

The Companies Act 1993

Constitution

of

HORSE TREK'N LIMITED

Certified true copy of the Constitution

- Adopted by the shareholders by special resolution, or
- Adopted by the company on registration.

(tick one).

Director

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**” refers to a New Zealand Act of Parliament and any reference to an Act (but only where the context permits) is, where the relevant Act has been replaced or amended, to the replacement or amended Act.

“**Companies Act**” means the Companies Act 1993 and its amendments.

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

“**[§]**” refers to comparable sections and **[§§]** refers to the comparable subsections of the Companies Act.

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

“**Solvency test**” means the solvency test in s4 of the Companies Act, as may be modified in accordance with the Companies Act.

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

No limitation - the words "include", "including" or similar do not imply any limitation.

Conflict - If there is a conflict between the provisions of this constitution and a mandatory provision of an 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.

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; or

1.3.2 are redeemable; or

1.3.3 are restricted or limited as to transfer; or

1.3.4 differentiate as to liability; or

1.3.5 confer preferential rights to distributions of capital or income; or

1.3.6 confer special quorum rights; or

1.3.7 confer special, limited or conditional voting rights; or

1.3.8 do not confer voting rights; or

1.3.9 confer the right to 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

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

2.2 The board may issue shares, securities that are convertible into shares or options to acquire shares at any time, to any person, in any number, in such classes and on such terms as it thinks fit subject to the provisions of the Act and this constitution.

2.3 The issue of further shares ranking equally with, or in priority to, any existing shares, whether as to voting rights, distributions or otherwise, is deemed not to be an action affecting the rights attaching to the existing shares of that class.

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 in the Schedule, or in any subscription application for the share or in any contract for the issue of the share.

2.6 Before the board issues shares (not being the issue of shares on registration of the company or to which subclause 14.6.7 applies) 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.

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;

2.7.3 and is not less than the amount to be credited in respect of the shares.

2.8 Before the board issues securities that are convertible into shares or any option to acquire shares the board must [§§49(1)]:

2.8.1 decide the consideration for which the convertible securities or options and, in either case, the shares will be issued and the terms on which they will be issued; and

- 2.8.2 if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue; and
- 2.8.3 resolve that, in its opinion, the consideration for and terms of the issue of the convertible securities or options and, in either case, the shares are fair and reasonable to the company and to all existing shareholders; and
- 2.8.4 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.

- 2.9 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 subclauses 2.6, 2.7 or 2.8 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) & 49(3)].

Pre-emptive Rights - New Issues

- 2.10 Any shares, securities that are convertible into shares or options to acquire shares proposed to be issued by the company, must be offered for acquisition (in priority) as follows:
- 2.10.1 first, to the holders of the same class of share (which, in the case of a security that is convertible into a share or an option to acquire any share, shall be the class of share to which the security or option relates); and
- 2.10.2 secondly, to the holders of other classes of share (if any); and
- 2.10.3 thirdly, to any person or persons whom the board is prepared to register as a holder or holders of those shares, securities or options.
- 2.11 An offer to holders of shares already issued must be pro rata according to the number of shares held by them of the relevant class or classes and must remain open for acceptance for a reasonable time, not being less than 10 working days.
- 2.12 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.
- 2.13 Except as provided in subclauses 2.10 to 2.13 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.
- 2.14 A shareholder may waive its rights under subclauses 2.10 to 2.12 on written notice to the company.

