

# **APPENDIX 02: PAYMENTS NZ'S CONSTITUTION**



## **Constitution**

**relating to**

Payments NZ Limited

**Date: 31 March 2022**

## Contents

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# Constitution of Payments NZ Limited

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## 1. Interpretation

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### 1.1 Definitions

In this Constitution, unless the context otherwise requires:

**Acceptance Notice** has the meaning set out in clause 10.4(c)(ii)(C);

**Alternate Director** means a person appointed to be the alternate of a Director (other than an Independent Director) pursuant to clause 20.1;

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

**Bulk Electronic Clearing System** means the systems, standards and procedures from time to time adopted by the Company under the Rules as the “Bulk Electronic Clearing System” or “BECS”;

**Business Day** means any day other than a Saturday or Sunday on which registered banks are open for business in Auckland and Wellington;

**Chair** means the chair of the Board appointed in accordance with clause 19.2(b);

**Clearing System Suspension Event** has the meaning set out in the Rules;

**Clearing Systems** means each “Clearing System” under the Rules, including the Established Clearing Systems and all other systems, standards and procedures from time to time adopted by the Company under the Rules in relation to any other clearing, payments and/or settlement systems which are established and/or operated by, or under the auspices of, the Company;

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

**Company** means Payments NZ Limited;

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

**Consumer Electronic Clearing System** means the systems, standards and procedures from time to time adopted by the Company under the Rules as the “Consumer Electronic Clearing System” or “CECS”;

**Declined Shares** has the meaning set out in clause 10.4(d)(i);

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

**Distribution** has the meaning set out in section 2(1) of the Companies Act;

**Dividend** has the meaning set out in section 53 of the Companies Act;

**Established Clearing Systems** means the Bulk Electronic Clearing System, the Consumer Electronic Clearing System and the High Value Clearing System;

**Expert** has the meaning set out in clause 10.11(a);



**Fair Value** has the meaning set out in clause 10.11(a);

**High Value Clearing System** means the systems, standards and procedures from time to time adopted by the Company under the Rules as the “High Value Clearing System” or “HVCS”;

**Independent Director** means a Director appointed in accordance with clause 19.4;

**Independent of each Shareholder** means, at any date in relation to a Director, that the Director:

- (a) is not and has not, within 12 months of that date, been a director, officer, employee or contractor of a Shareholder or a Participant or a Related Company of a Shareholder or a Participant;
- (b) does not at that date hold, legally or beneficially, more than five per cent. of the voting shares in a Shareholder or a Participant or any Related Company of a Shareholder or a Participant; and
- (c) does not at that date otherwise have any vested interest in a Shareholder or a Participant such that his or her judgment or impartiality as a Director may be called into question;

**Infrastructure Member** means an organisation that provides Infrastructure Services that has a current infrastructure membership.

**Infrastructure Services** means services such as switching services, messaging services, or data processing services that:

- (a) relate to the operation of a Clearing System; or
- (b) directly enable a Participant to participate in a Clearing System; but

does not include services such as the provision of electricity or telecommunications services that are not specifically related to the operation of, or participation in, a Clearing System.

**Intending Seller** has the meaning set out in clause 10.1(a);

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

**Management Committee** has the meaning set out in the Rules;

**Participant** means a “Participant” under the Rules;

**Pricing Committee** means the pricing committee established by the Board pursuant to clause 26.1;

**Proposed Sale Price** has the meaning set out in clause 10.2(b);

**Register** means the register of Shareholders to be kept under the Companies Act;

**Related Company**, in relation to a company, has the meaning given to that expression in section 2(3) of the Companies Act, provided that, for this purpose, references to “company” in that section extend to any body corporate wherever incorporated or registered;

**Representative** means a person appointed as a proxy or representative under clause 11;

**Reserve Bank** means Reserve Bank of New Zealand;

**Rules** means the “*Payments NZ Limited Rules*” as adopted by the Company;

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

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

**Shareholder Representative** has the meaning set out in clause 32.1(a);

**Special Resolution** means a resolution passed by 85 per cent. or more of the votes of Shareholders entitled to vote on the resolution (whether or not voting);

**Specified Shares** has the meaning set out in clause 10.2(a);

**Transfer Notice** has the meaning set out in clause 10.1(a); and

**Unanimous Resolution** means a resolution passed by each Shareholder entitled to vote on the resolution.

## 1.2 Shareholders under common control

For the purposes of this Constitution, where:

(a) **Control by Shareholder**

any Shareholder controls another Shareholder; or

(b) **Common control of Shareholders**

any Shareholders are controlled by the same person or group of persons,

those Shareholders are to be treated for all purposes as the same Shareholder.

## 1.3 Construction

In this Constitution, unless the context otherwise requires:

(a) **Headings**

headings are inserted for convenience and do not affect the interpretation of this Constitution;

(b) **Control**

a reference to one person being **controlled** by another person means that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

(i) has the power:

(A) to appoint or remove the majority of the members of the governing body of that person; or

(B) to appoint a member or members of the governing body of that person who is or are in a position to cast, or to control the casting of, more than

one half of the maximum number of votes that might be cast at a meeting of that governing body; or

- (ii) otherwise controls or has the power to control the affairs and policies of that person; or
- (iii) is in a position to derive the whole or substantial part of the benefit of the existence or activities of that person, and

**control** is to be construed accordingly;

(c) **Varied document**

a reference to this **Constitution** or to another agreement, document or instrument includes any variation, novation or replacement of it;

(d) **Clause or paragraph**

a reference to a **clause** or a **paragraph** is a reference to a clause or paragraph of this Constitution;

(e) **Statutes**

a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

(f) **Singular includes plural**

the singular includes the plural and *vice versa*;

(g) **Person includes groups**

the word **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a state and an agency of state (in each case, whether or not having a separate legal personality);

(h) **Person includes successors**

a reference to a **person** includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assignees;

(i) **Gender**

words importing one gender include the other genders;

(j) **Other grammatical forms**

where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(k) **Writing**

the words **written** and **writing** include facsimile and electronic mail communications and any other means of communication resulting in permanent visible reproduction; and

(l) **Companies Act**

words or expressions defined in the Companies Act have the same meaning in this Constitution.

## 2. **Capacity and powers of Company**

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### 2.1 **Capacity and powers**

Each of the Company, the Board, each Director and each Shareholder has the capacity, rights, powers and privileges set out in the Companies Act except to the extent that they are restricted, negated or modified by this Constitution.

### 2.2 **Objectives and functions of Company**

Without limiting clause 2.1, the primary objectives and functions of the Company are:

(a) **Manage Rules**

to manage the Rules;

(b) **Efficient payments systems**

to promote interoperable, innovative, safe, open and efficient payments systems;

(c) **Access**

to encourage and facilitate new entities becoming Participants in Clearing Systems based on fair and reasonable public access criteria;

(d) **Interoperability**

(i) to facilitate interoperability of payments between Participants on legally appropriate and fair and reasonable terms; and

(ii) to make available exchangeable file format material at no cost to parties who have a business need in a way that will enable alternative payment services to be provided; and

(e) **Other business**

to pursue other business opportunities as it sees fit (whether in the payments- and clearing-related businesses or not) which do not conflict with the Company's other objectives and functions.

### 2.3 **Levies, charges and fees**

(a) **Levies, charges and fees to meet anticipated costs and expenses in respect of Established Clearing Systems**

In respect of the Established Clearing Systems, the Board is to ensure that the Company's financial affairs are so managed that the levies, charges and membership or other fees that the Board imposes in accordance with paragraph (b) are those that are reasonably and prudently required to meet the anticipated costs and expenses of the Established Clearing Systems (including a proportionate share of the general operating and administrative costs and expenses of the Company).

(b) **Setting levies, charges and fees in respect of Established Clearing Systems**

For the purposes of paragraph (a), the Board may, from time to time in accordance with the Rules, impose on Participants in Established Clearing Systems the levies, charges and membership or other fees that the Board considers necessary, expedient or desirable, provided that:

- (i) in doing so, the basis for the imposition is, in the opinion of the Board, equitable:
  - (A) as between Participants in an Established Clearing System; and
  - (B) as between Established Clearing Systems;
- (ii) in doing so, the basis for the imposition does not undermine fair and open access to the relevant Established Clearing System; and
- (iii) the Board provides each Participant in an Established Clearing System with financial and other information that discloses the allocation by the Board of the levies, charges and membership or other fees paid by that Participant to the costs and expenses of operating that Established Clearing System.

