is a conflict between the provisions of this constitution and the rules of any Stock Exchange on which the company’s shares are listed, then the rules of the Stock Exchange shall prevail (see clause 36).

PART I - SHARES

1 RIGHTS AND POWERS ATTACHING TO SHARES

Standard Shares

1.1 Unless otherwise provided by the terms of issue or by this constitution, a share confers on the holder [§36]

1.1.1 The right to one vote on a poll at a meeting of the company on any resolution.

1.1.2 The right to an equal share in dividends authorised by the board.

1.1.3 The right to an equal share in the distribution of the surplus assets of the company.

Specified Shares

1.2 The rights conferred on the holder of a share or any class of share, and the consideration for and terms on which the share or any class of share will be issued may be specified in the Schedule.

Other Classes

1.3 Any class of share may be issued by the company at any time including those which [§37]:

1.3.1 Are convertible;

1.3.2 Are redeemable;

1.3.3 Are restricted or limited as to transfer;

1.3.4 Differentiate as to liability;

1.3.5 Confer preferential rights to distributions of capital or income;

1.3.6 Confer special quorum rights;

1.3.7 Confer special, limited or conditional voting rights;

1.3.8 Do not confer voting rights;

1.3.9 Confer the right to exclusivity appoint or remove a number of directors; or

1.3.10 Possess any combination of two or more of the foregoing characteristics.

2 ISSUE OF SHARES & OPTIONS

Initial Share Issue

2.1 The company must issue the number and class of shares specified in the application for registration to the person or persons named therein [§41].

Subsequent Share Issues & Option Issues etc

2.2 The board may:

2.2.1 Issue shares at any time, to any person, in any number, in such classes and on such terms as it thinks fit; and

2.2.2 Issue options or other instruments convertible into shares (in any number and of any class) in the company at any time, to any person and on such terms as it thinks fit and issue shares pursuant to those options or other instruments convertible into shares in the company,

in either case, subject to the provisions of the Act and this constitution [§42 & 49].

2.3 The board may only issue (a) shares and (b) options or other instruments convertible into shares under which the shares (when issued) will rank equally with or in priority to existing shares (whether as to voting rights or distributions) if

2.3.1 All affected interest groups have approved the issue by special resolution [§117],

2.3.2 The issue is made in accordance with the preemptive rights contained in clause 2.9 [§45], or

2.3.3 All entitled persons have agreed to the proposed share issue [§107(2)].

Consideration for Share Issues

2.4 The consideration for which a share is issued may take any form and may be cash, promissory notes, contracts for future services, real or personal property, or other securities of the company. [§46].

2.5 The persons named in the application for registration shall not be required to pay any consideration for the issue of a share on registration unless the consideration and terms of issue are fixed:

2.5.1 In the Schedule, or in any subscription application for the share or in any contract for the issue of the share whether entered into before or after registration; or

2.5.2 By the board within three months from the date of registration (subject however to clause 2.5.1).

2.6 Before the board issues shares (not being the issue of shares on registration of the company) the board must [§47(1)]:

2.6.1 Decide the consideration for which the shares will be issued and the terms on which they will be issued; and

- 2.6.2 If the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
- 2.6.3 Resolve that, in its opinion, the consideration for and terms of the issue are fair and reasonable to the company and to all existing shareholders; and
- 2.6.4 If the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of the consideration to be provided is not less than the amount to be credited for the issue.

For the avoidance of doubt, this clause 2.6 does not apply to any issue of bonus shares (being the issue of shares that are fully paid up from the reserves of the company to all shareholders of the same class in proportion to the number of shares held by each shareholder).

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

For the avoidance of doubt, this clause 2.7 does not apply to any issue of bonus shares (being the issue of shares that are fully paid up from the reserves of the company to all shareholders of the same class in proportion to the number of shares held by each shareholder).

- 2.8 The board must deliver notice of subsequent share issues to the Registrar of Companies within 10 working days of such issue. Directors who vote in favour of the resolutions required by clauses 2.6 or 2.7 must sign a certificate as to the matters set out in those clauses and deliver the same to the Registrar of Companies within 10 working days after it is given, as required by the Act [§§43 & 47(5)].

Pre-emptive Rights - New Issues

- 2.9 For the purposes of clause 2.3.2, any shares issued or proposed to be issued by the company that rank or would rank as to voting or distribution rights or both, equally with or prior to shares already issued by the company, must be offered for acquisition (in priority) as follows
 - 2.9.1 First, to the holders of the same class of share,
 - 2.9.2 Secondly, to the holders of other classes of share (if any), and
 - 2.9.3 Thirdly, to any person or persons whom the board is prepared to register as a holder or holders of that class of share.
- 2.10 An offer to holders of shares already issued must be pro rata according to the number of shares held by them and must remain open for acceptance for a reasonable time, not being less than 10 working days.
- 2.11 Shareholders of the same class of share shall be entitled to purchase additional shares to the extent that shareholders of that class do not accept the offer or accept the offer only in part. Competing applications for additional shares shall be allocated pro rata according to the number of shares held by the applicants.
- 2.12 Except as provided in clauses 2.9 to 2.12 and the Act, the procedure for the offer acceptance and issue of shares shall be determined by the board. No irregularity in such process

shall affect the validity of the allocation and issue of shares.

Consolidation and Subdivision of Shares

- 2.13 The board may consolidate, divide or subdivide the shares or any class of shares in the company into a lesser or greater number of shares.
- 2.14 Clauses 2.6 and 2.7 shall not apply to the consolidation division or subdivision of the shares or any class of shares in the company in proportion to those shares or the shares in that class [§48].

3 ALTERATION OF SHAREHOLDER RIGHTS

- 3.1 The company may not take action that affects rights attached to shares unless that action has been approved by a special resolution of each interest group of shareholders, including the following rights [§117]:
 - 3.1.1 The rights, privileges, limitations and conditions attached to the share by the Act or this constitution, including voting rights and rights to distributions;
 - 3.1.2 Pre-emptive rights arising under clauses 2.9 to 2.12;
 - 3.1.3 The right to have the procedure set out in s117 and any further procedure required by this constitution for the amendment or alteration of rights observed by the company;
 - 3.1.4 The right that a procedure required by this constitution for the amendment or alteration of rights not be amended or altered.

4 LIABILITY OF SHAREHOLDERS

Limited Liability

- 4.1 The liability of a shareholder to the company is limited to any amount unpaid on a share held by the shareholder [§97].
- 4.2 An amount unpaid on a share may comprise all or part of the consideration payable in respect of the issue of the share or any other liability imposed on its holder by its terms of issue.

Calls

- 4.3 The board may make calls on the holder of a share, for any amount unpaid on the share, and not by the terms of issue made payable on a fixed date.
- 4.4 The board must give the shareholder not less than 10 working days notice of a call specifying the amount, date and place of payment A call may be revoked or postponed as the board may determine.
- 4.5 The joint holders of a share shall be jointly and severally liable to pay all calls.
- 4.6 Amounts unpaid on a share shall bear interest from the due date for payment to the date of actual payment at a rate to be determined by the board but not exceeding 4% per annum above all the company's bank's prime overdraft rate, but the board shall be at liberty to waive payment of that interest wholly or in part.

Application of Distributions

- 4.7 Any dividend or distribution due to the holder of a share may be applied in reduction or satisfaction of any amount unpaid on that share or any other amount presently payable by the shareholder to the company.

5 LIEN ON SHARES

Existence and Subject Matter of Lien

- 5.1 The company shall have a first and continuing lien on its shares for:
- 5.1.1 Amounts unpaid (whether presently payable or not) on those shares; or
- 5.1.2 Other amounts presently payable by the then holder of those shares to the company on any account whatsoever.

