



# CONSTITUTION

## OF

# Certified Organics Limited

I, **WARRICK, David**, hereby  
Certify that **Certified Organics Limited**  
Adopted this Constitution as its Constitution on  
the 31<sup>st</sup> day of August 2004

Dated this 31<sup>st</sup> day of August 2004.

A handwritten signature in black ink, appearing to read "David Warrick", enclosed in a white rectangular box.

.....  
WARRICK, David

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# CONSTITUTION OF CERTIFIED ORGANICS LIMITED

## 1.0 Interpretation

### Definitions

1.1 In this Constitution, unless the context otherwise requires:

**"Act"** means the Companies Act 1993 as the same may be amended from time to time.

**"Board"** and **"Board of Directors"** in relation to the Company means those Directors who number not less than the quorum specified in Regulation 8.4 of this Constitution acting together as a board of directors.

**"Business Day"** means a day on which NZX is open for trading.

**"Class"** means a class of Securities having identical rights, privileges, limitations and conditions and includes or excludes securities which NZX in its discretion deems to be of or not of that Class.

**"Company"** means **Certified Organics Limited**

**"Constitution"** means this Constitution as may be amended from time to time.

**"Director"** means a person occupying the position of director of the Company by whatever name called.

**"Equity Security"** means an Equity Security, as defined in the Listing Rules, which has been issued, or is to be issued, by the Company, as the case may require;

**"Independent Director"** has the meaning given in the Listing Rules;

**"Listed"** has the meaning given to it in the Listing Rules;

**"Listing Rules"** means the Listing Rules of NZX applying to the NZSX market (or any successor to that market) in force from time to time.

**"Minimum Holding"** has the meaning given to it in the Listing Rules;

**"NZX"** means New Zealand Exchange Limited, its successors and assigns and as the context permits includes any duly authorised delegate of NZX (including NZX Discipline);

**"NZX Discipline"** has the meaning given to it in the Listing Rules;

**"Ordinary Resolution"** means a resolution passed by a simple majority of the votes of holders of Securities of the Company which carry votes, entitled to vote and voting;

**"Ruling"** has the meaning given to it in the Listing Rules;

**"Security"** has the meaning given to it in the Listing Rules;

**"Special Resolution"** means a resolution approved by a majority of seventy five percent (75%) of votes of those shareholders entitled to vote and voting on the question.

**"Subsidiary"** means:

(a) a subsidiary within the meaning of section 5 of the Companies Act 1993 (read

together with sections 6 to 8 inclusive of that Act); and

- (b) an entity treated as a subsidiary or in substance subsidiary within the meaning of Financial Reporting Standard Number 37 issued by the New Zealand Institute of Chartered Accountants or within the meaning of any financial reporting standard approved in terms of the Financial Reporting Act 1993.

**"Treasury Stock"** means shares in the Company which have been acquired by that Company and are held by the Company as treasury stock pursuant to provisions of the Act and includes shares which are held by a Subsidiary other than in accordance with section 82(6) of the Act.

1.2 In this Constitution:

- (a) Any headings appear as a matter of convenience and shall not affect the construction of this Constitution.
- (b) References to any statute, statutory regulations or other statutory instrument shall be deemed to be references to the statute, statutory regulations or instrument as from time to time amended or re-enacted, or as the context permits, provisions substituted therefor and for the time being in force.
- (c) The singular includes the plural and vice versa and words importing any gender include the other genders.
- (d) The words "written" and "writing" include facsimile communications and any other means of communication resulting in permanent visible reproduction.
- (e) Unless stated otherwise, references to monetary amounts are to New Zealand currency.
- (f) Except as specified in Regulation 1.1, words or expressions which are defined in the Act and/or the Securities Act 1978 and/or the Listing Rules shall have the meaning given by the Act and/or the Securities Act 1978 and/or the Listing Rules unless the context otherwise requires.
- (g) A reference to a Listing Rule includes that Listing Rule as from time to time amended or substituted.

**Incorporation of Listing Rules**

1.3 While the Company is Listed, those provisions of the Listing Rules which are required to be contained or incorporated by reference in this Constitution, as they may be modified by any Ruling relevant to the Company, will be deemed to be incorporated in this Constitution and have the same effect as though they were set out in full with any necessary modification.

**Listing Rules Prevail**

1.4 While the Company is Listed, if a provision of this Constitution is inconsistent with the Listing Rules as modified by any Ruling relevant to the Company, the Listing Rules shall prevail.

**Compliance with Listing Rules**

1.5 Subject to:

- (a) the terms of any Ruling from time to time given by NZX; and
- (b) the requirements of the Act and any other applicable legislative or regulatory requirement,

the Company shall, for so long as it is Listed, comply with the Listing Rules.

### **NZX Rulings**

- 1.6 If NZX has granted a Ruling in relation to the Company authorising any act or omission which in the absence of the Ruling would be in contravention of the Listing Rules or this Constitution, that act or omission will be deemed to be authorised by the Listing Rules and this Constitution.

### **Effect of Failure to Comply**

- 1.7 Failure to comply with the Listing Rules shall not affect the enforceability of any transaction, contract, action or other matter whatsoever (including the proceedings of, or voting at, any meeting) done or entered into by, or affecting, the Company, except that a party to a transaction or contract who knew of the failure to comply with the Listing Rules shall not be entitled to enforce that transaction or contract. This provision does not affect the rights of any holder of Securities of the Company against the Company or the Directors arising from failure to comply with the Listing Rules.