(c) **Setting levies, charges and fees in respect of Other Clearing Systems**

In respect of any Clearing System other than an Established Clearing System, the Board may impose on Participants in that Clearing System, the levies, charges and membership or other fees as the Board considers necessary, expedient or desirable:

- (i) whether or not those levies, charges and membership or other fees exceed any amount reasonably and prudently required to meet the anticipated costs and expenses of that Clearing System; and
- (ii) irrespective of the criteria set out in paragraph (b) above.

### 3. **Alteration or revocation of Constitution**

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This Constitution may only be altered or revoked by Unanimous Resolution.

### 4. **Rights attaching to Shares**

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Each Share confers on the holder the right:

- (a) **Appointment and removal of Directors**  
subject to clause 1.2, to appoint and remove a Director in accordance with clause 19.4;
- (b) **One vote**  
to one vote on a poll at a meeting of the Shareholders on any resolution, including any resolution:
  - (i) to appoint or remove an auditor; or

- (ii) to adopt a constitution; or
- (iii) to alter the Company's constitution; or
- (iv) to approve a major transaction; or
- (v) to approve an amalgamation of the Company under section 221 of the Companies Act; or
- (vi) to put the Company into liquidation;

(c) **Equal share in Dividends**

subject to the rights of Shares which confer special rights as to Distributions, to an equal share in Dividends authorised by the Board;

(d) **Equal share in distribution of surplus assets**

subject to the rights of Shares which confer special rights as to surplus assets, to an equal share in the Distribution of the surplus assets of the Company; and

(e) **Notice of and attendance at meetings**

to receive notice of and attend every meeting of Shareholders.

## 5. Issue of Shares

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### 5.1 Issue of further Shares

Subject to this Constitution and the Companies Act, the Board may, with the approval of Shareholders by Unanimous Resolution, issue further Shares on the terms it deems fit.

### 5.2 Section 45 not apply

Section 45 of the Companies Act does not apply to an issue of any Shares by the Company made in accordance with clause 5.1.

## 6. Alteration of rights of Shareholders

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Any action affecting the rights, privileges, limitations or conditions attached to any Shares by this Constitution, the Companies Act or the terms on which the Shares were issued is to be approved by Unanimous Resolution.

## 7. Share certificates

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### 7.1 Issue of Share certificates

(a) **Share certificate**

The Company may issue a certificate for any Shares.

(b) **Period for sending Share certificate**

The Company is, within 20 Business Days after receiving an application by a Shareholder, to send a Share certificate to the Shareholder, in accordance with section 95 of the Companies Act.

## 7.2 **Replacement Share certificate**

(a) **Obligation to replace**

Subject to paragraph (b), the Company:

- (i) may issue a replacement Share certificate for one that is mutilated or defaced; and
- (ii) is to issue a replacement Share certificate for one that has been lost, stolen or destroyed.

(b) **Conditions to be met**

The Company is not required to issue a replacement Share certificate unless and until the applicant has:

- (i) paid the reasonable expenses of the Company incurred in connection with the application;
- (ii) furnished the Company with the evidence, security and indemnity as the Company may require; and
- (iii) surrendered to the Company any mutilated or defaced Share certificate.

## 8. **Shares fully paid**

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### 8.1 **Shares to be credited as fully paid upon adoption of Constitution**

All Shares on issue at the time of adoption of the Constitution will be credited as fully paid.

### 8.2 **Shares credited as fully paid on issue**

All Shares will be credited as fully paid when issued.

## 9. **Transfer of Shares**

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### 9.1 **General right to transfer**

Subject to this Constitution, a Shareholder may transfer all (but not some only) of its Shares.

### 9.2 **Instrument of transfer**

Subject to this Constitution, a Shareholder may transfer all (but not some only) of its Shares by an instrument of transfer that complies with the following provisions:

(a) **Usual or common form**

the form of the instrument of transfer is to be any usual or common form or any other form which the Board may approve; and

(b) **Execution of form**

the instrument of transfer is to be signed or executed by or on behalf of the transferor.

### 9.3 **Transferor remains holder until registration**

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

### 9.4 **Power to refuse to register**

(a) **Power to refuse to register**

Subject to paragraph (b), the Board may decline to register any transfer of Shares where:

- (i) the Board is not satisfied that the transferor has complied with clause 10; or
- (ii) the transfer is not accompanied by:
  - (A) the certificate (if any) for the Shares to which it relates; or
  - (B) other evidence that the Board, acting reasonably, requires to show the right of the transferor to make the transfer; or
- (iii) the Board has notice of any agreement by the Shareholder to transfer the Shares only to some specified person or subject to some specified condition.

(b) **Conditions to refusal**

The Board may only decline to register any transfer of Shares under paragraph (a) if:

- (i) it resolves to exercise its powers under this sub-clause within 30 Business Days after receipt of the relevant transfer; and
- (ii) notice of the resolution is sent to the transferor and to the transferee within five Business Days of the Board passing the resolution.

### 9.5 **Registration of transfers**

(a) **Instrument of transfer to be delivered to Register**

The Intending Seller is to ensure that every instrument of transfer is delivered to the Register, together with the Share certificate (if any) for the Shares to be transferred.

(b) **No Share certificate, etc.**

If:

- (i) there is no Share certificate for those Shares; or



- (ii) the Share certificate has been lost, damaged or destroyed,

the transferee is to provide the evidence that the Board, acting reasonably, may require to show the right of the transferor to make the transfer.

## 9.6 Trusts not to be entered on Register

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

## 10. Pre-emptive rights on transfers of Shares

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### 10.1 Transfer Notices

#### (a) Intending Seller to give notice

Each Shareholder that wishes to sell or transfer any legal or beneficial interest in its Shares (other than pursuant to a pro rata offer made by the Company to acquire Shares) (the **Intending Seller**) is to give notice in writing (a **Transfer Notice**) to the Board that the Intending Seller wishes to sell or transfer those Shares.

#### (b) Extended definition of Shareholder

For the purposes of this clause, **Shareholder** includes a statutory manager, manager, receiver, protection attorney, assignee in bankruptcy or Representative of any Shareholder.

#### (c) Transfers of entire shareholding

No Transfer Notice may be given for less than all Shares held by a Shareholder.

### 10.2 Contents of Transfer Notice

The Transfer Notice is to specify:

#### (a) Number of Shares

the number of Shares held by the Intending Seller (the **Specified Shares**); and

#### (b) Sale price

the sum which the Intending Seller proposes as the sale price of the Specified Shares (the **Proposed Sale Price**).

### 10.3 Board appointed agent

#### (a) Board as agent of Intending Seller

A Transfer Notice constitutes the Board as the agent of the Intending Seller for the sale of the Specified Shares in accordance with this clause.

#### (b) Transfer Notice revocable only in certain circumstances

A Transfer Notice is not revocable by the Intending Seller except as provided in clause 10.11.

## 10.4 Offer to Shareholders

### (a) Board to act immediately

Immediately upon receipt of a Transfer Notice, the Board is to follow the provisions of, and undertake the actions set out in, this sub-clause.

### (b) Determination to repurchase

- (i) The Board may elect by notice in writing to the Intending Seller, accompanied by evidence of the agreement of all entitled persons approving the repurchase, for the Company to acquire all (but not some only) of the Specified Shares for the Proposed Sale Price.
- (ii) Any election to repurchase Shares made in accordance with this sub-clause is binding on the Company.

### (c) Offer to all Shareholders

- (i) If no election to repurchase is made by the Board, the Board is promptly to give notice in writing to each Shareholder offering the Specified Shares in proportion to its existing holdings of Shares.
- (ii) The notice is to specify:
  - (A) the number of Specified Shares to which the offeree is entitled;
  - (B) the Proposed Sale Price;
  - (C) the date (being not less than 15 Business Days nor more than 20 Business Days after the receipt by the Company of the Transfer Notice) by which the offeree is to give notice in writing to the Company (an **Acceptance Notice**) containing the details set out in clause 10.5; and
  - (D) that Shareholders can only accept the offer in respect of all (but not some only) of the Specified Shares to which the offeree is entitled.