- 5.2 The lien shall extend to all dividends and distributions from time to time declared in respect of those shares.

Power of Sale

- 5.3 The company shall have power to sell in a manner determined by the board, any share on which the company has a lien if:
- 5.3.1 An amount is presently payable to the company on those shares or by the holder of those share; and
- 5.3.2 The company has demanded the amount in writing and payment has not been made within 20 working days after the demand.

Transfer of Shares

- 5.4 To give effect to the power of sale, the company may
- 5.4.1 Receive the proceeds of sale;
- 5.4.2 Execute a share transfer in favour of the purchaser; and
- 5.4.3 Enter the purchaser's name in the share register.

- 5.5 Any shares offered for sale in accordance with this clause 5 must be first offered by the board to existing shareholders in priority as set out in clause 2.9.

Proceeds of Sale

- 5.6 The proceeds of sale must be applied first, in payment of costs and expenses incurred in enforcing the lien, and second in payment of the amount secured by the lien.
- 5.7 The balance if any, shall be paid to the former shareholder provided however if any consideration is payable at a future date in respect of the issue of the share over which the lien existed, the balance may be held in suspense by the company to the extent of any such consideration (without any obligation to account for interest), and applied in payment when such consideration is due.
- 5.8 The purchaser need not see to the application of the sale proceeds nor will the purchaser's title to the shares be affected by any irregularity or invalidity in the enforcement of the lien.

6 SHARE REGISTER

Company to Maintain Share Register

- 6.1 Subject to clause 6.3 (agent may maintain register), the company must maintain a share register that records the shares issued by the company [§87(1)].
- 6.2 The share register must state, with respect to each class of shares [§87(2)]:
- 6.2.1 The names alphabetically arranged, and the latest known address of each person who is, or has within the last 10 years been, a shareholder;
- 6.2.2 The number of shares of that class held by each shareholder within the last 10 years; and
- 6.2.3 The date of any:
- 6.2.3.1 Issue of shares to;

- 6.2.3.2 Repurchase or redemption of shares from; or
- 6.2.3.3 Transfer of shares by or to each shareholder within the last 10 years and the name of the person to or from whom the shares were transferred.

- 6.3 An agent may maintain the share register of the company [§87(3)].

- 6.3A The share register may be kept and maintained by way of an electronic system.

Share Register as Evidence of Legal Title

- 6.4 The entry of the name of a person in the share register as holder of a share is prima face evidence that legal title to the share vests in that person [§89].
- 6.5 The company may treat the registered holder of a share as the only person entitled to:
- 6.5.1 Exercise the right to vote attaching to the share;
- 6.5.2 Receive notices;
- 6.5.3 Receive a distribution in respect of the share; and
- 6.5.4 Exercise the other rights and powers attaching to the share.

Trusts not to be Entered on Register

- 6.6 No notice of a trust, whether express, implied or constructive, may be entered on the share register [§92].

Personal Representative may be Registered

- 6.7 A personal representative of a deceased person whose name is registered in the share register of the company as the holder of a share in the company is entitled to be registered as the holder of that share as personal representative [§93].
- 6.8 The registration of a trustee, executor, or administrator pursuant to this clause does not constitute notice of a trust.

Declaration of Ownership

- 6.9 The board may, from time to time and, on each occasion, by notice in writing (an "Ownership Declaration Request"), require any shareholder, or proposed transferee of any shares, to, on or before the date which is 7 days after the date of the Ownership Declaration Request, deliver to the company a statutory declaration (in a form approved by the board) and such other evidence as the board may require, which discloses full details of the beneficial ownership of those shares and of each other Relevant Interest (as defined in the Financial Markets Conduct Act 2013) in those shares. Sections 290, 291, and 292 of the Financial Markets Conduct Act 2013 will apply (with the necessary changes) to the Ownership Declaration Request as if the company was a "listed issuer" and the shares were "quoted voting products" under that Act.

7 TRANSFER OF SHARES

Entry on the Register

- 7.1 A share may be transferred by entry of the name of the transferee on the share register [§84].
- 7.1A A share may be transferred by way of an electronic share transfer system where the board has approved the use of such electronic share transfer system.

Form of Transfer

7.2 For the purpose of transferring shares, a form of transfer signed by the present holder of the shares or by his or her personal representative must be delivered to:

7.2.1 The company; or

7.2.2 An agent of the company who maintains the share register.

7.3 The form of transfer must be signed by the transferee if registration as holder of the shares imposes a liability to the company on the transferee.

7.4 A transfer shall be an instrument in writing:

7.4.1 In any usual or common form;

7.4.2 In any other form which the board may approve; or

7.4.3 In any other form which is permitted by the terms of any electronic share transfer system that is utilised by the company.

Clauses 7.2, 7.3, and 7.4 do not apply in respect of any transfer pursuant to an electronic transfer system that the board has approved the use of.

Rights to Refuse Transfer

7.5 The board may refuse to register the transfer of any share (and, where an agent maintains the share register, may instruct that agent to not to register the transfer of any share), if [§84(4)(c)]:

7.5.1 The company has a lien on the share;

7.5.2 The share is not fully paid;

7.5.3 The holder of the share has failed to comply with the terms of any contract with the company;

7.5.4 [Not used];

7.5.5 The board considers that it would not be in the interests of the company to do so; or

7.5.6 The board believes effecting the transfer would be a breach of the law

Where Share Certificate Issued

7.6 Where a share certificate has been issued, a transfer of the shares to which it relates must not be registered by the company unless the form of transfer is accompanied by the share certificate relating to the shares, or by evidence as to its loss or destruction and, if required, an indemnity in a form required by the board [§95(5)].

8. **NOT USED**

PART II - DISTRIBUTIONS

9 DISTRIBUTIONS TO SHAREHOLDERS

Board May Authorise Distributions if Company is Solvent

9.1 The board may if it is satisfied on reasonable grounds that the company will, immediately after the distribution, satisfy the solvency test, and subject to any restrictions in this constitution, authorise a distribution by the company at a time and of an amount and to any shareholders it thinks fit [§52].

9.2 A distribution may be any one or more of the following

9.2.1 The payment of a dividend;

9.2.2 The issue of shares in lieu of a proposed dividend;

9.2.3 The offer of shareholder discounts in respect of some or all of the goods and services provided by the company;

9.2.4 The cancellation or reduction of a shareholder's liability in relation to a share to be acquired or redeemed by the company, or as a result of a proposed alteration to this constitution;

9.2.5 The purchase or acquisition by the company of its own shares;

9.2.6 The redemption by the company of its shares; and

9.2.7 The giving of financial assistance for the purpose of, or in connection with the purchase of its own shares or the shares of its holding company.

Directors' Certificate

9.3 The directors who vote in favour of a distribution must sign a certificate stating that in their opinion, the company will, immediately after the distribution satisfy the solvency test and the grounds for that opinion [§52(2)].

9.4 The board must not make a distribution if, after a distribution is authorised and before it is made, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the distribution is made satisfy the solvency test [§52(3)].

Solvency Test

9.5 Subject to the Act and this constitution, the company satisfies the solvency test if [§4]:

9.5.1 It is able to pay its debts as they become due in the normal course of business; and

9.5.2 The value of the company's assets is greater than the value of its liabilities, including contingent liabilities.

Dividends

9.6 A dividend is a distribution other than the purchase or acquisition by the company of its own shares, or the giving of financial assistance for the purpose of, or in connection with the purchase of its own shares or the shares of its holding company [§53(1)].