### **Companies Act 1993**

- 1.8 This Constitution has no effect to the extent that it contravenes, or is inconsistent with, the Act.
- 1.9 The Company, the Board, each Director and each shareholder of the Company have the rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

### **Powers of Shareholders**

- 1.10 Unless otherwise specified in the Act or this Constitution any power reserved to shareholders may be exercised and any approval of shareholders may be given by Ordinary Resolution.

## **2.0 Management of the Company**

### **Role of Board**

- 2.1 The business and affairs of the Company must be managed by, or under the direction or supervision of, the Board, subject to the provisions of this Constitution and the Act.

- 2.2 Notwithstanding Regulation 2.1 of this Constitution:

- (a) 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 of the Company; and
- (b) A meeting of shareholders may pass a resolution relating to the management of the Company.

### **Shareholders' Resolutions Regarding Management**

- 2.3 A resolution relating to the management of the Company passed by a meeting of shareholders shall not be binding on the Board.

### **Delegation by the Board**

- 2.4 The Board may delegate to a committee of Directors, a Director or employee of the Company, or any other person, any one or more of its powers, other than those specified in the Second Schedule to the Act.

- 2.5 The Board is responsible for the exercise of the power by the delegate as if the power had been exercised by the Board, unless the Board:

- (a) Believed on reasonable grounds at all times before the exercise of the power that the delegate would exercise the power in conformity with the duties imposed on Directors of the Company by the Act and this Constitution; and
- (b) Has monitored, by means of reasonable methods properly used, the exercise of the power by the delegate.

## **Managing Director**

### **Power to appoint Managing Director and Term**

- 2.6
- (a) The Board may from time to time appoint one of the Directors to the office of Managing Director of the Company for a period not exceeding five years and on such conditions as it thinks fit.
  - (b) Notwithstanding Regulation 2.6(a) the Managing Director may be reappointed as Managing Director upon expiry of the term of appointment.
  - (c) Nothing in Regulation 2.6(a) shall affect the terms of engagement of the Managing Director as an employee.
  - (d) If the Board so determines, the Managing Director may be referred to as the Chief Executive of the Company.

### **Managing Director Liable to Dismissal**

- (e) Every Managing Director shall be liable to be dismissed or removed by the Board (with or without cause), but the Board may enter into any agreement on behalf of the Company with any person who is, or is about to become, the Managing Director, with regard to the length and terms of his or her employment, but so that the remedy of any such person for any breach of the agreement shall be in damages only, and he or she shall have no right to claim to continue in such office contrary to the will of the Board.

### **Remuneration of Managing Director**

- (f) The remuneration of the Managing Director shall be fixed by the Board and may be in addition to the remuneration of that Managing Director as an ordinary Director.

### **Managing Director Not Required to Retire by Rotation**

- (g) The Managing Director shall not, while he or she continues to hold that office, be required to retire by rotation, but he or she shall be taken into account in determining the number of Directors to retire. Subject to any agreement entered into between a Managing Director and the Company as aforesaid, a Managing Director shall be subject to the same provisions as regards resignation, removal, and disqualification as the other Directors, and if he or she ceases to hold the office of Director from any cause, he or she shall thereupon cease to be a Managing Director. If a Managing Director shall cease to be employed by the Company then, unless the Board otherwise determines, he or she shall ipso facto cease to be a Director.

### **Powers Capable of Being Conferred Upon Managing Director**

- (h) Subject to Regulations 2.4 and 2.5, the Board may from time to time entrust to and confer upon the Managing Director any of the powers exercisable by the Board upon such terms and conditions, and with such restrictions, as it may think fit and either collaterally with or to the exclusion of its own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers.

## **3.0 Shares**

### **Rights and Powers Attaching to Shares**

- 3.1 Subject to Regulation 3.2, a share in the Company confers on the holder:

- (a) The right to one vote at a meeting of the Company on any resolution, including any resolution to:
  - (i) Appoint or remove a Director or auditor;
  - (ii) Alter the Constitution;

- (iii) Approve a major transaction;
  - (iv) Approve an amalgamation of the Company under s.221 of the Act;
  - (v) Put the Company into liquidation.
- (b) The right to an equal share in dividends authorised by the Board;
  - (c) The right to an equal share in the distribution of the surplus assets of the Company.

Subject to s.53 of the Act, the rights specified in this Regulation 3.1 may be negated, altered, or added to by the terms on which the share is issued.

- 3.2 (a) The rights, privileges, limitations and conditions attached to any shares in the Company may, subject to compliance with ss. 116 and 117 of the Act, be modified, abrogated or altered only with the sanction of a Special Resolution passed at a meeting of each interest group but s.116 and s.117 shall be read as if the references to "shares" in those sections shall (subject to Regulation 3.2(b) be deemed to include references to all Equity Securities of the Company and the references to shareholders shall be read accordingly. In respect of Equity Securities which are not shares in the Company, in s.116 and s.117 the reference to a Special Resolution shall be read as a reference to a resolution approved by a majority of 75% of votes of the holder of those Securities entitled to vote and voting and the reference to the constitution as a reference to the document which governs the rights of those Equity Securities.
- (b) The Company shall be required by Regulation 3.2(a) to comply with s.116 and s.117 of the Act but shall not be required by the modifications deemed to be made thereto by Regulation 3.2(a) to comply with those sections in respect of actions that affect the rights attaching to:
- (i) Equity Securities which are not Quoted; or
  - (ii) Equity Securities which are not shares of the Company if:
    - (aa) those Equity Securities were issued before 30 April 1995; or
    - (ab) those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the approval of holders of those Equity Securities, and those terms were clearly disclosed in the Offering Document (if any) pursuant to which those Equity Securities were offered.
- (c) No obligation to pay any amount which is unpaid on any Equity Security shall be cancelled, reduced or deferred without the authority of an ordinary resolution of the Company.