### (d) Full entitlements not claimed

- (i) If any offeree does not accept its entitlement to Shares, those Shares (the **Declined Shares**) are to be used to satisfy requests for Declined Shares from other Shareholders.
- (ii) Declined Shares are to be allocated:
  - (A) among each offeree that, in its Acceptance Notice, states that it wishes to purchase Declined Shares; and
  - (B) in proportion to the existing holdings of Shares of each Shareholder wishing to purchase Declined Shares.

## 10.5 **Acceptance Notices**

Each Acceptance Notice is to state whether or not the offeree:

(a) **Purchase of offered Shares**

wishes to purchase the offeree's entitlement of Specified Shares;

(b) **Purchase of Declined Shares**

wishes to purchase Declined Shares; and

(c) **Acceptance of price**

accepts the Proposed Sale Price or wishes the sale price to be the Fair Value determined in accordance with clause 10.11.

## 10.6 **Notice to Intending Seller**

After the earlier of:

(a) **Receipt of Acceptance Notices**

receipt of Acceptance Notices from all offerees; or

(b) **Expiry of offer period**

the expiry of the date specified in clause 10.4(c)(ii)(C),

the Board is, within five Business Days, either:

(c) **Send copies of Acceptance Notices**

to send to the Intending Seller copies of all Acceptance Notices received; or

(d) **Notice that no Acceptance Notices received**

to notify the Intending Seller that no Acceptance Notices were received.

## 10.7 **Revocation of Transfer Notice if insufficient acceptances**

(a) **Revocation of Transfer Notice**

The Transfer Notice is automatically revoked if:

- (i) Acceptance Notices are received which do not, in aggregate, contain acceptances for all of the Specified Shares; and
- (ii) no Shareholder accepts an offer of Declined Shares.

(b) **Alternative offer following revocation of Transfer Notice**

If a Transfer Notice is revoked, the Intending Seller may, but is not required to, issue a new Transfer Notice pursuant to clause 10.1.

## 10.8 Sale and purchase

Subject to clause 10.11, the Intending Seller becomes bound to sell the Specified Shares in respect of which Acceptance Notices have been received when:

(a) **Election to repurchase given by Board**

the Board delivers notice to the Intending Seller under clause 10.4(b); or

(b) **Acceptance Notices for all Specified Shares**

Acceptance Notices are given under clause 10.5 which, in aggregate, relate to at least the number of Specified Shares offered under the Transfer Notice.

## 10.9 Purchasers

If the Board has not elected that the Company repurchase Specified Shares, the purchasers of the Specified Shares are to be determined as follows:

(a) **All entitlements accepted**

if all offerees have accepted their entitlements, then each offeree becomes bound to purchase that number of Specified Shares equivalent to that offeree's entitlement to Shares set out in the Transfer Notice; and

(b) **Less than all Shareholders accept entitlements**

in any other case where Acceptance Notices are received which, in aggregate, contain acceptances for at least the number of Specified Shares offered under the Transfer Notice, each offeree becomes bound to purchase:

- (i) the number of Specified Shares accepted by it; and
- (ii) the number of Declined Shares allocated to it under clause 10.4(d)(ii).

## 10.10 Price

If an offeree's Acceptance Notice states that the offeree accepts the Proposed Sale Price, that offeree is bound to purchase the relevant Specified Shares at that price.

## 10.11 Fair Value if no agreement

(a) **Fair Value fixed by Expert**

If an offeree's Acceptance Notice states that the offeree does not accept the Proposed Sale Price, the sale price per Share is the fair value (**Fair Value**) fixed by a person (the **Expert**) appointed by:

- (i) agreement between the Intending Seller and the Company; or
- (ii) failing agreement, the President of the New Zealand Institute of Chartered Accountants.

(b) **Expert not arbitrator**

- (i) The Expert is to be an expert, not an arbitrator.

(ii) Accordingly, the Arbitration Act 1996 does not apply.

(c) **Fair Value fixed below Proposed Sale Price**

- (i) If the Expert fixes the Fair Value at a price below the Proposed Sale Price, the Intending Seller may, within five Business Days of receiving notice in writing of the Expert's determination, revoke the Transfer Notice by giving written notice to the Company.
- (ii) If the Intending Seller revokes the Transfer Notice, the sale of all Shares under that Transfer Notice is terminated.
- (iii) The provisions of clause 10 apply to any further attempt by the Intending Seller to sell or transfer any Shares.

(d) **Costs**

If:

- (i) the Expert fixes the Fair Value at an amount less than or equal to 80 per cent. of the Proposed Sale Price, the Intending Seller is to pay the costs of the Expert; or
- (ii) the Expert fixes the Fair Value at an amount greater than 80 per cent. of the Proposed Sale Price, all offerees bound to purchase Specified Shares that did not accept the Proposed Sale Price will pay the costs of the Expert.

## 10.12 Settlement

Settlement of the sale and purchase of the Shares is to take place:

(a) **10 Business Days after bound to sell**

for any Shares to be transferred at the Proposed Sale Price, within 10 Business Days after the Intending Seller becomes bound to sell the Specified Shares pursuant to clause 10.8; or

(b) **10 Business Days after determination of Fair Value**

in any other case, within 10 Business Days after the determination of the Fair Value.

## 10.13 Payment

On settlement:

(a) **Payment**

the Company or the offeree, as applicable, is to pay the price for the Shares to the Intending Seller in cleared funds; and

(b) **Delivery**

in return, the Intending Seller is to deliver to the Company or the offeree, as applicable, a signed Share transfer, unencumbered title to the Shares, and the relevant Share certificate (if any), in each case without additional restrictions, warranties or representations.

#### 10.14 **Execution by Company**

If the Intending Seller does not transfer the Shares in accordance with clause 10.13(b), the Company is to execute transfers of the Shares on behalf of the Intending Seller and receive the price for the Shares.

#### 10.15 **Actions by Company**

Upon receipt of the price for the Shares under clause 10.14, the Company is:

(a) **Entry in Register**

to cause the name of the Company or the relevant offeree, as applicable, to be entered in the Register; and

(b) **Amount paid held in trust**

to hold the amount paid in trust for the Intending Seller.

#### 10.16 **Validity**

(a) **Board's receipt is good discharge**

The Board's receipt is a good discharge to the offeree for the purchase price.

(b) **Title to Shares not to be questioned**

No question may be raised about the title of the offeree to the Shares.

#### 10.17 **Approved transfer**

(a) **Approval of transfer by Shareholders**

A Shareholder may transfer some or all of its Shares to any person if that transfer is unanimously approved in writing by all Shareholders.

(b) **Transfer to or by holding company**

A Shareholder may transfer some or all of its Shares to a company incorporated in New Zealand if the transfer is to its holding company or any wholly-owned subsidiary of its ultimate holding company.

(c) **Transfer restrictions do not apply**

The restrictions in the preceding provisions of this clause 10 do not apply to any transfer authorised by paragraphs (a) or (b).

## 11. Proxies and corporate Representatives

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### 11.1 Proxy permitted

(a) **Exercise of right to vote**

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

(b) **Proxy**

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

### 11.2 Form of proxy

(a) **Written proxy**

A proxy is to be appointed by notice in writing signed by the Shareholder.

(b) **Contents of proxy**

The notice is to state whether the appointment is for a particular meeting or a specified term.

(c) **Powers of attorney**

If the written notice appointing a proxy is signed under a 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.

### 11.3 Lodging proxy

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

### 11.4 Validity of proxy vote

(a) **Matters not affecting validity**

Subject to paragraph (b), a vote given in accordance with the terms of an instrument of proxy is valid notwithstanding:

- (i) the previous death or mental disorder of the principal; or
- (ii) the revocation of the proxy or of the authority under which the proxy is executed; or
- (iii) the transfer of the Share in respect of which the proxy is given.

(b) **Conditions of validity**

A proxy is only valid if no written notice of death, mental disorder, revocation or transfer has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the proxy is used.

## 11.5 Corporate Representative

### (a) Power to appoint

A body corporate that 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.