9.7 The board must not authorise a dividend [§53(2)]:

9.7.1 In respect of some but not all the shares in a class; or

9.7.2 That is of a greater value per share in respect of some shares of a class than it is in respect of other shares of that class

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the company in satisfaction of the liability of the shareholder under this constitution or under the terms of issue of the share.

9.8 A shareholder may waive his or her entitlement to receive a dividend by notice in writing to the company signed by or on behalf of the shareholder [§53(3)].

Bonus Shares in lieu of Dividend

9.9 The board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividends if [§54]:

9.9.1 The right to receive shares, wholly or partly, in lieu of the proposed dividend or proposed future

dividends has been offered to all shareholders of the same class on the same terms;

- 9.9.2 If all shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained;
- 9.9.3 The shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it;
- 9.9.4 The shares issued to each shareholder are issued on the same terms and subject to the same rights as the shares issued to all shareholders in that class who agreed to receive the shares; and
- 9.9.5 The consideration for the shares has been determined in accordance with this constitution and §47 of the Act.

10 COMPANY MAY ACQUIRE ITS OWN SHARES

Right to Acquire

- 10.1 The company may purchase or otherwise acquire its own shares if the board makes an offer to acquire such shares and [§59]:
 - 10.1.1 The offer is to all shareholders to acquire a proportion of their shares that:
 - 10.1.1.1 would, if accepted, leave unaffected relative voting and distribution rights within each class; and
 - 10.1.1.2 affords a reasonable opportunity to accept the offer [§60(1)(a)]; or
 - 10.1.2 The offer is to one or more shareholders, and:
 - 10.1.2.1 All shareholders have consented in writing; or
 - 10.1.2.2 The offer is special and the resolutions and disclosure document referred to in clauses 10.3 and 10.4 have been passed and given respectively [§60(1)(b)].

Resolutions Required for Offers

- 10.2 The board may make an offer to acquire shares issued by the company only if it has previously resolved that [§§52 & 60(3)]:
 - 10.2.1 It is satisfied on reasonable grounds that immediately after the purchase or acquisition, the company will satisfy the solvency test;
 - 10.2.2 The acquisition in question is in the best interests of the company;
 - 10.2.3 The terms of the offer and the consideration offered for the shares are fair and reasonable to the company; and
 - 10.2.4 It is not aware of any information that will not be disclosed to shareholders:
 - 10.2.4.1 Which is material to an assessment of the value of the shares; and
 - 10.2.4.2 As a result of which the terms of the offer and consideration offered for the shares are unfair to shareholders accepting the offer.

Further Resolutions Required for Special Offers

- 10.3 Where the board makes a special offer to acquire shares to one or more shareholders without the consent in writing of all shareholders, then the board must also resolve [§61(1)]:

10.3.1 That the acquisition is of benefit to the remaining shareholders; and

10.3.2 That the terms of the offer and the consideration offered for the shares are fair and reasonable to the remaining shareholders.

Disclosure Document for Special Offers

- 10.4 Before an offer is made pursuant to a resolution under clause 10.3, the company must send to each shareholder a disclosure document that sets out [§61(5)]:
 - 10.4.1 The nature and terms of the offer and if made to specified shareholders to whom it will be made;
 - 10.4.2 The nature and extent of any relevant interest of any director of the company in any shares the subject of the offer; and
 - 10.4.3 The text of the resolutions required by clause 10.3, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implication for the company and its shareholders of the proposed acquisition.

- 10.5 The offer must be made not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder [§61(6)].

Resolutions and Certificate

- 10.6 The resolutions referred to in this clause 10 must set out in full the reasons for the directors' conclusions [§§60(4) & 61(2)].
- 10.7 The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein [§§52, 60(5) & 61(3)].
- 10.8 The board must not make an offer to acquire shares issued by the company if, after the passing of the resolutions and before the making of the offer the board ceases to be satisfied as to the matters resolved [§§60(6) & 61(4)].

Company may acquire its own shares by way of Stock Exchange Acquisition

- 10.9 Where shares in the company are listed on a Stock Exchange, the company may purchase or otherwise acquire its own shares in accordance with section 63 of the Act (stock exchange acquisitions subject to prior notice to shareholders) and section 65 of the Act (stock exchange acquisitions not subject to prior notice to shareholders) (or in accordance with any one or more of those sections).

11 COMPANY MAY HOLD TREASURY STOCK

- 11.1 Shares issued by the company which are purchased or acquired by it shall be deemed cancelled immediately on acquisition unless [§67A]:
 - 11.1.1 The board resolves that the shares concerned shall be retained as treasury stock; and
 - 11.1.2 The number of shares acquired, when aggregated with shares of the same class held by the company at the time of acquisition, does not exceed 5 percent of the shares of that class previously issued by the company excluding shares previously deemed to be cancelled.
- 11.2 The rights and obligations attaching to any treasury stock owned by the company shall be suspended during any such period of ownership [§67B].
- 11.3 Any treasury stock may be transferred at any time and to any person, in any number and on such terms as the board

thinks fit. For the avoidance of doubt, this means that the transfer of treasury stock held by the company shall not be subject to any provisions in the Act or this constitution relating to the issue or transfer of shares except to the extent section 67C of the Act applies (consideration to be decided by board in certain circumstances).

12 COMPANY REDEMPTION OF SHARES

Right to Issue Redeemable Shares

12.1 The company may issue shares which are redeemable [§68]:

- 12.1.1 At the option of the company;
- 12.1.2 At the option of the holder of the shares; or
- 12.1.3 On a date specified by their terms of issue, for a consideration that is-
- 12.1.4 Specified;
- 12.1.5 To be calculated by reference to a formula; or
- 12.1.6 Required to be fixed by a suitably qualified person who is not associated with or interested in the company.

Redemption at Option of Company

12.2 Shares may be redeemed at the option of the company only if [§69]:

- 12.2.1 The option is exercised in relation to all shareholders of the same class and in a manner that will leave unaffected relative voting and distribution rights; or
- 12.2.2 The option is exercised in relation to one or more shareholders, and
 - 12.2.2.1 All shareholders have consented in writing; or
 - 12.2.2.2 The redemption is special and the resolutions and disclosure document referred to in clauses 12.4 and 12.5 have been passed and given respectively.

Resolutions Required for Redemptions at Option of Company

12.3 The company may exercise an option to redeem shares only if the board has previously resolved that [§69(2) & 70]:

- 12.3.1 It is satisfied on reasonable grounds that immediately after the shares have been redeemed, the company will satisfy the solvency test;
- 12.3.2 The redemption of the shares is in the best interests of the company; and
- 12.3.3 The consideration for the redemption of the shares is fair and reasonable to the company.

Further Resolutions Required for Special Redemptions

12.4 Where the company exercises a special option to redeem shares in relation to one or more shareholders without the consent in writing of all shareholders, then the board must also resolve [§71(1)]:

- 12.4.1 That the redemption is of benefit to the remaining shareholders; and
- 12.4.2 That the consideration for the redemption is fair and reasonable to the remaining shareholders.

Disclosure Document for Special Redemptions

12.5 Before the exercise of an option to redeem shares pursuant to a resolution under clause 12.4 the company must send to each shareholder a disclosure document that sets out [§71(5)]:

- 12.5.1 The nature and terms of the redemption of the shares, and if the option to redeem the shares is to be exercised in relation to specified shareholders, the names of those shareholders; and
- 12.5.2 The text of the resolutions required by clause 12.4, together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed redemption.