**Terms of Issue**

- 3.3 (a) Without limiting the classes of shares that may be issued, shares in the Company may be issued on terms that they:
- (i) are convertible; or
  - (ii) are redeemable within the meaning of s.68 of the Act, and redeemable at the option of the Company as contemplated by s.69(1)(b) of the Act; or
  - (iii) confer preferential rights to distributions of capital which may be made subject to the power of the Directors to make distributions; or
  - (iv) confer preferential rights to distributions of income which may be made

subject to the power of the Directors to make distributions; or

- (v) confer special, limited or conditional voting rights; or
  - (vi) do not confer voting rights; or
  - (vii) possess any combination of two or more of the foregoing characteristics.
- (b) The issue of shares ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions or both is expressly permitted. Accordingly any such issue of shares shall not be an action modifying, abrogating or altering the rights, privileges, limitations and conditions attached to these shares as contemplated by s.117(3) of the Act.

**Issue of new Equity Securities**

- 3.4 The Board may issue Shares or other Equity Securities to any person and in any number it thinks fit provided that while the Company is Listed, the issue is made in accordance with the Listing Rules. The provisions of sections 45(1) and 45(2) of the Act shall not apply to any issue or proposed issue of Shares by the Company. The transfer, by the Company of Treasury Stock shall for the purposes of this Constitution be deemed to be an issue of Equity Securities.

**Consolidation and subdivision of shares**

- 3.5 Subject to any applicable provisions of the Listing Rules, the Board may:
- (a) consolidate and divide the shares or shares of any Class in proportion to those shares or the shares in that Class; or
  - (b) subdivide the shares or shares of any Class in proportion to those shares or the shares in that Class.

**3.6 Bonus Issue**

Subject to any applicable provisions of the Listing Rules, the Board may resolve to apply any amount which is available for distribution to shareholders either:

- (a) in paying up in full shares or other Securities of the Company to be issued credited as fully paid to:
  - (i) the shareholders who would be entitled to that amount if it were distributed by way of dividend, and in the same proportions; and
  - (ii) if applicable, the holders of any other Securities of the Company who are entitled by the terms of issue of those Securities to participate in bonus issues by the Company, whether at the time the bonus issue is made to the shareholders, or at some time later, in accordance with their respective entitlements; or
- (b) in paying up any amount which is unpaid on any shares held by the shareholders referred to in Regulation (a)(i) above,

or partly in one way and partly in the other.

**Liens on Shares**

- 3.7 The Company shall have a lien in respect of each share and on dividends and other distributions from time to time declared in respect of such Securities only to the extent described in Regulation 3.8.

- 3.8 The lien referred to in Regulation 3.7 shall be restricted to:

- (a) unpaid calls, instalments, premiums or other amounts, and any interest payable on



such amounts, relating to the specific Securities; and

- (b) such amounts as the Company may be called upon to pay under any legislation in respect of the specific Securities.
- 3.9 Any dividends or distributions may be applied in reduction or satisfaction of any amount presently payable to the Company in respect of which the lien exists.
- 3.10 (a) The Company may sell, in a manner decided by the Board, any share on which the Company has a lien if:
- (i) an amount of the kind specified in Regulation 3.8 is presently payable in respect of the share; and
  - (ii) the Company demands the amount in writing, and payment is not made within 14 days after the demand.
- (b) To give effect to a sale the Board may authorise a person to transfer the shares sold to the purchaser. The purchaser shall be registered as the holder of the shares comprised in the transfer. The purchaser shall not be bound to see to the application of the purchase money. The title of the purchaser to the shares shall not be affected by any irregularity or invalidity affecting the sale or the payment of the proceeds.
- 3.11 The Company shall apply the proceeds received from the sale first to the reasonable expenses of the sale and, secondly to the amount which is presently payable to the Company when the proceeds are received. Any remaining balance shall then be paid to the shareholder, the shares of whom were sold pursuant to the power of sale contained in Regulation 3.10.

**Power to sell where less than Minimum Holdings**

- 3.12 (a) Where the shares registered in the name of a shareholder are less than a Minimum Holding the Board may at any time give written notice of that fact and of the provisions of Regulation 3.12(b) to the shareholder;
- (b) Where notice has been given under Regulation 3.12(a) the Company may, at any time after the expiration of three months from the date of the notice if the shares then registered in the name of the shareholder are less than a Minimum Holding, sell the shares by means of a transaction on NZX or in some other manner approved by NZX.
- (c) To give effect to any sale under Regulation 3.12(b) the Board may authorise some person to transfer the shares sold to the purchaser thereof. The purchaser shall not be bound to see to the application of the purchase money, nor shall his or her title to the shares be affected by any irregularity or invalidity in the proceedings relating to the sale. The remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.
- (d) The proceeds of sale of any shares sold under this Regulation 3.12 shall be applied as follows:
- (i) First, in payment of any reasonable expenses incurred in regard to the sale;
  - (ii) Secondly, in satisfaction of any unpaid calls, instalments or premiums, interest thereon, expenses, and any other money in respect of which a lien existed;
  - (iii) The residue (if any) shall be paid to, or in accordance with a direction of, the person who was the holder of the shares immediately before the sale or the executors or administrators or assigns of that person.