### (b) Rights and powers of corporate Representative

A corporate Representative has the same rights and powers as if the Representative were a proxy.

## 12. Exercise of powers of Shareholders

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### 12.1 Methods of holding meetings

A meeting of Shareholders may be held either:

#### (a) Meeting in person

by the number of Shareholders who constitute a quorum assembled together at the place, date and time appointed for the meeting; or

#### (b) Audio-visual meetings

by means of audio, or audio and visual, communication at the date and time appointed for the meeting by which all Shareholders (and any invitees of the Chair) participating in the meeting, and constituting a quorum, can simultaneously hear each other throughout the meeting.

### 12.2 Exercise of power by meeting or written resolution

A power reserved to the Shareholders by the Companies Act or by this Constitution may be exercised either:

#### (a) By meeting

at a meeting of Shareholders; or

#### (b) By written resolution

by a resolution in writing signed in accordance with section 122 of the Companies Act.

### 12.3 Powers of Shareholders

Unless otherwise specified in this Constitution, any power reserved to Shareholders will be exercised, and any approval of Shareholders will be given, by Special Resolution.



## 13. Meetings of Shareholders

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### 13.1 Annual meeting

#### (a) Requirement to hold annual meeting

Subject to clause 13.3, the Company is to hold an annual meeting not later than:

- (i) six months after the balance date of the Company; or
- (ii) if:
  - (A) the Company is an **exempt company** (as that term is defined in the Financial Reporting Act 1993); and
  - (B) all Shareholders agree,10 months after the balance date of the Company; or
- (iii) 15 months after the previous annual meeting.

#### (b) First annual meeting

- (i) The Company need not hold its first annual meeting in the calendar year of its registration.
- (ii) However, the Company is to hold that meeting within 18 months of its registration.

### 13.2 Time and place of annual meeting

Each annual meeting is to be held at the time and place that the Board appoints.

### 13.3 Resolution in lieu of annual meeting

The Company is not required to hold an annual meeting if everything required to be done at the meeting (by resolution or otherwise) is done by resolution in writing signed in accordance with section 122 of the Companies Act.

### 13.4 Special meeting

Each meeting other than an annual meeting is to be called a special meeting.

### 13.5 Calling of special meeting

#### (a) Called at any time

A special meeting may be called by the Board at any time.

#### (b) Called on request of Shareholders

A special meeting is to be called by the Board on the written request of Shareholders holding Shares carrying together not less than five per cent. of the voting rights entitled to be exercised on any of the questions to be considered at the meeting.

## 14. Notice of meetings of Shareholders

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### 14.1 Written notice

Not less than 10 Business Days before the meeting, written notice of the time and place of a meeting of Shareholders is to be sent:

(a) **Shareholder**

to every Shareholder entitled to receive notice of the meeting; and

(b) **Directors**

to every Director and any auditor of the Company.

### 14.2 Contents of notice

The notice is to state:

(a) **Nature of business**

the nature of the business to be transacted at the meeting in sufficient detail to enable a Shareholder to form a reasoned judgment in relation to it; and

(b) **Text of resolution**

the text of any Special Resolution or Unanimous Resolution to be submitted to the meeting.

### 14.3 Irregularity in notice

(a) **Waiver of irregularity**

An irregularity in a notice of meeting is waived if:

(i) each Shareholder entitled to attend and vote at the meeting attends the meeting without protest about the irregularity; or

(ii) each such Shareholder agrees to the waiver.

(b) **Proceedings not invalidated**

The accidental omission to give a notice of a meeting to, or the non-receipt of a notice of a meeting by, any person does not invalidate the proceedings at the meeting.

### 14.4 Adjourned meetings

If a meeting of Shareholders is adjourned for less than 30 days, notice of the time and place of the adjourned meeting need not be given, other than by announcement at the meeting which is adjourned.

## 15. Chair of meetings of Shareholders

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### 15.1 Chair to act

If the Chair is present at a meeting of Shareholders, he or she is to chair the meeting.

### 15.2 Other chair

#### (a) Unavailability of Chair

If:

- (i) no Chair is elected; or
- (ii) at any meeting of Shareholders, the Chair is not present within 15 minutes of the time appointed for the commencement of the meeting; or
- (iii) the Chair is unwilling or unable to act,

the Directors present may choose one of their number to be chair.

#### (b) Director not willing to act

If:

- (i) no Director is willing to act as chair; or
- (ii) no Director is present within 15 minutes of the time appointed for the commencement of the meeting,

the Shareholders present may choose one of their number to be chair.

### 15.3 Adjourned meetings

#### (a) Adjournment to new time and place

The chair may adjourn, and if directed by the meeting is to adjourn, the meeting to a new time and place.

#### (b) Transaction of business at adjourned meeting

No business is to be transacted at any adjourned meeting other than unfinished business at the original meeting.

### 15.4 Regulation of proceedings

Subject to the Companies Act, and except as otherwise provided in this Constitution, the chair may regulate the proceedings at meetings of Shareholders.

## 16. Quorum for meetings of Shareholders

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### 16.1 Quorum required

Subject to clause 16.3, no business may be transacted at a meeting of Shareholders if a quorum is not present.

### 16.2 Size of quorum

A quorum for a meeting of Shareholders is present if Shareholders representing 85 per cent. of Shares are present in person or by Representative.

### 16.3 Lack of quorum

#### (a) Dissolution or adjournment of meeting

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

- (i) in the case of a meeting called by the Board on the written request of Shareholders under section 121(b) of the Companies Act, the meeting is dissolved; or
- (ii) in the case of any other meeting, the meeting is adjourned:
  - (A) to the same day in the following week at the same time and place; or
  - (B) to the other date, time and place that the Directors appoint.

#### (b) Quorum not present at adjourned meeting

If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the Shareholders or their Representatives present constitute a quorum.

## 17. Voting at meetings of Shareholders

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### 17.1 Meetings in one place

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

#### (a) Voice

voting by voice; or

#### (b) Show of hands

voting by show of hands.

## 17.2 **Audio-visual meetings**

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

## 17.3 **Postal votes**

### (a) **No postal votes unless Board determines**

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

### (b) **Procedures for postal votes**

If the Board determines that Shareholders may exercise the right to vote at a meeting by casting postal votes, the procedures in relation to postal voting are those set out in clause 7 of the First Schedule to the Companies Act, together with any other procedures determined by the Board.

## 17.4 **Voting at general meeting**

Whether voting is by poll or by voice or a show of hands, each Shareholder has one vote per Share held by that Shareholder.

## 17.5 **Passing of resolutions**

Subject to any requirement that a greater number of votes be cast in favour of a resolution, a resolution is taken to be carried on a resolution put at a meeting for voting by poll or by voice or show of hands if approved by Shareholders holding in aggregate 85 per cent. or more of the Shares entitled to vote on the resolution.

## 17.6 **Unanimous Resolution**

Any resolution:

- (a) to amend the Constitution; or
- (b) to approve a major transaction; or
- (c) to approve an amalgamation of the Company under section 221 of the Companies Act; or
- (d) to put the Company into liquidation,

is to be approved by Unanimous Resolution.

## 17.7 **Declaration of chair conclusive**

A declaration by the chair that a resolution is carried is conclusive evidence of that fact, unless a poll is demanded in accordance with clause 17.8.

## 17.8 **Right to demand poll**

### (a) **How poll is demanded**

Any Shareholder may demand a poll at a meeting of Shareholders.

### (b) **Proxies**

For the purposes of this sub-clause:

- (i) the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll; and
- (ii) a demand by a person as proxy for the Shareholder has the same effect as a demand by the Shareholder.

## 17.9 **Time of demand for poll**

### (a) **When poll may be demanded**

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

### (b) **Withdrawal**

The demand for a poll may be withdrawn.

## 17.10 **Timing of poll**

### (a) **Role of chair**

The chair may determine the time and manner in which a poll is to be taken.

### (b) **Continuance of business**

Any business, other than that upon which a poll is demanded, may proceed pending the taking of the poll.

## 17.11 **Counting of votes on poll**

If a poll is taken, votes are to be counted according to the number of votes by each Shareholder, each vote corresponding to a Share held by that Shareholder.