Consolidation and Subdivision of Shares

- 2.15 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.
- 2.16 Subclauses 2.6 to 2.8 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 (being a resolution approved by 75% of the votes of those shareholders entitled to vote and voting on that resolution), 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; and

- 3.1.2 pre-emptive rights arising under subclauses 2.10 to 2.14; and
- 3.1.3 the right to have the procedure set out in §117 of the Companies Act and any further procedure required by this constitution for the amendment or alteration of rights, observed by the company; and
- 3.1.4 the right to have that a procedure required by this constitution for the amendment or alteration of rights not 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 An amount which, by the terms of issue of a share, is payable on allotment or at a fixed date is deemed for the purposes of this constitution to be a call duly made and payable on the date on which the amount is payable.
- 4.5 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.
- 4.6 The joint holders of a share shall be jointly and severally liable to pay all calls.
- 4.7 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 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.
- 4.8 In any proceedings for recovery of a call:
- 4.8.1 it is sufficient to prove that:
- 4.8.1.1 the name of the relevant shareholder is entered in the share register as the holder, or one of the holders, of the shares to which the call relates; and
- 4.8.1.2 except in relation to any amount which, by the terms of issue of a share, is payable on allotment or at a fixed date, the resolution making the call is entered in the records and notice of the call has been duly given.
- 4.8.2 Proof of the matters mentioned in subclause 4.8.1 is conclusive evidence of the debt and it is not necessary to prove the appointment or qualification of any member of the board which made the call nor any other matter.
- 4.9 The company may receive from any shareholder in advance any amount uncalled and unpaid upon any shares held by that shareholder and may, until the date on which the amount becomes payable pursuant to a call, pay interest on the amount at such rate as the board and the shareholder agree.

Application of Distributions

- 4.10 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 and all proceeds of sale 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 that share or by the holder of that 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; and

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 subclause 8.4.

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.

Forfeiture of Shares

5.9 If a shareholder fails to pay any call on the due date, the company may at any time thereafter by written notice to that shareholder require payment of the amount unpaid together with any accrued interest and all expenses incurred by the company by reason of such non-payment.

5.10 The notice shall specify a further date (not earlier than 10 working days after the date of service of the notice) on or before which the payment is to be made, and shall state that, if payment is not made by the specified date, the share in respect of which the call is due is liable to be forfeited.

5.11 If payment is not made by the date specified in the notice then, at any time thereafter before the payment required by the notice has been made, any share in respect of which the notice has been given may be forfeited by a resolution of the board to that effect. The forfeiture shall include all dividends declared in respect of the forfeited share and not paid before the forfeiture.

5.12 When a share has been forfeited, the company shall give notice of the resolution to the shareholder in whose name the share stood immediately prior to the forfeiture, and shall enter in the share register details of the forfeiture.

5.13 A forfeiture may be cancelled at any time before the forfeiture comes into effect, on such terms as the board thinks fit.

5.14 The holder of a share which has been forfeited ceases to be a shareholder in respect of the forfeited share, but remains liable to the company for all money payable in respect of the forfeited share.

6 SHARE REGISTER**Company to Maintain Share Register**

6.1 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)] the following details for the last decade of:

6.2.1 the names, alphabetically arranged, and the latest known address of each person who is a shareholder; and

6.2.2 the number of shares of that class held by each shareholder; and

6.2.3 the date of any:

6.2.3.1 issue of shares to; or

6.2.3.2 repurchase or redemption of shares from; or

6.2.3.3 transfer of shares by or to,

each shareholder 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)].

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 facie 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 [§§89(2)]:

6.5.1 exercise the right to vote attaching to the share; and

6.5.2 receive notices; and

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.

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].

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 its 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 form required by an Act; or
- 7.4.2 otherwise in any form required or approved by the Board.

7.5 On receipt of a form of transfer, the company must forthwith enter or cause to be entered the name of the transferee on the share register as holder of the shares, unless [§84(4)]:

- 7.5.1 the board resolves within 30 working days of receipt of the transfer to refuse or delay the registration of the transfer, and the resolution sets out in full the reasons for doing so; and
- 7.5.2 notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the resolution being passed by the board; and
- 7.5.3 the board is permitted by subclause 7.6 to refuse or delay registration.