## 4.0 Transfer of Shares

### Transferability of Shares

4.1 Subject to the terms of this Constitution:

- (a) A share in the Company is transferable.
- (b) A share may be transferred by entry of the name of the transferee on the share register.

4.2 A shareholder may transfer all or any of his or her shares by:

- (a) using a wholly or partly electronic system for the transfer of securities which has been approved by any statute or regulations in New Zealand;
- (b) a form of transfer complying with the Securities Transfer Act 1991 in respect of any shares disposed of by an "authorised transaction" or a "stock exchange transaction" within the meaning of those terms in the Securities Transfer Act 1991. Where an instrument of transfer would have complied with the provisions of the Securities Transfer Act 1991 if it had been executed by the transferor in New Zealand, it may nevertheless be registered by the Company if it is executed under the common seal of a corporation as transferor or if the signature of the transferor has been witnessed by an individual who has added his or her occupation and address after his or her signature;
- (c) To the extent that the transfer proceeds under paragraphs (a) or (b) above, the form of the instrument of transfer shall be any usual or common form or any other form which the Board may approve, signed by the shareholder or the personal representative of the shareholder. If registration of the transfer imposes on the transferee, as holder of the shares, any liability to the Company, the instrument of transfer must be signed by the transferee except where execution is under the common seal of a corporation, every signature to the instrument of transfer shall be witnessed by an individual who shall add his or her occupation and address after his or her signature.

4.3 The form of transfer must be delivered to:

- (a) the Company; or
- (b) an agent of the Company designated by the Board who maintains the share register.

### Registration of Transfers

4.4 On receipt of a form of transfer in accordance with Regulation 4.2, 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:

- (a) 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
- (b) notice of the resolution, including those reasons, is sent to the transferor and to the transferee within 5 working days of the approval of the resolution by the Board; and
- (c) the refusal or delay in the registration is permitted by Regulation 4.5.

### Permitted Transfer Restrictions

4.5 The Board may refuse or delay the registration of a transfer of shares if:

- (a) The Company has a lien on the shares; or

- (b) The registration of the transfer, together with registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding shares of less than the Minimum Holding.
- (c) The refusal or delay is permitted by the Listing Rules.

## **5.0 Distributions (Repurchase, Redemption, Financial Assistance, Dividends)**

### **Repurchase and Redemption**

5.1 The Company may:

- (a) purchase or otherwise acquire shares issued by it from one or more shareholders;
- (b) purchase or otherwise acquire other Equity Securities from one or more shareholders;
- (c) hold any shares or other Equity Securities so purchased or acquired; and
- (d) redeem any redeemable shares or other Equity Securities held by one or more holders,

in accordance with the provisions, and subject to the restrictions of the Act, this Constitution and the Listing Rules.

### **Financial Assistance**

5.2 The Company shall not give financial assistance for the purpose of, or in connection with, the acquisition of any shares or other Equity Securities issued, or to be issued, by the Company unless the giving of that assistance is in accordance with the provisions of the Act and the Listing Rules.

### **Dividends**

5.3 The Board must not authorise a dividend in respect of some but not all the shares in a class or 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 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.

5.4 A shareholder's entitlement to receive a dividend may be waived by notice in writing to the Company signed by or on behalf of a shareholder.

5.5 The Board may deduct from dividends payable to any shareholder in respect of the shares any:

- (a) unpaid calls, instalments or other amounts, and any interest payable on such amounts, relating to the specific shares; and
- (b) amounts to the Company may be called upon to pay under any legislation in respect of the specific shares.

5.6 Dividends and other distributions or payments to holders of Securities of the Company will be payable to the persons who are registered as the holders of those Securities on an entitlement date fixed by the Board.

### **Shares in Lieu of Dividends**

5.7 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:

- (a) 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

- (b) 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
- (c) the shareholders to whom the right is offered are afforded a reasonable opportunity of accepting it; and
- (d) 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 agree to receive the shares.

#### **Unclaimed Dividends**

- 5.8 All dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed and the Company shall be entitled to mingle the amounts of any such dividends with other money of the Company or spend the same, (and in the meantime shall carry no right to interest) and shall not be required to hold them or regard them as being impressed with any trust.
- 5.9 All dividends, and any other moneys payable to any shareholder or former shareholder in respect of shares and/or interests in respect of Securities issued by the Company remaining unclaimed for five years after having been declared or otherwise having become payable, shall, at the expiry of such period of five years after having been declared or otherwise having become payable, be automatically forfeited for the benefit of the Company, unless the Board shall resolve otherwise. The Board must annul such forfeiture and pay the dividend or other money so forfeited to any person producing evidence that he or she is entitled to the same.

## **6.0 Meetings of Shareholders**

#### **Annual Meetings**

- 6.1 An annual meeting of shareholders shall be held:
  - (a) not later than 6 months after the balance date of the Company; and
  - (b) not later than 15 months after the previous annual meeting.

#### **Special Meetings**

- 6.2 (a) All meetings of shareholders other than the annual meeting shall be called special meetings.