## 17.12 **Votes of joint holders**

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

## 17.13 **Validity of votes**

### (a) **Raised at meeting only**

An objection may be raised to the qualification of a Shareholder to vote only at the meeting or adjourned meeting before the vote objected to is given or tendered.

(b) **Chair determines dispute**

In the case of any dispute about the admission or rejection of a vote, the chair is to determine the dispute.

(c) **Conclusive determination**

The determination of the chair made in good faith is to be conclusive.

## 17.14 **Electronic voting**

(a) **Board may permit electronic appointment and voting**

The Board may permit, in relation to a particular meeting or generally:

- (i) the appointment of a Representative to be made by electronic means; and
- (ii) to the extent permitted by law, votes to be cast on resolutions at meetings of Shareholders (or of other groups) by electronic means.

(b) **Procedures**

- (i) The procedures in relation to an electronic appointment or electronic voting are those required by law (if any) together with any other procedures determined by the Board.
- (ii) If the Board permits an electronic appointment of a Representative or electronic voting in accordance with paragraph (a), the electronic appointment may be made or electronic votes may be cast notwithstanding any other provision of this Constitution.

## 18. **Minutes of meetings of Shareholders**

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(a) **Minutes must be kept**

The chair is to ensure that minutes are kept of all proceedings at a meeting of Shareholders.

(b) **Evidence of proceeding**

Minutes which have been signed correct by the chair are *prima facie* evidence of the proceedings.

## 19. **Appointment and removal of Directors**

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### 19.1 **Number of Directors**

The Company is to have the number of Directors that is not more than the sum of:

(a) **Appointed by each Ordinary Shareholder**

the number of Directors appointed by the Shareholders in accordance with clause 19.4(b); and

(b) **Independent Directors**

three Independent Directors, each of whom is to be ordinarily resident in New Zealand.

## 19.2 **Chair**

(a) **Qualifications of Chair**

No person may hold the office of Chair unless he or she is and remains an Independent Director.

(b) **Appointment of Chair**

(i) If, at any time:

(A) no person holds the office of Chair; or

(B) the current Chair wishes to retire or is otherwise removed from or ceases to hold office,

the Directors are promptly to appoint one of the other Independent Directors as Chair.

(ii) For this purpose, an outgoing Chair is not entitled to vote.

(c) **Removal of Chair**

(i) If the Directors wish to remove the Chair, they are to pass a resolution accordingly.

(ii) For this purpose, the Chair is not entitled to vote.

## 19.3 **Initial Directors**

(a) **Initial Directors**

On registration of the Company, the initial Directors are the persons named as directors in the application for registration of the Company.

(b) **Deemed appointment**

The Directors named as directors in the application for registration of the Company are deemed to have been appointed pursuant to this Constitution.

## 19.4 **Appointment and removal**

(a) **Section 156**

Section 156 of the Companies Act does not apply.

(b) **Appointment by Shareholders**

(i) Each Shareholder is to appoint (and is entitled to remove and reappoint) one Director.



- (ii) The Shareholders are to appoint (and are entitled to remove and reappoint) three Directors each of whom is to be Independent of each Shareholder.

(c) **Process for appointment and removal**

The appointment or removal of:

- (i) a Director appointed by a Shareholder under paragraph (b)(i) is to be in writing signed by or on behalf of the Shareholder entitled to make the appointment or to effect the removal; and
- (ii) an Independent Director is to be by Special Resolution.

(d) **Appointment of Independent Directors by Board**

- (i) The Board may at any time appoint one or more Independent Directors to fill a casual vacancy.
- (ii) An Independent Director appointed by the Board holds office only until the next annual meeting of the Company.
- (iii) That Independent Director is eligible for re-election at that meeting.

## 19.5 **Rotation**

(a) **Retirement at each annual meeting**

With effect from the third annual meeting following the incorporation of the Company, at least one Independent Director is to retire from office at the annual meeting each year.

(b) **Who is to retire**

The Independent Director who has been longest in office since he or she was last elected or deemed elected is to retire.

(c) **Last appointed on the same day**

In the case of Independent Directors who were last appointed Directors on the same day, those to retire are to be determined by agreement between them or, if they cannot agree, by lot.

## 19.6 **Re-election of retiring Director**

(a) **Appointment by Shareholders**

At a meeting at which an Independent Director retires, the Shareholders may appoint a person to fill the vacated office in accordance with clause 19.4.

(b) **Deemed re-election**

If no other person is elected, the retiring Independent Director is, if standing for re-election, deemed to have been re-elected unless:

- (i) it is resolved at the meeting not to fill the vacated office; or

- (ii) a resolution for the re-election of that Independent Director is put to the meeting and lost.

## 19.7 **Vacation of office**

A Director ceases to hold office as a Director if:

- (a) **Bankruptcy**

the Director becomes bankrupt or makes an arrangement or compromise with his or her creditors generally; or

- (b) **Disqualification**

the Director becomes disqualified from being a Director pursuant to section 151 of the Companies Act; or

- (c) **Resignation**

the Director resigns from office by notice in writing to the Company; or

- (d) **Removal**

the Director is removed from office pursuant to this Constitution or the Companies Act; or

- (e) **Notice from appointing Shareholder**

in the case of a Director appointed under paragraph 19.4(b)(i), the Shareholder that appointed him or her gives notice in writing accordingly to the Company; or

- (f) **Change in shareholding**

in the case of a Director appointed under paragraph 19.4(b)(i), the Shareholder that appointed him or her ceases to be a Shareholder.

## 19.8 **Timing of retirement and appointment**

If:

- (a) **No re-election at meeting**

an Independent Director retires at a meeting of Shareholders and is not re-elected or deemed to be re-elected at that meeting, the Independent Director remains in office until, and his or her retirement takes effect at, the conclusion of the meeting;

- (b) **Removal at meeting**

an Independent Director is removed from office at a meeting of Shareholders by Special Resolution, the Independent Director remains in office until, and his or her removal takes effect at, the conclusion of the meeting; and

(c) **Appointment at meeting**

a person who is not already an Independent Director is appointed or elected as a Independent Director at a meeting of Shareholders, that person takes office as an Independent Director immediately after the conclusion of the meeting.

## 20. **Alternate Directors**

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### 20.1 **Appointment**

(a) **Director may appoint**

Each Director other than an Independent Director may from time to time appoint any person who is not already a Director to be the Director's Alternate Director.

(b) **No power to appoint deputy, etc.**

No Director may appoint a deputy or an agent otherwise than by way of an appointment of an Alternate Director.

### 20.2 **Form of appointment and removal**

Any Alternate Director may only be appointed or removed by notice in writing to the Company signed by the relevant Director.

### 20.3 **Rights of Alternate Director**

Each Alternate Director is entitled:

(a) **Receipt of notices**

to receive notices of all meetings of the Board if the Alternate Director is in New Zealand;

(b) **Attend and vote**

to attend and vote at any meeting of the Board at which the Director for whom the Alternate Director is alternate is not present; and

(c) **Functions and powers**

in the absence of the Director who appointed the Alternate Director, to perform all the functions, and exercise all the powers, of that Director.

### 20.4 **Remuneration**

No remuneration is payable by the Company to Alternate Directors.

### 20.5 **Cessation of appointment**

An Alternate Director ceases to be an Alternate Director:

(a) **Cessation or revocation**

if the Director who appointed the Alternate Director ceases to be a Director or revokes the appointment; or

(b) **Disqualification**

if an event relating to the Alternate Director occurs which, if the Alternate Director were a Director, would disqualify the Alternate Director from being a Director.

## 21. **Powers of Directors**

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### 21.1 **Management of Company**

The business and affairs of the Company are to be managed by, or under the direction or supervision of, the Board.

### 21.2 **Exercise of powers by Board**

The Board may exercise all the powers of the Company which are not required, either by the Companies Act or this Constitution, to be exercised by the Shareholders.

### 21.3 **Delegation of powers**

The Board may delegate to a committee of Directors, a Director, an employee of the Company, a Management Committee or to any other person, any one or more of its powers, other than a power set out in the Second Schedule to the Companies Act.