Rights to Refuse Transfer

7.6 The board may refuse to register the transfer of any share if [§84(4)(c)]:

- 7.6.1 the company has a lien on the share; or
- 7.6.2 the share is not fully paid; or
- 7.6.3 the holder of the share has failed to comply with the terms of any contract with the company; or
- 7.6.4 the rights of pre-emption contained in clause 8 have not been exhausted; or
- 7.6.5 the board considers that it would not be in the interests of the company to do so; or
- 7.6.6 the board believes effecting the transfer would be a breach of the law.

Where Share Certificate Issued

7.7 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 PRE-EMPTIVE RIGHTS - SHARE TRANSFERS**Transfer Notice**

- 8.1 A shareholder intending to transfer any shares must give a transfer notice in writing to the company. The transfer notice shall state the number, class and asking price of the shares to be offered for sale.
- 8.2 The board shall be the agent of the transferor (to the exclusion of the transferor) for the sale of the shares specified in a transfer notice. A transfer notice may not be withdrawn except with the sanction of the board or as provided in this clause 8.

8.3 The transferor shall be under no obligation to sell or transfer part only of the shares specified in a transfer notice.

Offer and Allocation of Shares

8.4 The shares specified in a transfer notice must be offered for sale by the board in priority as follows:

- 8.4.1 first, to the holders of the same class of share (other than the transferor); and
- 8.4.2 secondly, to the holders of other classes of share (if any); and
- 8.4.3 thirdly, to any other person or persons whom the board is prepared to register as a holder or holders of that class of share.

8.5 An offer to holders of shares already issued must:

- 8.5.1 be in writing; and
- 8.5.2 be pro rata according to the number of shares held by them; and
- 8.5.3 remain open for acceptance for a reasonable time as determined by the board, not being less than 10 working days; and
- 8.5.4 state the number and class of share on offer, the transferor's asking price and the time period for acceptance.

8.6 Shareholders of the same class of share shall be entitled to purchase additional shares to the extent that shareholders of that class (or classes, if subclause 8.4.2 applies and there is more than one other class of share) 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.

8.7 An acceptance by holders of shares already issued:

- 8.7.1 must be in writing; and
- 8.7.2 may relate to all or only part of the shares offered for sale; and
- 8.7.3 may state the number of additional shares to be purchased from declined offers (if any); and
- 8.7.4 may be made conditional on a fair value for the shares being determined.

8.8 Offers for the sale of shares which have not been accepted in the time and manner set out in the preceding clauses shall be deemed to have been declined.

8.9 On expiry of the time period for acceptance of all offers, the board shall allocate the shares offered for sale according to acceptances received (including the allocation of additional shares from declined offers). The board shall give notice in writing of the share allocation to all persons who have been allocated shares aforesaid, within 10 working days from the expiry of the time for acceptance of all offers.

8.10 Except as provided in this clause 8, the procedure for the offer, acceptance and allocation of shares shall be determined by the board. No irregularity in such process shall affect the validity of the allocation and sale of shares.

Determination of "Fair Value"

8.11 If any acceptance is conditional on a fair value for the shares being determined, such fair value shall be determined by a single arbitrator, appointed by agreement between the transferor and the relevant transferee (or transferees, if more than one transferee has made an acceptance conditional on fair value being determined) or, if they fail to agree, by the president for the time being of the Institute of Chartered Accountants of New Zealand on the application of the transferor or a relevant transferee.

8.12 The arbitration shall be conducted under the provisions of the Arbitration Act 1996. The provisions of the Second Schedule of the Arbitration Act 1996 shall apply to the arbitration only to the extent that the parties expressly agree. One half of the costs of the arbitration shall be borne by the transferor and the other half by the transferee (equally between or among them, if more than one transferee has made an acceptance conditional on fair value being determined), unless the arbitrator determines otherwise. The company shall promptly give a copy of the arbitration award to the transferor and the relevant transferee once the costs of the arbitration have been paid in full.

8.13 Except with the consent of the transferor, there shall be no determination of fair value until all shares offered for sale in a transfer notice have been accepted (either unconditionally or subject only to the determination of fair value) and allocated by the board.