#### **Directors May Attend Meetings**

- (b) Each Director shall be entitled to attend every meeting of shareholders of the Company notwithstanding that he or she is not a shareholder of the Company.

#### **Notices, Reports, Financial Statements**

- (c) Equity Security holders of all Classes shall be entitled to attend meetings of shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of Securities carrying Votes.

#### **Convening Special Meetings**

- 6.3 A special meeting of shareholders entitled to vote on an issue:
  - (a) may be called at any time by the Board; and
  - (b) must be called by the Board on the written request of shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

### **Chairperson**

- 6.4 (a) If the Directors have elected a chairperson of the Board, and the chairperson of the Board is present at a meeting of shareholders, he or she must chair the meeting.
- (b) 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.

### **Notice of Meetings**

- 6.5 (a) Written notice of the time and place of a meeting of shareholders must be given to every shareholder and Equity Security holder entitled to receive notice of the meeting and to every Director and the auditor of the Company not less than 10 working days before the meeting.
- (b) The notice must:-
- (i) State the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
  - (ii) State the text of any Special Resolution to be submitted to the meeting (and to the extent reasonably practicable must be framed in a manner which facilitates two-way voting instructions for proxy holders);
  - (iii) If a resolution is proposed which if passed will give shareholders who voted against the resolution the right to require the Company to purchase their shares by virtue of s.110 [Major transactions, amalgamations and removal of constitutional restrictions] or s.118 [modification of rights of Interest Groups], contain a prominent statement to that effect;
  - (iv) be accompanied by an Appraisal Report if required by the Listing Rules;
- (c) An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver. The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.
- (d) 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**

- 6.6 (a) The shareholders and Equity Security holders who are entitled to receive notice of a meeting are:
- (i) If the Board fixes a date for the purpose, those shareholders and Equity Security holders whose names are registered in the applicable register on that date;
  - (ii) If the Board does not fix a date for the purpose, those shareholders and Equity Security holders whose names are registered in the applicable register at the close of business on the day immediately preceding the day on which the notice is given.

### **Methods of Holding Meetings**

- 6.7 A meeting of shareholders may be held by a number of shareholders, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting.

### **Quorum**

- 6.8 (a) No business may be transacted at a meeting of shareholders if a quorum is not present.
- (b) A quorum for a meeting of shareholders is present if shareholders or their proxies, attorneys or representatives (in the case of a body corporate) are present who number not less than three (3).
- (c) 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 pursuant to s.121(b) of the Act, the meeting is dissolved;
  - (ii) 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**

- 6.9 (a) In the case of a meeting of shareholders assembled together in accordance with Regulation 6.7, unless a poll is demanded, voting shall be by whichever of the following methods is determined by the chairperson of the meeting:
- (i) Voting by voice; or
  - (ii) Voting by show of hands
- (b) 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 in accordance with sub-clause (c) of this Regulation.
- (c) At a meeting of shareholders a poll may be demanded by:
- (i) Not less than five shareholders having the right to vote at the meeting; or
  - (ii) 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
  - (iii) 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
  - (iv) The Chairperson of the meeting.
- (d) A poll may be demanded either before or after the vote is taken on a resolution.
- (e) 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.
- (f) The chairperson of a shareholders' meeting is not entitled to a casting vote.
- (g) For the purposes of this Regulation, 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.

**Different Polls to be Taken at Different Times**

- (h) A poll demanded on the election of a chairperson of a meeting or on a question of adjournment shall be taken immediately. A poll demanded on any other question shall be taken at such time as the chairperson of the meeting directs, and the meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

**Restrictions in Listing Rules on Voting**

- 6.10 No shareholder shall be entitled to vote at any meeting in favour of a resolution when that person is disqualified from doing so by virtue of any applicable voting restriction in the Listing Rules.

**Proxies**

- 6.11 (a) A shareholder may exercise the right to vote either by being present in person or by proxy.
- (b) A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
- (c) A proxy must be appointed by notice in writing signed by the shareholder which must state whether the appointment is for a particular meeting or a specified term and a copy of which must be produced before the start of the meeting. A proxy need not be a shareholder of the Company.

**Form of Proxy**

- (d) A notice appointing a proxy shall be in the following form or in such other form as the Board may approve:

I \_\_\_\_\_ of \_\_\_\_\_ being a shareholder of  
**Certified Organics Limited** hereby appoint \_\_\_\_\_ or failing him or her  
as my proxy to vote for me and on my behalf at the meeting of shareholders  
to be held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
, and at any adjournment thereof.

SIGNED this day of \_\_\_\_\_ 20\_\_\_\_ .

This form is to be used in favour of/against the following resolutions (strike out the inappropriate words).

[Recite resolution(s)]

Unless otherwise instructed the proxy will vote or abstain from voting as he or she thinks fit.

**Proxy Not to be Named**

- (e) The Company shall not issue any proxy form with a proxy named therein either by name or by reference to an office which he or she may hold, but the Company may indicate in a footnote that certain persons are willing to act as a Proxy if a Shareholder desires to appoint any of them and the Company may set out on any proxy form issued by the Company the names of the Directors for the time being of the Company.

**Validity on Death or Insanity**

- (f) A vote given in accordance with the terms of a notice of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy is given or the transfer of the Share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation, or transfer has been received by the Company at the Registered Office of the Company before the commencement of the meeting or adjourned meeting at which the proxy is used or has been handed to the Chairperson of the meeting before

the vote is given.