12.6 The option must be exercised not less than 10 and not more than 30 working days after the disclosure document has been sent to each shareholder [§71(6)].

Resolutions and Certificate

- 12.7 The resolutions referred to in this clause 12 must set out in full the reasons for the directors' conclusions [§§69(3) & 71(2)].
- 12.8 The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein [§§69(4), 70(2) & 71(3)].
- 12.9 The company must not exercise an option to redeem shares if, after the passing of the resolutions and before the option is exercised, the board ceases to be satisfied as to the matters resolved [§§69(5), 70(3) & 71(4)].

13 FINANCIAL ASSISTANCE FOR PURCHASE OF OWN SHARES

Right to Give Financial Assistance

13.1 The company may give financial assistance to a person for the purpose of or in connection with the purchase of a share issued or to be issued by the company or by its holding company, whether directly or indirectly if [§76]:

- 13.1.1 All shareholders have consented in writing;
- 13.1.2 The financial assistance is special and the resolutions and disclosure document referred to in clauses 13.4 and 13.5 have been passed and given respectively; or
- 13.1.3 The financial assistance is limited and is given in accordance with clause 13.7.

13.2 For the purposes of this clause, financial assistance includes a loan, a guarantee, and the provision of a security.

Resolutions Required for Financial Assistance

13.3 The company may give financial assistance to purchase shares issued by the company only if the board has previously resolved that [§§76(2) & 77(1)]:

- 13.3.1 It is satisfied on reasonable grounds that the company will, immediately after the giving of financial assistance satisfy the solvency test;
- 13.3.2 The company should provide the assistance;
- 13.3.3 Giving the assistance is in the best interests of the company; and
- 13.3.4 The terms and conditions under which the assistance is given is fair and reasonable to the company.

Further Resolutions Required for Special Financial Assistance

- 13.4 Where the company gives special financial assistance without the consent in writing of all shareholders or in accordance with clause 13.7, then the board must also resolve [§78]:
 - 13.4.1 That giving the assistance in question is of benefit to those shareholders not receiving the assistance; and
 - 13.4.2 That the terms and conditions under which the assistance is given are fair and reasonable to those shareholders not receiving the assistance.

Disclosure Document for Special Financial Assistance

- 13.5 Before financial assistance is given pursuant to a resolution under clause 13.4, the company must send to each shareholder a disclosure document that sets out [§78(5)]:
 - 13.5.1 The nature and terms of the financial assistance to be given, and to whom it will be given;
 - 13.5.2 If the financial assistance is to be given to a nominee for another person, the name of that other person; and
 - 13.5.3 The text of the resolutions required by clause 13.4 together with such further information and explanation as may be necessary to enable a reasonable shareholder to understand the nature and implications for the company and its shareholders of the proposed transaction.
- 13.6 The financial assistance may be given not less than 10 working days and not more than 12 months after the disclosure document has been sent to each shareholder [§78(6)].

Limited Financial Assistance

- 13.7 Where the financial assistance is given without the consent in writing of all shareholders or is not of benefit to and fair and reasonable to those shareholders not receiving the assistance the company may give financial assistance only if [§80]:
 - 13.7.1 The amount of the financial assistance, together with any other financial assistance given by the company pursuant to this clause 13.7 repayment of which remains outstanding, would not exceed 5 per cent of the aggregate of amounts received by the company in respect of the issue of shares and reserves as disclosed in the most recent financial statements of the company that comply with s10 of the Financial Reporting Act 1993;
 - 13.7.2 The company receives fair value in connection with the assistance; and
 - 13.7.3 Within 10 working days of providing the financial assistance, the company sends to each shareholder a notice containing the following particulars:
 - 13.7.3.1 The class and number of shares in respect of which the financial assistance has been provided;
 - 13.7.3.2 The consideration paid or payable for the shares in respect of which the financial assistance has been provided;
 - 13.7.3.3 The identity of the person receiving the financial assistance and, if that

person is not the beneficial owner of the shares in respect of which the financial assistance has been provided, the identity of that beneficial owner; and

- 13.7.3.4 The nature and if quantifiable the amount of the financial assistance.

Resolutions and Certificate

- 13.8 The resolutions referred to in this clause 13 must set out in full the reasons for the directors' conclusions [§§76(3) & 78(2)].
- 13.9 The directors who vote in favour of the resolutions must sign a certificate as to the matters set out therein [§§76(4), 77(2) & 78(3)].
- 13.10 The company must not give financial assistance if, after the passing of the resolutions and before the assistance is given the board ceases to be satisfied as to the matters resolved [§§76(5) 77(3)& 78(4)].

Solvency Test for giving Financial Assistance

- 13.11 In applying the solvency test for the purposes of this clause 13 relating to financial assistance
 - 13.11.1 "Assets" excludes amounts of financial assistance given by the company at any time in the form of loans; and
 - 13.11.2 "Liabilities" includes the face value of all outstanding liabilities, whether contingent or otherwise, incurred by the company at any time in connection with the giving of financial assistance.

PART III - SHAREHOLDERS

14 POWERS OF SHAREHOLDERS

Powers Reserved to Shareholders

- 14.1 Powers reserved to the shareholders by the Act or this constitution may be exercised only [8104]:
 - 14.1.1 At an annual or special meeting of shareholders; or
 - 14.1.2 By a resolution in lieu of a meeting.

Ordinary Resolutions

- 14.2 An ordinary resolution is a resolution that is approved by a simple majority of the votes of those shareholders entitled to vote and voting on the question [§105].
- 14.3 Unless otherwise specified in the Act or this constitution a power reserved to shareholders may be exercised by an ordinary resolution.

Special Resolutions

- 14.4 A special resolution is a resolution approved by a majority of 75 percent of the votes of those shareholders entitled to vote and voting on the question [§2].
- 14.5 The shareholders must exercise the following powers by special resolution, namely to:
 - 14.5.1 Adopt a constitution or alter or revoke the constitution [§§32 &106];
 - 14.5.2 Approve a major transaction [§106];
 - 14.5.3 Approve an amalgamation of the company [§106];
 - 14.5.4 Put the company into liquidation [§106];
 - 14.5.5 Appoint a liquidator [§241];
 - 14.5.6 Remove the company from the register [§318]; or

14.5.7 Transfer the place of incorporation [§352].

Unanimous Shareholder Agreement

14.6 If all shareholders have agreed or concur, in writing [§107];

14.6.1 A dividend may be authorised otherwise than in accordance with s53;

14.6.2 A discount scheme may be approved otherwise than in accordance with s55;

14.6.3 Shares in the company may be acquired otherwise than in accordance with s58 to s65;

14.6.4 Shares in the company may be redeemed otherwise than in accordance with s69 to s72;

14.6.5 Financial assistance may be given for the purpose of, or in connection with, the purchase of shares otherwise than in accordance with s76 to s80;

14.6.6 The provision of remuneration and other benefits to directors may be authorised otherwise than in accordance with s161(1);

14.6.7 Shares may be issued otherwise than in accordance with ss42 44 or 45; and

14.6.8 On the company entering into a transaction in which a director is interested nothing in s140 and s141 shall apply to that transaction.

14.7 A power referred to in clause 14.6 must not be exercised unless the board is satisfied on reasonable grounds that the company will, immediately after the exercise satisfy the solvency test [§108(1)].

14.8 The directors who vote in favour of the exercise of the power must sign a certificate stating that, in their opinion, the company will, immediately after the exercise of the power, satisfy the solvency test [§108(2)].