8.14 The transferor shall not be bound to enter into more than one arbitration for the determination of fair value and every offeree who has conditionally accepted an offer to sell shares subject to determination of fair value shall be deemed a party thereto.

Transferor’s Right to Withdraw

8.15 The transferor may withdraw the transfer notice in respect of all or any shares offered for sale if any share remains unallocated 3 months after issue of the transfer notice.

Settlement

8.16 The sale of the shares which are the subject of the transfer notice shall be settled on the later of the following dates:

8.16.1 If all of the shares offered for sale have been unconditionally accepted, 20 working days after the date of the notice of allocation of shares referred to in subclause 8.9; or

8.16.2 If any of the shares offered for sale have been accepted subject to determination of fair value, 20 working days after determination of such fair value.

8.17 The sale price shall be:

8.17.1 For offerees who have unconditionally accepted the offer for sale, the transferor’s asking price; or

8.17.2 For offerees who have accepted the offer for sale subject to determination of fair value, the fair value so determined.

8.18 At settlement, the offerees who have been allocated shares for sale shall be bound to pay the sale price and the transferor shall be bound to transfer the allocated share or shares to such persons.

8.19 Nothing herein shall prevent the transferor from settling the sale of shares with one or more offerees who have been allocated shares, before the settlement date provided above. If the transferor so elects, the right to withdraw the transfer notice shall be deemed waived as to those shares.

Company May Effect Transfer

8.20 If a shareholder fails to give a transfer notice in accordance with this clause 8, the board may give a transfer notice on behalf of that shareholder, which may not be withdrawn except with the consent of the board. In such circumstances, the asking price shall be the fair value of the shares to be determined in accordance with this clause 8.

8.21 If the transferor, after becoming bound in accordance with this clause 8 does not transfer the shares on the settlement date, then the company may receive the sale price and cause the name of the offeree to be entered in the share register as the holders of the shares and shall hold the sale price in trust for the transferor (subject to any lien in favour of the company).

8.22 The board’s receipt will be a good discharge to the offerees for the sale price and after the shares are registered in the names of the offerees, the validity of the proceedings may not be questioned by any person.

Sale to Third Parties

8.23 To the extent that a transfer notice has not been withdrawn, any shares which remain unallocated 3 months after the board has received a transfer notice may be sold by the transferor (at any time within the following 6 months) to any person at a price which is not lower than the asking price specified in the transfer notice.

Pre-emptive Rights Not to Apply

8.24 This clause 8 shall not apply to the transfer of shares:

8.24.1 to a parent, spouse, child, adopted child, stepchild, or grandchild of a shareholder, or to a spouse of such persons; or

8.24.2 to a trustee or trustees of a trust which is, in the opinion of the board, exclusively or principally for the benefit of one or more of the persons referred to in subclause 8.24.1; or to the subsequent transfer of such shares to one or more beneficiaries of the trust, being a person or persons in one of the relationships referred to in subclause 8.24.1, with the former shareholder; or

8.24.3 to a company which is, in the opinion of the board, exclusively or principally owned and effectively controlled by one or more of the persons referred to in subclause 8.24.1; or

8.24.4 to the personal representative of a deceased shareholder; or to a beneficiary of such deceased shareholder’s estate; or

8.24.5 if all shareholders have agreed or concur in writing.

Company Shareholders

8.25 A transfer notice must be given by a company shareholder in respect of its shares in the company if, in the opinion of the board, ownership or effective control of the company shareholder is to be or has been transferred otherwise than to the persons or as referred to in subclause 8.24.

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; and
- 9.2.2 the issue of shares in lieu of a proposed dividend; and
- 9.2.3 the offer of shareholder discounts in respect of some or all of the goods and services provided by the company; and
- 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; and
- 9.2.5 the purchase or acquisition by the company of its own shares; and
- 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)].