**Notice of Proxy to be Lodged 48 Hours Before Meeting**

- (g) No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced not less than 48 hours before the time of the meeting in the manner set out in Regulation 6.11(h).

**Notice of Proxy to be Lodged in Particular Manner 48 Hours Before Meeting**

- (h) A copy of the written notice appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office or at such other place within New Zealand as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote.

**Two-way Voting**

- (i) A proxy shall (to the extent that the subject matter of the relevant resolution reasonably permits) allow the shareholders to instruct the proxy to vote either for or against any resolution.

**Postal Votes**

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

**Minutes**

- 6.13 (a) The Board must ensure that minutes are kept of all proceedings at meetings of shareholders.
- (b) Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

**Shareholder Proposals**

- 6.14 (a) 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.
- (b) 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.
- (c) 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.
- (d) If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- (e) If the Directors intend that shareholders may vote on the proposal by proxy, 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.
- (f) The Board is not required to include in or with the notice given by the Board a



statement prepared by a shareholder which the Directors consider to be defamatory, frivolous or vexatious.

- (g) 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**

- 6.15 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 and Personal Representatives**

- 6.16 (a) 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.
- (b) Where two or more persons are entitled under s.93 of the Act to be registered as holder of shares of a deceased or bankrupt Shareholder, the right of one of them to vote shall be determined by the order in which their names appear in the register of shareholders.

**Voting Rights if Calls Unpaid or Partly Paid**

- 6.17 (a) 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.
- (b) Each Security which is not fully paid shall carry only a fraction of the Vote which would be exercisable if the Security were fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call), provided that for the purposes of this Regulation 6.17(b), a Security which is not fully paid is not of the same Class as a fully paid Security.

**Appointment of Attorney**

- 6.18 Any shareholder may at any time and from time to time by power of attorney appoint any person to be his or her attorney to attend meetings of shareholders of the Company and on behalf of the shareholder to vote and generally to act for the shareholder in the capacity as such as fully and effectually to all intents and purposes as such shareholder could do if present in person or by Proxy or Representative.

**Powers to Adjourn Meetings**

- 6.19 (a) The chairperson of any meeting at which a quorum is present may, at his or her sole discretion (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place.
- (b) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting, but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**Powers to Dissolve Meetings**

- 6.20 (a) If any meeting shall become so unruly, disorderly or inordinately protracted, that in the opinion of the chairperson the business of the meeting cannot be conducted in a proper and orderly manner, the chairperson, notwithstanding any provision to the contrary contained in this Constitution and without the consent of the meeting, may in his or her sole and absolute discretion and without giving any reason therefor, either adjourn or dissolve the meeting.

- (b) If any meeting is dissolved by the chairperson pursuant to Regulation 6.20(a) and the unfinished business of the meeting relates to any resolution not voted upon by the meeting concerning the appointment of the Auditor, then in that case, the meeting shall be deemed to have resolved that the Board be authorised to fix the remuneration of the Auditor.

## **7.0 Appointment and Removal of Directors**

### **Board composition**

7.1 The composition of the Board must include the following:

- (a) the minimum number of Directors (other than Alternate Directors) is three. The number of Directors shall be not more than 9 or such other number as is fixed by an ordinary resolution of shareholders; and
- (b) at least two Directors must be ordinarily resident in New Zealand; and
- (c) while the Company is Listed, it shall have not less than the minimum number of Independent Directors prescribed by the Listing Rules.

### **Independent Directors**

7.2 While the Company is Listed, the Company and the Board shall comply with the Listing Rules applicable to the appointment and identification of Independent Directors under Regulation 7.1(c).

### **Existing Directors to continue in office**

7.3 The Directors in office at the date of this Constitution shall continue in office subject to the provisions of this Constitution.

### **Appointment and removal by Ordinary Resolution**

7.4 A Director may be appointed by Ordinary Resolution. All Directors shall be subject to removal from office as director by Ordinary Resolution.

### **Appointment by Board**

7.5 The Board may at any time appoint additional Directors. A Director appointed by the Board shall hold office only until the next annual meeting of the Company but shall be eligible for election at that meeting.

### **Nominations**

7.6 No person (other than a Director retiring at the meeting) shall be elected as a Director at a meeting of Security holders unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. The opening date (if any) for nominations, shall not be later than three months, and the closing date for nominations shall not be earlier than two months before the meeting at which the election is to take place. Notice of every valid nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with or as part of the notice of meeting.

### **Voting**

- 7.7 (a) Shareholders of the Company may vote on a resolution to appoint a Director of the Company only if:
- (i) the resolution is for the appointment of one Director and a separate resolution is moved in respect of each Director proposed to be appointed; or
  - (ii) the resolution is a single resolution for the appointment of two or more Directors, and a separate resolution that it be so voted on has just been passed without a vote being cast against it.

- (b) Nothing in Regulation 7.7(a) prevents the election of two or more Directors by ballot or poll.

**Rotation**

- 7.8 One third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. The Directors to retire shall be those who have been longest in office since they were last elected or deemed elected. In the case of Directors who were last appointed Directors on the same day, those to retire shall be determined by agreement between those Directors or, if they cannot agree, by lot.