### 21.4 **Appointment of attorney**

(a) **Section 181**

The Company may exercise the power conferred by section 181 of the Companies Act to appoint a person as its attorney, either generally or in relation to a specified matter.

(b) **Protection and authorisation**

That power of attorney may:

- (i) contain the provisions for the protection of persons dealing with the attorney as the Board thinks fit; and
- (ii) authorise any attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

### 21.5 **Ratification**

(a) **Power to ratify**

Subject to the provisions of section 177 of the Companies Act (relating to ratification of the actions of Directors), the Shareholders, or any other person in whom a power is vested by this Constitution or the Companies Act, may ratify the purported exercise of that power by a Director or the Board in the same manner as the power may be exercised.

(b) **Validity of ratified exercise**

The purported exercise of a power that is ratified under this sub-clause is deemed to be, and always to have been, a proper and valid exercise of that power.

## 22. Proceedings of Board

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### 22.1 Methods of holding meetings

A meeting of the Board may be held either:

(a) **Meeting in person**

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

(b) **Meeting by audiovisual**

by means of audio, or audio and visual, communication at the date and time appointed for the meeting by which all the Directors participating and constituting a quorum can simultaneously hear each other throughout the meeting.

### 22.2 Notice of meeting

(a) **Director may convene meeting**

A Director or, if requested by a Director to do so, an officer or employee of the Company approved by the Board for this purpose, may convene a meeting of the Board.

(b) **Notice to every Director in New Zealand**

Notice of a meeting of Directors must be given to:

- (i) every Director who is in New Zealand; and
- (ii) every Alternate Director who is in New Zealand.

(c) **Timing and form of notice of meeting**

- (i) Subject to sub-paragraphs (ii) and (iii), each Director is to be given not less than 10 Business Days' notice of a meeting of the Board.
- (ii) However, the Chair may waive that requirement.
- (iii) Shorter notice may be given if, in the opinion of the Chair, the meeting is necessary as a matter of urgency, in which case, subject to sub-paragraph (iv), notice as is practicable in the circumstances is to be given.
- (iv) At least three hours' notice of the meeting is to be given in respect of a meeting to consider a Clearing System Suspension Event.
- (v) Notice may be given to a Director or Alternate Director in any of the following ways:

- (A) by telephone to the telephone number given by the Director to the Company for the purpose of receiving notices, in which case the notice is deemed to be given when the call is answered at that time; or
- (B) by delivery of the notice to the Director, in which case the notice is deemed to be given when delivered; or
- (C) by sending by electronic means to an e-mail address given by the Director to the Company from time to time for the purpose of receiving notices or in respect of a specific request, in which case the notice is deemed to be given when sent; or
- (D) by sending the notice by facsimile transmission to the facsimile number given by the Director to the Company for the purpose of receiving notices, in which case the notice is deemed to be given when sent; or
- (E) by posting the notice to the address given by the Director for the purpose of receiving notices, in which case the notice is deemed to be given three Business Days after it is posted; or
- (F) by text message to the telephone number given by the Director to the Company for the purpose of receiving notices, in which case the notice is deemed to be given when acknowledgement of receipt of the message is received by the Company.

### 22.3 **Waiver of irregularity**

An irregularity in a notice of meeting is waived if:

(a) **Participation without protest**

all the Directors entitled to receive notice of the meeting attend or participate in the meeting without protest about the irregularity; or

(b) **Agree to waiver**

all Directors entitled to receive notice of the meeting agree to the waiver.

### 22.4 **Quorum**

(a) **Percentage threshold**

A quorum for a meeting of the Board is present if at least three-quarters of the Directors (or where permitted, their Alternate Directors) who are entitled to vote at that meeting are present at the meeting.

(b) **No business transacted if quorum not present**

No business may be transacted at a meeting of Directors unless a quorum is present.

### 22.5 **Lack of quorum**

(a) **Adjournment of meeting**

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

- (i) in the case of a meeting called to consider a Clearing System Suspension Event in accordance with clause 22.2(c)(iv), the meeting is adjourned to the future time and place as the Chair may appoint, provided that such time is at least two hours after the adjournment; or
- (ii) in the case of any other meeting, the meeting is adjourned to the future date, time and place as the Chair may appoint.

(b) **Quorum at adjourned meeting**

A quorum for an adjourned meeting is present if a majority of the Directors (or where permitted, their Alternate Directors) who are entitled to vote at that meeting are present at the meeting, provided at least one Independent Director is present.

## 22.6 **Insufficient number of Directors**

The Directors may act notwithstanding any vacancy in their body.

## 22.7 **Chair**

(a) **Chair**

The Chair is to chair meetings of the Board.

(b) **Alternate Chair**

- (i) If, at any meeting, the Chair is not present within five minutes after the time appointed for the commencement of the meeting, the Directors present may choose one of their number who is an Independent Director to be chair of the meeting.
- (ii) The alternate Chair replaces the Chair only to the extent necessary to chair that meeting.

## 22.8 **Reserve Bank representative**

(a) **Invitation to Reserve Bank or advisers**

The Chair may invite a representative of the Reserve Bank:

- (i) to attend a Board meeting as an observer; or
- (ii) to attend and speak at a Board meeting.

(b) **No voting rights**

However, that person may not vote at a Board meeting.

## 22.9 **Voting**

(a) **Requisite majority**

- (i) Subject to this Constitution and to sub-paragraph (ii), any resolution put to a meeting of the Board is to be answered in the affirmative if a majority of all Directors (calculated as a majority of all Directors holding office and not otherwise excluded from voting on the matter) cast their votes in favour of the resolution.

(ii) Any Director appointed by a Shareholder that is the subject of a possible Clearing System Suspension Event may not vote at a meeting called to consider the Clearing System Suspension Event.

(b) **Deemed to be decision of Board**

Any such decision is for all purposes deemed a decision of the Board.

(c) **Recommendation not a decision**

A recommendation of a Management Committee is not a decision for the purposes of this sub-clause.

(d) **Dissent and abstention**

A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board, unless that Director expressly dissents or expressly abstains from voting on, or votes against, the resolution.

## 22.10 Resolutions in writing

(a) **Validity**

A resolution in writing, signed or assented to by the number of Directors and Independent Directors who would have been able to approve the matter the subject of the resolution at a duly convened and held meeting at which all Directors entitled to receive notice of a meeting of the Board were in attendance, is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

(b) **Resolution by counterpart**

That 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.

(c) **Records**

A copy of the resolution is to be entered in or kept with the records of Board proceedings.

## 22.11 Minutes

The Chair is to ensure that minutes are kept of all proceedings at meetings of the Board.

## 22.12 Validity of acts

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

(a) **Defects in appointment**

any defect in the appointment of any Director or person acting as a Director; or

(b) **Disqualification**

that they or any of them were disqualified; or

(c) **Irregularity**



any irregularity in a notice of meeting.

## 22.13 Other procedures

### (a) Self-regulation of procedures

Except as set out in this clause, the Board may regulate its own procedures.

### (b) Third Schedule excluded

The provisions of the Third Schedule of the Companies Act do not apply to proceedings of the Board, except to the extent that those provisions are included in this Constitution.

## 23. Directors' Interests

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### 23.1 Disclosure of Interests

#### (a) Compliance with section 140

Each Director is to comply with the provisions of section 140 of the Companies Act (relating to disclosure of Interests of Directors).

#### (b) Failure to comply

However, failure to comply with that section does not affect the operation of clause 23.2.

### 23.2 Personal involvement of Director

#### (a) Ability of Interested Director to do certain things

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

- (i) sections 107(3) and 141 of the Companies Act (relating to avoidance of transactions in which a Director is Interested); and
- (ii) section 199(2) of the Companies Act (prohibiting a Director from acting as auditor of a company),

a Director may:

- (iii) contract with the Company in any capacity;
- (iv) be a party to any transaction with the Company;
- (v) have any direct or indirect personal involvement or Interest in any transaction or arrangement:
  - (A) to which the Company is a party; or
  - (B) in which the Company is otherwise directly or indirectly interested or involved;
- (vi) become a Director or other officer of, or otherwise be Interested in, any

company:

- (A) promoted by the Company; or
  - (B) in which the Company may be directly or indirectly interested as a shareholder or otherwise; and
- (vii) retain any remuneration, profit or benefits in relation to any of the foregoing.