Dividends

- 9.5 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)].
- 9.6 The board must not authorise a dividend [§§53(2)]:
 - 9.6.1 in respect of some but not all the shares in a class; or
 - 9.6.2 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 or is required, for a portfolio tax rate entity, as a result of section HL 7 of the Income Tax Act 2007.
- 9.7 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

- 9.8 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]:
 - 9.8.1 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; and
 - 9.8.2 if all shareholders elected to receive the shares in lieu of the proposed dividend, relative voting or distribution rights, or both, would be maintained; and
 - 9.8.3 the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
 - 9.8.4 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
 - 9.8.5 the consideration for the shares has been determined in accordance with this constitution and [§47].

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 subclauses 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; and
 - 10.2.2 the acquisition in question is in the best interests of the company; and
 - 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 subclause 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; and
 - 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 subclause 10.3, 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 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)].

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% 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 Transfer of treasury stock held by the company is deemed to be an issue of new shares and the provisions of subclauses 2.10 to 2.14 will apply accordingly.

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; or
- 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; or
 - 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(1)]:

- 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 subclauses 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; and
- 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 subclause 12.4, the company must send to each shareholder a disclosure document that sets out [§§71(5) & 72]:

- 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 subclause 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; or
- 13.1.2 the financial assistance is special and the resolutions and disclosure document referred to in subclauses 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 subclause 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; and
- 13.3.2 the company should provide the assistance; and

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 are fair and reasonable to the company.

Further Resolutions Required for Special Financial Assistance

13.4 Where the company gives special financial assistance of the nature contemplated by s78 of the Companies Act without the consent in writing of all shareholders or in accordance with subclause 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 subclause 13.4, the company must send to each shareholder a disclosure document that sets out [§§78(5) & 79]:

13.5.1 the nature and terms of the financial assistance to be given, and to whom it will be given; and

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 subclause 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 subclause 13.7, repayment of which remains outstanding, would not exceed 5% 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 the Financial Reporting Act 2013; and

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; and

13.7.3.2 the consideration paid or payable for the shares in respect of which the financial assistance has been provided; and

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)].

PART III - SHAREHOLDERS

14 POWERS OF SHAREHOLDERS

Powers Reserved to Shareholders

14.1 Powers reserved to the shareholders by the Companies Act or this constitution may be exercised only [§104]:

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 Companies 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% 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]; or

14.5.2 approve a major transaction [§106]; or

14.5.3 approve an amalgamation of the company [§106]; or

14.5.4 put the company into liquidation [§106]; or

14.5.5 appoint a liquidator [§241]; or

14.5.6 remove the company from the register [§318]; or

14.5.7 transfer the place of incorporation [§351].

Unanimous Shareholder Agreement

14.6 With the unanimous agreement of all shareholders the following actions may be undertaken (references are to sections of the Companies Act):

14.6.1 a dividend may be authorised otherwise than in accordance with §53; and

14.6.2 a discount scheme may be approved otherwise than in accordance with §55; and

14.6.3 shares in the company may be acquired otherwise than in accordance with §59 to §65; and

14.6.4 shares in the company may be redeemed otherwise than in accordance with §69 to §72; and

- 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 §76 to §80; and
- 14.6.6 the provision of remuneration and other benefits to directors may be authorised otherwise than in accordance with §§161(1); and
- 14.6.7 shares may be issued otherwise than in accordance with §42, 44 or 45; and
- 14.6.8 on the company entering into a transaction in which a director is interested, nothing in §140 and §141 shall apply to that transaction.

- 14.7 A power referred to in subclause 14.6.1 to 14.6.6 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 subclause 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)].
- 14.12 The provisions of clause 16 govern proceedings at meetings of shareholders at which a resolution under subclause 14.11 is passed [§§109(2A)].

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 either:
- 15.1.1.1 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
- 15.1.1.2 in any other case, not later than 6 months after the balance date of the company; and
- 15.1.2 not later than 15 months after the previous annual meeting; and
- 15.1.3 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 Except as required by in s122(3)(a), 207I and 207J of the Companies Act a resolution in writing signed by not less than 75% of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders who together hold not less than 75% 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 subclause 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 writing in lieu of a meeting may consist of several documents (including letters, facsimiles electronic mail or other similar means of communication) in like form each signed or assented to by one or more shareholders [§§122(3A)].