**Exceptions to rotation**

- 7.9 The provisions of Regulation 7.8 shall be read subject to the following exceptions:
  - (a) a Director appointed pursuant to Regulation 7.5 and who is subject to retirement and seeks election at the next annual meeting pursuant to that clause shall not be subject to retirement by rotation at the next annual meeting of the Company following that Director's appointment pursuant to Regulation 7.5. That Director shall not be included in the number of Directors upon which the calculation of the number of Directors to retire by rotation at the annual meeting is made;
  - (b) if the Company has executive Directors, one of those executive Directors shall not be subject to retirement by rotation. That executive Director shall be included in the number of Directors upon which the calculation of the number of Directors to retire by rotation is made.

**Vacation of Office**

- 7.10 A Director shall cease to hold office as a Director if the Director:
  - (a) becomes bankrupt or makes an arrangement or compromise with the Director's creditors generally;
  - (b) becomes disqualified from being a Director pursuant to the section 151 of the Act;
  - (c) resigns from office by notice in writing to the Company;
  - (d) is removed from office pursuant to this Constitution or the Act; or
  - (e) being an executive Director, ceases for any reason to be in salaried employment of the Company or any of its subsidiaries unless the Board decides otherwise; or
  - (f) has for more than six months been absent without permission of the Board from meetings of the Board held during that period.

**Alternates**

- 7.11 With the consent of a majority of his or her co-directors, any Director (the "nominating Director"), may appoint one person nominated by that Director, not being an individual who is already a Director of the Company, as an alternate Director (hereafter called "alternate Director") to act in the place of that Director when he or she is unable to do so. The following provisions shall apply to the appointment of an alternate Director:
  - (a) Without limiting Regulation 7.4, the office of the alternate Director shall be vacated if the Director who nominated the alternate Director shall no longer hold office, or if the appointment of the alternate is revoked by the nominating Director, or by a majority of the co-directors of the nominating Director.
  - (b) A nominating Director and his or her alternate Director shall be counted as one Director for the purposes of this Constitution.
  - (c) An alternate for the managing Director may not act as managing Director.

- (d) An alternate Director may be paid expenses, and shall be entitled to be indemnified by the Company to the same extent, with any necessary modifications, as if he or she were a Director but he or she shall not be entitled to receive from the Company, in respect of his or her appointment as alternate Director, remuneration other than such proportion (if any) of the remuneration otherwise payable to his or her appointor as such appointor may by notice in writing to the Company from time to time direct.
- (e) No Directors shall appoint a deputy or agent otherwise than by way of an appointment of an alternate.

**No Shareholding Qualifications**

- 7.12 A person shall not be required to hold shares in the Company in order to make him or her eligible for appointment as a Director or as an alternate Director.

**Timing of retirement and appointment**

7.13 If:

- (a) a Director retires at a meeting of shareholders and is not re-elected, the Directors shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting;
- (b) a Director is removed from office at a meeting of shareholders by Ordinary Resolution, the Director shall remain in office until, and his or her removal shall take effect at, the conclusion of the meeting;
- (c) a person who is not already a Director is appointed as a Director at a meeting of shareholders, that person shall take office as a Director immediately after the conclusion of the meeting.

**8.0 Directors' Meetings**

**Chairperson**

- 8.1 (a) The Directors may elect one of their number as chairperson of the Board to hold office until he or she dies or resigns or until the Directors elect a chairperson in his or her place.
- (b) 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 meeting, the Directors present may choose one of their number to be chairperson of the meeting.

**Notice of Meeting**

- 8.2 (a) 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 this Regulation 8.2.
- (b) Not less than 5 days' written notice of a meeting of the Board must be given either by hand, pre-paid post, telegram cable, facsimile machine or electronic mail, telex or telefax to every Director who is in New Zealand and every alternate Director who is in New Zealand and whose nominating Director is absent from New Zealand (at the physical, postal, telephonic or electronic address provided by a Director or alternate, as the case may be, for that purpose), and the notice must include the date, time and place of the meeting and the matters to be discussed.
- (c) 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 agree to the waiver.

### **Methods of Holding Meetings**

8.3 A meeting of the Board may be held either:

- (a) By a number of the Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- (b) By the contemporaneous linking together by telephone or other means of communication of the Directors constituting a quorum, whether or not any one or more of the Directors are absent from New Zealand and such meeting shall be deemed to be properly held provided the following conditions are met:
  - (i) all the Directors including alternate Directors entitled to receive notice of a meeting of the Directors shall have received notice of the meeting and be entitled to be linked by telephone or such other means of communication for the purposes of such meeting;
  - (ii) each of the Directors taking part in the meeting by telephone or other means of communication must throughout the meeting be able to hear each of the other Directors taking part;
  - (iii) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Board to all the other Directors taking part;
  - (iv) a Director may not leave the meeting by disconnecting the telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting, and a Director shall be presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting to leave the meeting.

### **Quorum**

- 8.4
- (a) Until otherwise determined by the Board a quorum for a meeting of the Board, other than an adjourned meeting, shall be 4 Directors.
  - (b) No business may be transacted at a meeting of the Board if a quorum is not present.
  - (c) If a quorum is not present within 15 minutes of the time appointed for the commencement of the meeting, the meeting shall then stand adjourned for seven days. The quorum for an adjourned meeting of the Board shall be those present.

### **Voting**

- 8.5
- (a) Every Director has one vote. An alternate Director shall not vote at a meeting at which the person for whom he or she is an alternate Director attends.
  - (b) In the case of an equality of votes the chairperson shall have a second and casting vote.
  - (c) A resolution of the Board is passed if a majority of the votes cast on it are in favour of it.
  - (d) A Director present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly abstains from voting or dissents from or votes against the resolution at the meeting.