(b) **Contract not avoided**

No contract or arrangement of any kind referred to in this sub-clause may be avoided by reason of a Director's Interest.

### 23.3 **Interested Director may vote**

A Director who is Interested in a transaction entered into, or to be entered into, by the Company may:

(a) **Vote**

vote on any matter relating to the transaction;

(b) **Attend meetings**

(i) attend a meeting of the Board at which any matter relating to the transaction arises; and

(ii) be included among the Directors present at the meeting for the purposes of a quorum;

(c) **Sign documents**

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

(d) **Others**

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.

## 24. **Directors' remuneration and other benefits**

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### 24.1 **Remuneration and benefits**

The Board may exercise the power conferred by section 161 of the Companies Act to authorise any payment or other benefit of the kind referred to in that section only for Independent Directors.

### 24.2 **Expenses**

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

(b) Each other Director and Alternate Director is entitled, subject to any policy or charter adopted by the Board, to be paid for all reasonable travelling, accommodation and

other expenses incurred by him or her in connection with his or her attendance at meetings or otherwise in connection with the Company's business.

## 25. Indemnity and insurance for Directors and employees

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### 25.1 Indemnity for Directors

Every Director is indemnified by the Company for:

(a) **Section 162(3)**

any costs referred to in section 162(3) of the Companies Act; and

(b) **Section 162(4)**

any liability or costs referred to in section 162(4) of the Companies Act.

### 25.2 Indemnities and insurance

In addition to the indemnity set out in clause 25.1, the Company may:

(a) **Section 162(3)**

indemnify an employee of the Company or a director or employee of a Related Company for any costs referred to in section 162(3) of the Companies Act;

(b) **Section 162(4)**

indemnify an employee of the Company or a director or employee of a Related Company in respect of any liability or costs referred to in section 162(4) of the Companies Act; and

(c) **Section 162(5)**

effect insurance for a Director or employee of the Company or a director or employee of a Related Company in respect of any liability or costs referred to in section 162(5) of the Companies Act.

### 25.3 Interpretation

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

## 26. Pricing Committee

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### 26.1 Establishment of Pricing Committee

In addition to any Board committees appointed pursuant to clause 21.3 and 27, the Board is to establish a Pricing Committee.

## 26.2 **Pricing Committee to make recommendations**

The Pricing Committee will make recommendations to the Board in respect of the levies, charges and membership or other fees applicable to Clearing Systems.

## 26.3 **Composition of Pricing Committee**

The Pricing Committee is to be comprised of the three Independent Directors.

## 26.4 **Proceedings of Pricing Committee**

### (a) **Chair**

The Chair is to be appointed by the Board and act as chair of the meetings of the Pricing Committee.

### (b) **Chair not present or able to act**

Where a meeting is held and the chair:

- (i) is not present within 15 minutes from the time appointed for the commencement of the meeting; or
- (ii) is unable or unwilling to act,

the members present may elect one of their number to be chair of the meeting.

### (c) **Quorum**

- (i) The quorum for a Pricing Committee meeting is three Independent Directors.
- (ii) The Pricing Committee may meet and adjourn as it thinks fit.

### (d) **Voting**

Any question arising at a meeting of the Pricing Committee is to be answered in the affirmative if a majority of the Independent Directors are in favour of it.

### (e) **Application of Board proceedings provisions**

Except as specified in this clause or in the Rules, clause 22 applies to meetings of the Pricing Committee.

## 27. **Management Committees**

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### 27.1 **Clearing System Management Committee**

#### (a) **Management Committee for each Clearing System**

In addition to any Board committees appointed pursuant to clause 21.3 and 26, the Board is to establish a Management Committee for each Clearing System.

(b) **Delegation of powers**

The Board may delegate to each Management Committee any of its other powers under the Companies Act, other than a power set out in the Second Schedule to the Companies Act, as it thinks necessary, desirable or expedient to enable that Management Committee to perform properly its obligations under the Rules.

(c) **Clearing System-specific issues**

Subject always to the Companies Act, paragraph (b) is not intended to restrict the power of each Management Committee to manage payments- and clearing-specific issues and matters in accordance with the Rules.

(d) **Delegation may be subject to restrictions**

Any delegation of powers pursuant to this clause may be subject to the conditions and restrictions that the Board thinks necessary, desirable or expedient.

(e) **Duty to act in best interests of Company**

In exercising any powers of the Board delegated to a Management Committee, each member of that Management Committee, when exercising those powers, must act in what the member believes to be the best interests of the Company.

## 27.2 **Composition of Management Committee**

(a) **Board to appoint one Director**

The Board will have the right to, and will, appoint one Director to each Management Committee.

(b) **Participant nominees**

- (i) If any Participant in the relevant Clearing System so elects, that Participant may nominate one person for appointment by the Board to the relevant Management Committee.
- (ii) That person is to be qualified to act as a member of that Management Committee in accordance with the Rules.
- (iii) The Board may only appoint that person as a member of that Management Committee if the Board is satisfied that that person is so qualified to act.
- (iv) If the Board is so satisfied, it must pass a resolution accordingly.

## 27.3 **Right to attend Management Committee meetings**

(a) **Reserve Bank representative**

A representative of the Reserve Bank:

- (i) is entitled to receive notice of a meeting of a Management Committee;
- (ii) may attend a meeting of a Management Committee; and
- (iii) may speak at a meeting of a Management Committee; but

(iv) may not vote at a meeting of a Management Committee.

**(b) Company representative**

(i) The Company is entitled to receive notice of a meeting of a Management Committee.

(ii) A representative of the Company:

(A) is entitled to be present at each meeting of a Management Committee; and

(B) may speak at a meeting of a Management Committee; but

(C) may not vote at a meeting of a Management Committee.

**(c) Infrastructure Member**

In respect of the Management Committee in the Clearing System in which an Infrastructure Member is a member, a representative of the Infrastructure Member:

(i) is entitled to receive notice of a meeting of the Management Committee;

(ii) may attend a meeting of the Management Committee; and

(iii) may speak at a meeting of the Management Committee; but

(iv) may not vote at a meeting of the Management Committee.

## 27.4 Removal of member of Management Committee

**(a) Removal at any time**

The Board may at any time remove any person as a member of a Management Committee.

**(b) Reasons for removal**

If requested to do so by the person who is so removed, the Board is:

(i) to provide in writing its reasons for the removal; and

(ii) give that person the opportunity to be heard on the relevant issues.

**(c) Participant may appoint**

The Participant that nominated that person as a member of the Management Committee may nominate a replacement member of that Management Committee pursuant to clause 27.2(b).

## 27.5 Responsibilities of Management Committee

### (a) Principal objective

Each Management Committee has, and is at all times to act consistently with, the principal objective of ensuring the efficient operation and management of the relevant Clearing System.

### (b) Matters for which Management Committee is responsible

The matters for which each Management Committee is responsible include:

- (i) rules and/or standards applicable to that Clearing System;
- (ii) operating procedures applicable to that Clearing System;
- (iii) the rules for the interchange and/or settlement of payments between Participants in that Clearing System (or the equivalent);
- (iv) advising the Board from time to time on the setting of levies, charges and membership or other fees payable by Participants in that Clearing System for the purpose of recovering the costs and expenses of operating that Clearing System only;
- (v) subject to any entitlement of a Participant to refer a dispute (whether initially or by way of a request for a review of a decision of a Management Committee) to the Board, the resolution of disputes by arbitration or otherwise between Participants in that Clearing System;
- (vi) supervision of the observance by Participants of the Rules;
- (vii) managing policies and procedures in relation to the occurrence of a Clearing System Suspension Event in respect of the relevant Clearing System;
- (viii) the establishment of working groups to undertake research and investigation and provide advice to the Management Committee on those matters;
- (ix) reporting to the Board to enable the Directors to perform their duties under the Companies Act and this Constitution;
- (x) identifying non-Participant stakeholders and formulating an approach for approval by the Board for engaging with those stakeholders, including the nature and extent of that engagement; and
- (xi) any other matters that the Board considers necessary, desirable or expedient for the better and more efficient operation of that Clearing System.