14.9 If, after a resolution is passed under clause 14.7 and before the power is exercised, the board ceases to be satisfied on reasonable grounds that the company will, immediately after the power is exercised, satisfy the solvency test, any exercise of the power is deemed not to have been authorised [§108(3)].

Management Review by Shareholders

14.10 The chairperson of a meeting of shareholders must allow a reasonable opportunity for shareholders at the meeting to question, discuss, or comment on the management [§109(1)].

14.11 A meeting of shareholders may pass a resolution relating to the management of the company but this shall not be binding on the board [§§109(2) & 109(3)].

15 MEETINGS AND RESOLUTIONS

Annual Meeting of Shareholders

15.1 The board of a company must call an annual meeting of shareholders to be held [§120]:

15.1.1 Once in each calendar year;

15.1.2 Either:

15.1.2.1 In the case of an exempt company, if all the shareholders of the company agree, not later than 10 months after the balance date of the company; or

15.1.2.2 In any other case not later than 6 months after the balance date of the company;

15.1.3 Not later than 15 months after the previous annual meeting; and

15.1.4 At such time and place as the board may appoint.

15.2 The company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.

15.3 The company must hold the meeting on the date on which it is called to be held.

Special Meetings of the Shareholders

15.4 A special meeting of shareholders entitled to vote on an issue (§121):

15.4.1 May be called at any time by the board; and

15.4.2 Must be called by the board on the written request of shareholders holding shares carrying together not less than 5% of the voting rights entitled to be exercised on the issue.

Resolution in Lieu of Meeting

15.5 A resolution in writing signed by [§§122(1) to 122(3)]:

15.5.1 In the case of a resolution under s196(2) that no auditor be appointed, all the shareholders who are entitled to vote on the resolution; and

15.5.2 In any other case, not less than 75 percent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75 percent of the votes entitled to be cast on that resolution -

is as valid as if it had been passed at a meeting of those shareholders.

15.6 The company need not hold an annual meeting of shareholders if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in lieu of a meeting in accordance with clause 15.5 [§122(4)].

15.7 Within 5 working days of a resolution in lieu of a meeting being passed, the company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed [§122(5)].

15.8 A resolution in lieu of a meeting may be signed without any prior notice being given to shareholders [§122(6)].

15.9 A resolution in lieu of a meeting 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 shareholders.

16 PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

Chairperson

16.1 If the directors have elected a chairperson of the board, and the chairperson of the board is present at a meeting of the shareholders, he or she must chair the meeting.

16.2 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 meeting, the shareholders present may choose one of their number to be chairperson of the meeting.

16.3 The chairperson may (and if so directed by the meeting must) adjourn the meeting from time to time and from place to place. No business may be transacted at any

adjourned meeting except the business which was left unfinished at the meeting which was adjourned.

Notice of Meetings

- 16.4 Written notice of the time and place of a meeting of shareholders must be given to every shareholder entitled to receive notice of the meeting and to every director and an auditor of the company not less than 10 working days before the meeting.
- 16.5 The notice must state:
 - 16.5.1 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;
 - 16.5.2 The text of any special resolution to be submitted to the meeting.
- 16.6 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.
- 16.7 The proceedings of a meeting are not invalidated by the accidental omission to give notice of the meeting to a person who is entitled to receive notice of it, or by non-receipt of the notice by such a person.
- 16.8 If a meeting of shareholders is adjourned for less than 30 days it is not necessary to give notice of the time and place of the adjourned meeting other than by announcement at the meeting which is adjourned.

Entitlement to Notice of Meetings

- 16.9 The shareholders who are entitled to receive notice of a meeting of shareholders are [§125(3)]:
 - 16.9.1 If the board fixes a date for the purpose, those shareholders whose names are registered in the share register on that date; or
 - 16.9.2 If the board does not fix a date for the purpose, those shareholders whose names are registered in the share register at the close of business on the day immediately preceding the day on which the notice is given.
- 16.10 A date must not be fixed under the preceding clause that precedes by more than 30 working days or less than 10 working days the date on which the meeting is to be held.

Methods of Holding Meetings

- 16.11 A meeting of shareholders may be held either:
 - 16.11.1 By a number of shareholders, who constitute a quorum, being assembled together at the place date and time appointed for the meeting; or
 - 16.11.2 By means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

Quorum

- 16.12 No business may be transacted at a meeting of shareholders if a quorum is not present.
- 16.13 In the absence of any special quorum rights attaching to shares or any class of shares, a quorum for a meeting of shareholders is present if shareholders or their proxies are present or have cast postal votes who are between them able to exercise a majority of the votes to be cast on the business to be transacted at the meeting.

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

- 16.14.1 In the case of a meeting called by the board on the written request of shareholders under s121(b), the meeting is dissolved; and
- 16.14.2 In the case of any other meeting, the meeting is adjourned to the same day in the following week at the same time and place or to such other date, time and place as the directors may appoint, and if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders or their proxies present are a quorum.

Voting

- 16.15 In the case of a meeting of shareholders assembled together, unless a poll is demanded, voting shall be by whichever of the following methods is determined by the chairperson of the meeting:
 - 16.15.1 Voting by voice; or
 - 16.15.2 Voting by show of hands.
- 16.16 In the case of a meeting of shareholders held by means of audio or audio and visual communication, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- 16.17 A declaration by the chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact, unless a poll is demanded.
- 16.18 At a meeting of shareholders a poll may be demanded by:
 - 16.18.1 Not less than 5 shareholders having the right to vote at the meeting;
 - 16.18.2 A shareholder or shareholders representing not less than 10 per cent of the total voting of all shareholders having the right to vote at the meeting; or
 - 16.18.3 By 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 per cent of the total amount paid up on all shares that confer that right.

- 16.19 A poll may be demanded either before or after the vote is taken on a resolution.
- 16.20 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.
- 16.21 The chairperson of a shareholders meeting is not entitled to a casting vote.
- 16.22 For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

Proxies

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

- 16.25 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months.
- 16.26 No proxy is valid in relation to a meeting unless a copy of the notice of appointment is received by the company at its registered office not later than 48 hours prior to the start of the meeting.
- Vote Before Notice of Revocation**
- 16.27 A vote given in accordance with the terms of a notice of appointment of proxy is valid notwithstanding:
- 16.27.1 The previous death or insanity of the shareholder;
- 16.27.2 Revocation of the notice or of the authority under which the notice was executed; or
- 16.27.3 Transfer of the share in respect of which the notice is given;
- if no notice in writing of the death, insanity, revocation, or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the notice is used or is presented at the meeting or adjourned meeting before the vote is given.
- Postal Votes**
- 16.28 A shareholder may not exercise the right to vote at a meeting by casting a postal vote unless the board determines prior to the meeting that the postal voting procedure will be available for such meeting and gives notice thereof in the notice of meeting.
- 16.29 If the board determines that the postal voting procedure will be available for a meeting (but not otherwise), such postal votes shall be cast and counted in accordance with the following provisions:
- 16.29.1 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the board to receive and count postal votes at that meeting.
- 16.29.2 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- 16.29.3 A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which the shareholder's shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- 16.29.4 It is the duty of a person authorised to receive and count postal votes at a meeting:
- 16.29.4.1 To collect together all postal votes received by him or her, or by the company; and
- 16.29.4.2 In relation to each resolution to be voted on at the meeting, to count:
- 16.29.4.2.1 The number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
- 16.29.4.2.2 The number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution; and
- 16.29.4.3 To sign a certificate that he or she has carried out the duties set out in clauses 16.29.4.1 and 16.29.4.2 and which sets out the results of the counts required by clause 16.29.4.2; and
- 16.29.4.4 To ensure that the certificate required by clause 16.29.4.3 is presented to the chairperson of the meeting.
- 16.29.5 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the chairperson of the meeting must:
- 16.29.5.1 On a vote by show of hands count each shareholder who has submitted a postal vote for or against the resolution; or
- 16.29.5.2 On a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.
- 16.29.6 The chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- 16.29.7 The chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.
- Minutes**
- 16.30 The board must ensure that minutes are kept of all proceedings at meeting of shareholders.
- 16.31 Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.
- Shareholder Proposals**
- 16.32 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.
- 16.33 If the notice is received by the board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 16.34 If the notice is received by the board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board the board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 16.35 If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board may, if practicable and at the expense of

the shareholder give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.