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 any 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; and
- 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 [§121(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; or

- 16.18.2 a shareholder or shareholders representing not less than 10% of the total voting rights of all shareholders having the right to vote at the meeting; or
- 16.18.3 a shareholder or shareholders holding shares in the company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10% of the total amount paid up on all shares that confer that right; or
- 16.18.4 The chairperson of the meeting.

- 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.
- 16.26 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before 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; or
 - 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 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 it, 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 it has carried out the duties set out in subclauses 16.29.4.1 and 16.29.4.2 and which sets out the results of the counts required by subclause 16.29.4.2; and
- 16.29.4.4 to ensure that the certificate required by subclause 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 it holds sufficient postal votes that it 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 it is annexed to the minutes of the meeting.

Minutes

- 16.30 The board must ensure that minutes are kept of all proceedings at meetings 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 must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 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:
- 16.37.1 any part of a statement prepared by a shareholder which the directors consider to be defamatory (within the meaning of the Defamation Act 1992), frivolous or vexatious; or
- 16.37.2 any part of a proposal or resolution by a shareholder that the directors consider to be defamatory (within the meaning of the Defamation Act 1992).
- 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 Companies 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 Companies 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; or

17.7.2 is removed from office in accordance with subclauses 17.5 or 17.8.3; or

17.7.3 becomes disqualified from being a director pursuant to s151 of the Companies 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 subclauses 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; and

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.

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 of the Companies Act, 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 to Act in Good Faith and in Best Interests

20.1 Subject to subclauses 20.2 to 20.4, 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 it 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(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 subclause 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 Companies Act or this constitution [§134].

Reckless Trading

- 20.8 A director must not [§135]:
- 20.8.1 cause or allow or 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.

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; and
- 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 it.

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 an employee of the company whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; and
- 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; and
- 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 Subclause 21.1 applies to a director only if the director:
- 21.2.1 acts in good faith; and
- 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 it 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 the nature and extent of the directors interest and the monetary value of it if the monetary value of the directors interest is able to be quantified. [§§140(1)]:
- 22.2 A general notice entered in the interests register and, if the company has more than one director, disclosed to the board to the effect that a director is a shareholder, director, officer or trustee of another named company or trustee for another named person or company 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 A director of the company is not required to comply with subclause 22.1 if [§§140(1A)]:

22.3.1 the transaction or proposed transaction is between the director and the company; and

22.3.2 the transaction or proposed transaction is or is to be entered into in the ordinary course of the company's business and on usual terms and conditions.

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 subclauses 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; and

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; and

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 its capacity as a director or employee of the company, being information that would not otherwise be available to it, 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; or

23.1.2 as required by law; or

23.1.3 in accordance with subclauses 23.2 or 23.3; or

23.1.4 in complying with s140 of the Companies Act.

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 [§§145(3)]:

23.3.1 particulars of the disclosure, use, or the act in question are entered in the interests register; and

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; and

24.1.1.2 the nature of the relevant interest; and

24.1.1.3 the consideration paid or received; and

24.1.1.4 the date of acquisition or disposition; and

24.1.2 ensure that particulars disclosed to the board under subclause 24.1 are entered in the interests register.

Restrictions

24.2 If a director of the company has information in its capacity as a director or employee of the company or a related company, being information that would not otherwise be available to it, 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 they die or resign or until the directors elect a chairperson in its 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 subclause 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 it 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 it abstains from or 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 Companies 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; and

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

26.1.3 making of loans by the company to a director; and

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 subclause 26.1.