### (c) Subject to Rules

The responsibilities of each Management Committee in respect of the matters referred to in paragraph (b) are subject to the Rules.

## 27.6 Directions

### (a) **Obligation to comply with directions**

A Management Committee to which any powers are delegated in accordance with clause 27.1(b) is to exercise the delegated powers in accordance with any directions of the Board.

### (b) **Board to consult**

The Board is to consult with a Management Committee before issuing any directions regarding the exercise of powers which have been delegated to that Management Committee.

### (c) **Deemed exercise**

A power so exercised is deemed to have been exercised by the Board.

## 27.7 Proceedings of Management Committee

### (a) **Chair**

The person appointed to a Management Committee by the Board under clause 27.2(a) is to act as chair of the meetings of that Management Committee.

### (b) **Chair not present or able to act**

Where a meeting is held and the chair:

- (i) is not present within 15 minutes from the time appointed for the commencement of the meeting; or
- (ii) is unable or unwilling to act,

the members present may elect one of their number to be chair of the meeting.

### (c) **Quorum**

- (i) The quorum for a Management Committee meeting is three-quarters of all members of the Management Committee entitled to vote at the relevant time.
- (ii) A Management Committee may meet and adjourn as it thinks fit.

### (d) **Determination of questions**

Except as provided in this clause, questions arising at a meeting of a Management Committee are to be determined in the manner specified in the Rules.

### (e) **Voting**

- (i) At a meeting of the Management Committee, the entitlement of each member of the Management Committee to vote at any time is to be determined by reference to NIV (as defined in the Rules) for the relevant Clearing System in the manner specified in the Rules.



- (ii) (A) The member of a Management Committee appointed by the Board pursuant to clause 27.2(a) has no right to vote at a meeting of the Management Committee.
- (B) An acting Chair appointed under clause 27.7(b) retains his or her right to vote at a meeting of the Management Committee while acting as Chair.

(f) **Right to demand poll**

- (i) At a meeting of the Management Committee, any member of the Management Committee may demand a poll.
- (ii) A poll may be demanded either before or after the vote is taken on any resolution of or question before the Management Committee.
- (iii) The demand for a poll may be withdrawn.
- (iv) The chair of the Management Committee may determine the time and manner in which the poll is to be taken.
- (v) Any business, other than that on which the poll is demanded, may be proceeded with pending the taking of the poll.

(g) **Voting on poll – 60 per cent. and majority by number**

If a poll is taken, the resolution or question on which the poll is demanded is to be answered in the affirmative only if both:

- (i) 60 per cent. or more of the maximum number of votes which could be cast on the poll if all members of the Management Committee entitled to vote were present at the meeting are cast in favour of the resolution or question; and
- (ii) a majority by number of the members of the Management Committee entitled to vote who were present at the meeting cast their votes in favour of the resolution or question.

(h) **Application of Board proceedings provisions**

Except as specified in this clause or in the Rules, clause 22 applies to meetings of Management Committees as if all members were Directors.

## 28. Distributions

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### 28.1 Power to authorise

(a) **Board may authorise Distributions**

Subject to the rights of any persons entitled to Shares with special rights as to Distributions, the Board may, subject to the Companies Act and this Constitution:

- (i) authorise a Distribution by the Company at the times, of the amounts, and in the form as it thinks fit; and
- (ii) do everything that is necessary or expedient to give effect to a Distribution.

(b) **Procedural steps necessary**

Prior to authorising a Distribution:

- (i) the Distribution is to be approved by Unanimous Resolution; and
- (ii) the Board is to be satisfied on reasonable grounds that the Company will, immediately after making the Distribution, satisfy the solvency test.

**28.2 No interest on Distributions**

The Company may not pay interest on any Distribution.

**28.3 Method of payment**

Any Distribution or other money payable to a Shareholder may be paid:

(a) **Electronic transfer**

by electronic transfer to the nominated account of the Shareholder; or

(b) **Other manner of payment**

in any other manner determined by the Board.

**28.4 Currency of payment**

Any Distribution in cash is to be paid in New Zealand currency.

**28.5 Deductions**

The Board may deduct from Distributions payable to any Shareholder in respect of any Shares any amounts the Company may be called upon to pay under any legislation.

**28.6 Entitlement date**

Distributions or other payments to Shareholders are payable to the persons who are the registered as Shareholders on an entitlement date fixed by the Board.

**28.7 Unclaimed Distributions**

(a) **One-year rule**

The Company may use for its own benefit until claimed a Distribution unclaimed for one year after its authorisation.

(b) **Five-year rule**

The Board may forfeit for the benefit of the Company a Distribution unclaimed for five years after its authorisation.

(c) **Payment on evidence of entitlement**

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

## 29. Liquidation

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### 29.1 Surplus assets on liquidation

If, upon the liquidation of the Company, and after satisfaction of all its debts and liabilities, any property of the Company remains, that property is to be:

(a) **Transferred to another entity**

transferred to another company or entity approved by Unanimous Resolution as having a business similar to the business of the Company; or

(b) **Distribution among Shareholders**

distributed among all Shareholders in the proportion that the number of Shares each Shareholder holds bears to the aggregate number of all Shares held at the relevant date by all Shareholders.

### 29.2 Approval of transfer

In either case, the transfer or Distribution is first to be approved:

(a) **By Unanimous Resolution**

by Unanimous Resolution at or before the time of liquidation; or

(b) **Application to High Court**

in default of that Unanimous Resolution, by application to the High Court for determination.

## 30. Method of contracting

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### 30.1 Deeds

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

(a) **Two Directors**

two or more Directors; or

(b) **One Director only**

if there is only one Director, that Director whose signature must be witnessed; or

(c) **Attorney**

one or more attorneys appointed by the Company; or

(d) **Any Director, if signature witnessed**

any Director, or any other person authorised by the Board, whose signature must be witnessed.

## 30.2 **Other written contracts**

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

## 30.3 **Other obligations**

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

## 30.4 **Company may appoint attorneys**

### (a) **Appointment of attorneys**

The Company may, by an instrument in writing executed in accordance with clause 30.1, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters.

### (b) **Acts of attorney bind Company**

An act of an attorney in accordance with the instrument binds the Company.

# 31. **Notices**

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## 31.1 **Notices to Shareholders**

### (a) **Sending of notices**

Subject to paragraph (b), each notice, report, account or document required to be sent to a Shareholder is to be sent in the manner set out in section 391 of the Companies Act, with a copy to its Shareholder Representative.

### (b) **Inadvertent failure**

The inadvertent failure to send any notice, report, account or document to a Shareholder Representative will not invalidate the sending to the Shareholder.

## 31.2 **Notices to other persons**

A notice to any other person under this Constitution is to be sent in the same manner as if that person were a Shareholder.

# 32. **Shareholder Representatives**

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## 32.1 **Nomination of Shareholder Representative**

### (a) **Appointment by notice in writing**

Each Shareholder is to provide notice in writing to the Company in the manner set out in section 387 of the Companies Act of the name, address, phone number, fax number and other contact details reasonably requested by the Company of a person or officeholder nominated by the Shareholder (a **Shareholder Representative**):

- (i) to whom notices, reports, accounts or documents required to be sent to a Shareholder may be sent; and
- (ii) who is authorised on behalf of the Shareholder to give any notice or approval, take any action or do any thing in the name of the Shareholder.

(b) **Shareholder Representative not to be Director**

A Director may not be a Shareholder Representative.

## 32.2 **Change of Shareholder Representative**

Each Shareholder may change its Shareholder Representative from time to time by giving notice in writing to the Company in the manner set out in section 387 of the Companies Act containing the details of the new Shareholder Representative set out under clause 32.1.

## 32.3 **Actions of Shareholder Representative bind Shareholder**

Any notices, approvals, actions or other things given or undertaken by a Shareholder Representative in the name of the Shareholder will bind the Shareholder and may be relied on by the Company as the notice, approval, action or other thing of the Shareholder.

## 33. **Inspection of records**

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Except as provided in the Companies Act, or unless the Board determines otherwise in any particular case, no Shareholder may:

(a) **Power to inspect records, etc.**

inspect any records, books, papers, correspondence or documents of the Company;  
or

(b) **Power to receive information, etc.**

require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.