- 16.36 If the directors intend that the shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- 16.37 The board is not required to include in or with the notice given by the board a statement prepared by a shareholder which the directors consider to be defamatory frivolous or vexatious.
- 16.38 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.

Corporations May Act by Representatives

- 16.39 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.

Votes of Joint Holders

- 16.40 Where 2 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.

Loss of Voting Rights if Calls Unpaid

- 16.41 If a sum due to the company in respect of a share has not been paid that share may not be voted at a shareholders' meeting other than a meeting of an interest group.

Other Proceedings

- 16.42 Except as provided in this constitution and the Act a meeting of shareholders may regulate its own procedure.

PART IV - DIRECTORS

17 APPOINTMENT AND REMOVAL OF DIRECTORS

First Directors

- 17.1 A person named as a director in the application for registration of the company or in an amalgamation proposal affecting the company holds office as a director from the date of registration or the date the amalgamation proposal is effective, as the case may be, until that person ceases to hold office as a director in accordance with the Act or this constitution [§153(1)].

Subsequent Directors

- 17.2 Subsequent directors of the company must be appointed by ordinary resolution [§153(2)].
- 17.3 Two or more directors may be appointed by a single resolution [§155(1)].

Consent Required

- 17.4 A person must not be appointed a director of the company unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the company [§152].

Removal

- 17.5 A director of the company may be removed from office by ordinary resolution passed at a meeting called for the purpose or for purposes that include the removal of the director [§156(1)].

- 17.6 The notice of meeting must state that the purpose or a purpose of the meeting is the removal of the director [§156(2)].

Vacation of Office

- 17.7 The office of director of the company is vacated if the person holding that office [§157]:

17.7.1 Resigns by signing a written notice of resignation and delivering it to the address for service of the company, such notice to be effective when it is received at that address or at such later time specified in the notice;

17.7.2 Is removed from office in accordance with clauses 17.5 or 17.8.3;

17.7.3 Becomes disqualified from being a director pursuant to §151 of the Act; or

17.7.4 Dies.

Class Directors

- 17.8 If the holders of any class of share are entitled to exclusively appoint one or more of directors of the company, then notwithstanding clauses 17.2 and 17.5:

17.8.1 A person named as a director in the application for registration of the company or in an amalgamation proposal affecting the company who is intended to represent such holders shall be deemed to be a class director appointed by such holders;

17.8.2 Subsequent class directors may be appointed by ordinary resolution of those holders, provided that the number of class directors appointed by such holders and holding office at any time shall not exceed the number of directors which such holders are entitled to appoint; and

17.8.3 Class directors appointed by such holders may only be removed from office by an ordinary resolution of those holders, passed at a meeting of those holders called for the purpose or for purposes that include the removal of the director.

Additional Directors

- 17.9 The directors may from time to time appoint any person to be an additional director either to fill a casual vacancy or as an addition to the existing directors who shall hold office only until the next annual meeting.

Alternate Directors

- 17.10 A director may from time to time appoint any person (except an existing director) to be his or her alternate director. An alternate director's appointment may be cancelled at any time by the director who made the appointment.

- 17.11 An alternate director may only attend meetings, vote and sign resolutions in the absence of the director who appointed him or her.

Rotation of Directors

- 17.12 At each annual meeting, two of the directors for the time being shall retire from office.

- 17.13 The two directors to retire in every year shall be those who have been longest in office since their last appointment or election. As between persons who were elected on the

same day, those to retire shall (unless they agree otherwise amongst themselves) be determined by lot. The names of the directors to retire by rotation shall be specified in the notice of meeting or that annual meeting.

- 17.14 Any director so retiring shall be entitled to stand and is eligible for re-election at such meeting.

Nomination of New Directors by Shareholders

- 17.15 The notice of the annual meeting sent to each shareholder by the board shall include a provision calling for nominations for membership of the board, and shall designate the number of vacant board positions required to be filled. The notice shall prescribe that each candidate shall be proposed in writing by two shareholders who shall each sign the nomination form. The candidate shall also signify their consent to nomination by signing the nomination form. All signed and completed nomination forms must be received by the company not later than 5 working days before the date of the annual meeting.

- 17.16 Any director retiring under clause 17.13 who wishes to stand for re-election at such meeting is not required to be nominated under article 17.15, and may self nominate by signed notice to the board of his intention, not later than 5 working days before the date of the annual meeting.

- 17.18 In the event of the number of nominated candidates exceeding the number of vacancies, the chairperson at the annual meeting shall arrange a ballot according to such system of voting as the board shall from time to time prescribe. Such ballot shall be by majority vote. At the conclusion of the counting of votes, the candidates receiving the most votes shall be declared duly elected to the vacant positions. Any tie shall be determined by lot.

18 POWERS OF DIRECTORS

Management of Company

- 18.1 The business and affairs of the company must be managed by, or under the direction or supervision of, the board [§128(1)].
- 18.2 The board has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company [§128(2)].

19 MANAGING DIRECTOR

Appointment

- 19.1 The board may from time to time appoint one or more of their body to the office of managing director for such period and on such terms as the board thinks fit, and subject to the terms of any agreement entered into in any particular case, may revoke any such appointment.
- 19.2 The appointment of a managing director is automatically terminated if he or she ceases to be a director.

Powers

- 19.3 Subject to s130, the board may entrust to and confer on a managing director any of the powers exercisable by the board on such terms and conditions and with such restrictions as the board may think fit, and may from time to time revoke, withdraw, alter, or vary all or any of those powers.

20 DUTIES OF DIRECTORS

Duty in Relation to Obligations

- 20.1 A director when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company [§131(1)].

Subsidiary

- 20.2 If the company is a wholly-owned subsidiary, a 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 the company's holding company even though it may not be in the best interests of the company [§131(2)].

- 20.3 If the company is a subsidiary (but not a wholly-owned subsidiary) a director may, when exercising powers or performing duties as a director with the prior agreement of the shareholders (other than its holding company), act in a manner which he or she believes is in the best interests of the company's holding company even though it may not be in the interests of the company [§131(3)].

Joint Venture

- 20.4 If the company is carrying on a joint venture between its shareholders, a director may, when exercising powers or performing duties as a director in connection with the carrying out of the joint venture, act in a manner which he or she believes is in the best interests of a shareholder or shareholders even though it may not be in the best interests of the company [§131(4)].

Exercise of Powers in Relation to Employees

- 20.5 Nothing in clause 20.1 limits the power of a director to make provision for the benefit of employees of the company in connection with the company ceasing to carry on the whole or part of its business [§132].

Powers to be Exercised for Proper Purpose

- 20.6 A director must exercise a power for a proper purpose [§133].

Directors to Comply with Act and Constitution

- 20.7 A director must not act, or agree to the company acting, in a manner that contravenes the Act or this constitution [§134].