26.2 If a payment, benefit, loan, guarantee or contract is authorised under subclause 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 its capacity as a director or employee; and

27.1.2 in which judgment is given in its favour, or in which it 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(4)]:

27.2.1 liability to any person other than the company or a related company for any act or omission in its 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 a breach of duty of the nature contemplated by s138A of the Companies Act, or otherwise any criminal liability in respect of a breach in the case of a director, of the duty specified in s131 of the Companies Act or, in the case of an employee, of any fiduciary duty owed to the company or a related company.

28 INSURANCE FOR A DIRECTOR OR EMPLOYEE

28.1 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)]:

28.1.1 liability, not being criminal liability, for any act or omission in its capacity as a director or employee; or

28.1.2 costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability; or

28.1.3 costs incurred by that director or employee in defending any criminal proceedings:

28.1.3.1 that have been brought against the director or employee in relation to any act or omission in its capacity as a director or employee; and

28.1.3.2 in which it is acquitted.

28.1.4 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)].

28.1.5 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

29 AMENDMENT OF CONSTITUTION

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

30 METHOD OF CONTRACTING

30.1 A contract or other enforceable obligation may be entered into by the company as follows [§180]:

30.1.1 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:

30.1.1.1 two or more directors of the company; or

30.1.1.2 if there is only one director, by that director whose signature must be witnessed; or

30.1.1.3 a director, and another person or persons authorised to do so by the board whose signature or signatures must be witnessed; or

30.1.1.4 one or more attorneys appointed by the company in accordance with s181 of the Companies Act.

30.1.2 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.

30.1.3 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.

31 COMPANY RECORDS

31.1 The company must keep the following documents at its registered office [§189]:

31.1.1 this constitution; and

31.1.2 minutes of all meetings and resolutions of shareholders within the last 7 years; and

31.1.3 an interests register; and

31.1.4 minutes of all meetings and resolutions of directors and directors' committees within the last 7 years; and

31.1.5 certificates given by directors under the Companies Act within the last 7 years; and

31.1.6 the full names and addresses of the current directors; and

31.1.7 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; and

31.1.8 copies of all financial statements and group financial statements required to be completed by the Companies Act or the Financial Reporting Act 2013 for the last 7 completed accounting periods of the company; and

31.1.9 the accounting records required by s194 for the current accounting period and for the last 7 completed accounting periods of the company; and

31.1.10 the share register.

32 ACCOUNTS

32.1 The board of the company must cause accounting records to be kept that [§194]:

32.1.1 correctly record and explain the transactions of the company; and

32.1.2 will at any time enable the financial position of the company to be determined with reasonable accuracy; and

32.1.3 will enable the directors to ensure that financial statements are prepared for the Company (and if required by the Act group financial statements) that meet the requirements of Part 11 of the Act. (Refer clause 33 and s200, s201, s202); and

32.1.4 will enable financial statements (and any group financial statements) to be audited if that is required by the Act. (Refer clause 34 and s206, s207).

33 FINANCIAL STATEMENTS

33.1 The Board must ensure that, if under Part 11 of the Act the Company is required to do so, financial statements (and if required group financial statements) are:

33.1.1 prepared within 5 months after the Company's balance date, for that balance date,

33.1.2 prepared in accordance with required accounting standards,

33.1.3 presented to the Registrar of Companies within 5 months after the Company's balance date (s207D, 207E), and/or

33.1.4 provided to any shareholder if requested to do so in accordance with s207F of the Act

33.2 Additionally the Board will ensure the Company's financial statements and reporting meet any other statutory obligation applying. (Consider Financial Reporting Act 2013, Part7 Financial Markets Conduct Act 2013).

34 AUDITOR

34.1 The Board must, if in accordance with sections 206 and 207 of the Act the Company is required to do so, ensure that its financial statements or any group financial statements audited by a qualified auditor.

34.2 The auditor will be required to conduct the audit in compliance with applicable auditing and assurance standards, and must provide a report to the shareholders on the financial statements or group financial statements audited.

35 NOTICES

35.1 Notices, statements, reports, accounts, or other documents must be served in accordance with Part 22 of the Companies Act.

36 OTHER PROVISIONS

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