Reckless Trading

- 20.8 A director must not [§135]:
- 20.8.1 Agree to the business of the company being carried on in a manner likely to create a substantial risk of serious loss to the company's creditors; or
- 20.8.2 Cause or allow the business of the company to be carried on in a manner likely to create a substantial risk of serious loss to the company's creditors.

Duty in Relation to Obligations

- 20.9 A director must not agree to the company incurring an obligation unless the director believes at that time on reasonable grounds that the company will be able to perform the obligation when it is required to do so [§136].

Director's Duty of Care

- 20.10 A director when exercising powers or performing duties as a director must exercise the care, diligence, and skill that a reasonable director would exercise in the same circumstances taking into account, but without limitation [§137]:
- 20.10.1 The nature of the company;
- 20.10.2 The nature of the decision; and
- 20.10.3 The position of the director and the nature of the responsibilities undertaken by him or her.

21 RELIANCE ON INFORMATION AND ADVICE

- 21.1 A director of the company, when exercising powers or performing duties as a director, may rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given by any of the following persons [§138]:
- 21.1.1 Any employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned;
- 21.1.2 A professional adviser or expert in relation to matters which the director believes on reasonable grounds to be within the person's professional or expert competence;
- 21.1.3 Any other director or committee of directors upon which the director did not serve in relation to matters within the director's or committee's designated authority.
- 21.2 Clause 21.1 applies to a director only if the director:
- 21.2.1 Acts in good faith;
- 21.2.2 Makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- 21.2.3 Has no knowledge that such reliance is unwarranted.

22 SELF INTEREST TRANSACTIONS

Interests Register

- 22.1 A director must, forthwith after becoming aware of the fact that he or she is interested in a transaction or proposed transaction with the company cause to be entered in the interests register, and if the company has more than one director, disclose to the board (§140(1)):
- 22.1.1 If the monetary value of the director's interest is able to be quantified the nature and monetary value of that interest; or
- 22.1.2 If the monetary value of the director's interest cannot be quantified, the nature and extent of the interest.
- 22.2 A general notice entered in the interests register or disclosed to the board to the effect that a director is a shareholder, director officer or trustee of another named company or other person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction [§140(2)].
- 22.3 Not used.
- 22.4 A transaction entered into by the company in which a director of the company is interested may be avoided by the company at any time before the expiration of three months after the transaction is disclosed to all the shareholders (whether by means of the company's annual report or otherwise) [§141(1)].
- 22.5 A transaction cannot be avoided if the company receives fair value under it [§141(2)].
- 22.6 Nothing in clauses 22.1 to 22.5 applies in relation to an indemnity given, insurance provided or remuneration or any other benefit given to a director in accordance with this constitution [§143].

Interested Directors May Vote

- 22.7 A director of the company who is interested in a transaction entered into or to be entered into, by the company, may [§144]:

- 22.7.1 Vote on a matter relating to the transaction;
- 22.7.2 Attend a meeting of directors at which a matter relating to the transaction arises and be included among the directors present at the meeting for the purpose of a quorum;
- 22.7.3 Sign a document relating to the transaction on behalf of the company; and
- 22.7.4 Do any other thing in his or her capacity as a director in relation to the transaction;
- as if the director were not interested in the transaction

23 USE OF COMPANY INFORMATION

- 23.1 A director of the company who has information in his or her capacity as a director or employee of the company, being information that would not otherwise be available to him or her, must not disclose that information to any person or make use of or act on the information, except [§145(1)]:
- 23.1.1 For the purposes of the company;
- 23.1.2 As required by law;
- 23.1.3 In accordance with clauses 23.2 or 23.3; or
- 23.1.4 In complying with clauses 22.1 or 22.2.

Disclosure - Nominee Director to Appointor

- 23.2 A director of the company may, unless prohibited by the board disclose information to a person whose interests the director represents or in accordance with whose directions or instructions the director may be required or is accustomed to act in relation to the director's powers and duties and, if the director discloses the information, the name of the person to whom it is disclosed must be entered in the interests register [§145(2)].

Disclosure and Use of Information Generally

- 23.3 A director of the company may disclose, make use of, or act on the information if [§144(3)]:
- 23.3.1 Particulars of the disclosure, use, or the act in question are entered in the interests register;
- 23.3.2 The director is first authorised to do so by the board; and
- 23.3.3 The disclosure, use, or act in question will not, or will not be likely to, prejudice the company.

24 SHARE DEALING BY DIRECTORS

Disclosure

- 24.1 A director of the company who acquires or disposes of a relevant interest in shares issued by the company must forthwith after the acquisition or disposition [§148(2)]:
- 24.1.1 Disclose to the board:
- 24.1.1.1 The number and class of shares in which the relevant interest has been acquired or the number and class of shares in which the relevant interest was disposed of, as the case may be;
- 24.1.1.2 The nature of the relevant interest;
- 24.1.1.3 The consideration paid or received;
- 24.1.1.4 The date of acquisition or disposition; and
- 24.1.2 Ensure that particulars disclosed to the board under clause 24.1 are entered in the interests register.

Restrictions

24.2 If a director of the company has information in his or her capacity as a director or employee of the company or a related company being information that would not otherwise be available to him or her, but which is information material to an assessment of the value of shares or other securities issued by the company or a related company, the director may acquire or dispose of those shares or securities only if [§149]:

24.2.1 In the case of an acquisition, the consideration given for the acquisition is not less than the fair value of the shares or securities; or

24.2.2 In the case of a disposition, the consideration received for the disposition is not more than the fair value of the shares or securities.

25 PROCEEDINGS OF DIRECTORS

Chairperson

25.1 The directors may elect one of their number as a chairperson of the board to hold office until he or she dies or resigns or until the directors elect a chairperson in his or her place.

25.2 If no chairperson is elected or if at a meeting of the board the chairperson is not present within 10 minutes after the time appointed for the commencement of the meeting the directors present may choose one of their number to be chairperson of the meeting.

Notice of Meeting

25.3 A director or, if requested by a director to do so, an employee of the company, may convene a meeting of the board by giving notice in accordance with clause 25.4.

25.4 Not less than 2 working days notice of a meeting of the board must be sent to every director, whether or not he or she is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.

25.5 An irregularity in the notice of a meeting or a failure to give notice is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or if all directors entitled to receive notice of the meeting agree to the waiver.

Methods of Holding Meetings

25.6 A meeting of the board may be held either:

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

25.6.2 By means of audio, or audio and visual communication by which all directors participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

Quorum

25.7 No business may be transacted at a meeting of the board if a quorum is not present.

25.8 In the absence of any special quorum rights affecting class directors, a quorum for a meeting of the board is a majority of the directors.

Voting

25.9 In the absence of any special voting rights affecting class directors, every director has one vote.

25.10 The chairperson shall not have a casting vote.

25.11 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.

25.12 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 he or she expressly abstains from or expressly votes against the resolution at the meeting.

Minutes

25.13 The board must ensure that minutes are kept of all proceedings of the board.

Unanimous Resolution

25.14 A resolution in writing, signed or assented to by all directors then entitled to receive notice of a board meeting, is as valid and effective as if it had been passed at a meeting of the board duly convened and held.

25.15 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.

25.16 A copy of any such resolution must be entered in the minute book of board proceedings.

Other Proceedings

25.17 Except as provided in this constitution and the Act, the board may regulate its own procedure.

26 REMUNERATION AND OTHER BENEFITS

26.1 The board may authorise the following if the board is satisfied that to do so is fair to the company [§161(1)]:

26.1.1 Payment of remuneration or the provision of other benefits by the company to a director for services as a director or in any other capacity;

26.1.2 Payment by the company to a director or former director of compensation for loss of office;

26.1.3 Making of loans by the company to a director,

26.1.4 Giving of guarantees by the company for debts incurred by a director; and

26.1.5 Entering into of a contract to do any of the things permitted by this clause 26.1.

26.2 If a payment, benefit, loan, guarantee or contract is authorised under clause 26.1:

26.2.1 The board must ensure that particulars thereof are forthwith entered in the interests register [§161(2)]; and

26.2.2 Directors who vote in favour thereof must sign a certificate stating that, in their opinion it is fair to the company, and the grounds for that opinion [§161(4)].

27 INDEMNITY, AND INSURANCE

Company may Indemnify a Director or Employee

27.1 The company may indemnify a director or employee of the company or a related company for any costs incurred by him or her in any proceeding [§162(3)]:

27.1.1 That relates to liability for any act or omission in his or her capacity as a director or employee; and

27.1.2 In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

- 27.2 The company may indemnify a director or employee of the company or a related company in respect of [§162(3)]:
- 27.2.1 Liability to any person other than the company or a related company for any act or omission in his or her capacity as a director or employee; or
- 27.2.2 Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability,
- not being criminal liability in respect of a breach in the case of a director of the duty specified in s131 or in the case of an employee, of any fiduciary duty owed to the company or a related company
- Insurance for a Director or Employee**
- 27.3 The company may, with the prior approval of the board, effect insurance for a director or employee of the company or a related company in respect of [§162(5)]:
- 27.3.1 Liability, not being criminal liability, for any act or omission in his or her capacity as a director or employee;
- 27.3.2 Costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or
- 27.3.3 Costs incurred by that director or employee in defending any criminal proceedings in which he or she is acquitted.
- 27.4 The directors who vote in favour of authorising insurance under this clause must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the company [§162(6)].
- 27.5 The board must ensure that particulars of any indemnity given to, or insurance effected for any director or employee of the company or a related company, are entered in the interests register [§162(7)].

PART V - OTHER PROVISIONS

28 AMENDMENT OF CONSTITUTION

- 28.1 The shareholders of the company may, by special resolution, alter or revoke this constitution [§32].

29 METHOD OF CONTRACTING

- 29.1 A contract or other enforceable obligation may be entered into by the company as follows [§180]:
- 29.1.1 An obligation which, if entered into by a natural person, would, by law, be required to be by deed may be entered into on behalf of the company in writing signed under the name of the company by:
- 29.1.1.1 Two or more directors of the company;
- 29.1.1.2 If there is only one director, by that director whose signature must be witnessed;
- 29.1.1.3 A director, and another person or persons authorised to do so by the board whose signature or signatures must be witnessed; or
- 29.1.1.4 One or more attorneys appointed by the company in accordance with s181 of the Act.
- 29.1.2 An obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the company in writing

by a person acting under the company's express or implied authority.

- 29.1.3 An obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the company in writing or orally by a person acting under the company's express or implied authority.

30 COMPANY RECORDS

- 30.1 The company must keep the following documents at its registered office [§189]:
- 30.1.1 This constitution;
- 30.1.2 Minutes of all meetings and resolutions of shareholders within the last 7 years;
- 30.1.3 An interests register;
- 30.1.4 Minutes of all meetings and resolutions of directors and directors' committees within the last 7 years;
- 30.1.5 Certificates given by directors under the Act within the last 7 years;
- 30.1.6 The full names and addresses of the current directors;
- 30.1.7 Copies of all written communications to all shareholders or all holders of the same class of shares during the last 7 years including annual reports;
- 30.1.8 Copies of all financial statements and group financial statements required to be completed by the Act or the Financial Reporting Act 1993 for the last 7 completed accounting periods of the company;
- 30.1.9 The accounting records required by s194 for the current accounting period and for the last 7 completed accounting periods of the company; and
- 30.1.10 The share register.

31 ACCOUNTS

- 31.1 The board of the company must cause accounting records to be kept that [§194]:
- 31.1.1 Correctly record and explain the transactions of the company;
- 31.1.2 Will at any time enable the financial position of the company to be determined with reasonable accuracy;
- 31.1.3 Will enable the directors to ensure that the financial statements of the company comply with s10 of the Financial Reporting Act 1993 and any group financial statements comply with s13 of that Act; and
- 31.1.4 Will enable the financial statements of the company to be readily and properly audited.

32 ANNUAL REPORT

- 32.1 The board must, within 5 months (or if the company is an exempt company, within 9 months) after the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date [§208].
- 32.2 The board must cause a copy of the annual report to be sent to every shareholder of the company not less than 20 working days before the date fixed for holding the annual meeting, unless [§209]:

- 32.2.1 The shareholder has given notice in writing to the company waiving the right to be sent a copy of that annual report or copies of annual reports of the company generally;
- 32.2.2 The shareholder has not revoked that notice;
- 32.2.3 A copy of the report is available for inspection by the shareholder; and
- 32.2.4 Financial statements for the most recently completed accounting period (completed and signed in accordance with the Financial Reporting Act 1993) and any auditor's report on those financial statements are sent to such shareholder within the period aforesaid [§210].
- 32.3 Every annual report for the company must be in writing and dated and must contain the reports, financial statements and information required by s211.
- 32.4 Subject to s210 a shareholder of a company may from time to time by written notice to the company waive the right to receive all or any documents from the company and may revoke the waiver in the same manner and while the waiver is in effect the company need not send to the shareholder the documents to which the waiver relates [§212].

33 AUDITOR

- 33.1 The company must, at each annual meeting, appoint an auditor to [§196]:
 - 33.1.1 Hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and
 - 33.1.2 Audit the financial statements of the company for the accounting period next after the meeting.
- 33.2 Where the shares in the company are listed on a stock exchange and any rules applicable to that stock exchange require that the company comply with any of the following sections of the Act:
 - 33.2.1 Sections 201 and 202 (Preparation of financial statements and group financial statements);
 - 33.2.2 Section 207 (Audit of statements);
 - 33.2.3 Section 208 (Preparation of annual report);then:
 - 33.2.4 In the case of sections 201 and 202, the shareholders shall not be entitled to opt out of compliance with those sections under section 207I; and
 - 33.2.5 In the case of section 207, the shareholders shall not be entitled to opt out of compliance with that section under section 207I, or under section 207J; and
 - 33.2.6 In the case of section 208, the shareholders shall not be entitled to opt out of compliance with that section under section 207I.

34 NOTICES

- 34.1 Notices, statements, reports, accounts, or other documents must be served in accordance with Part XXII of the Act.

35 OTHER PROVISIONS

- 35.1 Any other provisions set out in the Schedule shall form part of this constitution.

36 STOCK EXCHANGE

- 36.1 For so long as the company is listed on a Stock Exchange:
 - 36.1.1 This constitution (including in particular, but without limitation, clauses 2 (Share issues and option issues etc), 5 (Lien on shares), 7 (board may refuse to register share transfer), and clause 11 (Company may hold treasury stock), is deemed to be subject to the rules of the Stock Exchange in question; and
 - 36.1.2 The company must comply with the rules (subject to any ruling, waiver, or exemption granted by the Stock Exchange in question).
- 36.2 However if the company fails to comply with the rules this does not affect the validity or enforceability of any transaction, contract, or other thing entered into or done by the company, except to the extent that it is invalid or unenforceable because a party to a transaction, contract, or other thing had actual or constructive knowledge of the failure to comply with the rules. This clause does not affect the rights of any shareholder or other holder of securities of the company against the company or the board arising from a failure to comply with the rules.