### **Minutes**

- 8.6 The Board must ensure that minutes are kept of all proceedings at meetings of the Board. Minutes signed correct are prima facie evidence of the proceeding at the meeting.

### **Unanimous Resolution**

- 8.7 (a) A resolution in writing, signed or assented to by letter, telegram, cable, telex, facsimile or other written form by all Directors including alternate Directors (when the person for whom he or she is appointed is unable to act), 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.
- (b) A resolution pursuant to Regulation 8.7(a) may consist of several documents (including facsimile or other similar means of communication, including electronic communication) in like form each signed or assented to by one or more Directors (or alternate Directors, as the case may be).
- (c) A copy of any such resolution must be entered in the minute book of Board proceedings.

### **Presence by Telephone**

- 8.8 A Director may attend any meeting of the Board convened pursuant to Regulation 8.3(a) by telephone or other instantaneous audio (or audio and visual) communication provided such Director has given notice in writing of his or her intention so to do to the Company at least 2 days prior to the scheduled commencement time of such meeting. The requirements as to such notice may be waived by the Board. Any such Director:
- (a) must throughout the meeting be able to hear each of the other Directors taking part;
- (b) must at the commencement of the meeting, acknowledge his or her presence for the purpose of the meeting, to all the other Directors taking part;
- (c) may not leave such meeting by disconnecting his or her telephone or other means of communications unless he or she has first obtained the express consent of the chairperson;
- (d) shall (for the purposes of this Constitution) be conclusively presumed to have been physically present and to have formed part of the quorum at all times during the meeting unless he or she first obtained the express consent of the chairperson of the meeting to leave the meeting as aforesaid. Neither the meeting, nor any business conducted thereat, shall be invalidated if a Director does leave a meeting conducted as aforesaid, without the express consent of the chairperson.

### **Other**

- 8.9 (a) The provisions in Regulation 8 of this Constitution replace those contained in the Third Schedule to the Act.

### **Proceedings in Case of Vacancy**

- (b) The continuing Directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the minimum number of Directors, the continuing Directors or Director may act only for the purposes of increasing the number of Directors to the said minimum number or to summon a meeting of shareholders of the Company but for no other purpose.
- (c) Except as provided in this Constitution, the Board may regulate its own procedure.

### **Interested Directors may not vote**

- 8.10 Subject to Regulation 8.11 a Director may not vote on a Board resolution in respect of a matter in which the Director is interested, and the Director shall not be counted in the quorum for the purposes of consideration of that matter. In this Regulation and Regulation 8.11 the word "interested" has the meaning given to that word in section 139 of the Act.

### **Exception to voting prohibition**

- 8.11 Notwithstanding Regulation 8.10 a Director may vote in respect of and be counted in the

quorum for the Board for the purposes of a matter in which the Director is interested if the matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Act.

## **9.0 Remuneration and Other Benefits**

9.1 The Board may authorise the:

- (a) Payment of remuneration or the provision of other benefits by the Company to a Director for services in any capacity other than as a Director, subject to the Listing Rules (if applicable);
- (b) Payment by the Company to a Director or former Director of compensation for loss of office other than as a Director;
- (c) Making of loans by the Company to a Director;
- (d) Giving of guarantees by the Company for debts incurred by a Director;
- (e) Entering into of a contract to do any of the things set out in paragraphs (a) to (d) of this Regulation 9.1;

if the Board is satisfied that to do so is fair to the Company.

9.2 If a payment, benefit, loan, guarantee or contract is authorised under Regulation 9.1:

- (a) The Board must ensure that particulars thereof are forthwith entered in the interests register; and
- (b) 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.

### **Directors' Remuneration**

#### **Fixing Remuneration**

- 9.3
- (a) No remuneration shall be paid to a Director in his or her capacity as a Director of the Company or any Subsidiary, other than a Subsidiary which is Listed, unless that remuneration has been authorised by an ordinary resolution of the Company. Each such resolution shall express Directors' remuneration as either:
    - (i) a monetary sum per annum payable to all Directors taken together; or
    - (ii) a monetary sum per annum payable to any person who from time to time holds office as a Director.
  - (b) If remuneration is expressed in accordance with Regulation 9.3(a)(i), then in the event of an increase in the total number of Directors holding office, the Directors may, without the authorisation of an ordinary resolution of the Company, increase the total remuneration by such amount as is necessary to enable the Company to pay to the additional Director or Directors remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson) of the Company.
  - (c) No resolution which increases the amount fixed pursuant to a previous resolution shall be passed at a meeting of shareholders of the Company unless notice of the amount of increase has been given in the notice of meeting. Nothing in this Regulation 9.3 shall affect the remuneration of executive Directors in their capacity as executives.

### **Payments upon Cessation of Office**

- 9.4 (a) The Company may make a payment to a Director or former Director, or his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, only if the amount of the payment, or the method of calculation of the amount of that payment is authorised by an Ordinary Resolution of the Company provided that the Company may make a payment to a Director or former Director that was in office on or before 1 May 2004 and has continued to hold office since that date, or to his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, without an Ordinary Resolution provided that the total amount of that payment (or the base for the pension) does not exceed the total remuneration of that Director in his or her capacity as a Director in any three years chosen by the Company.
- (b) Nothing in this Regulation 9.4 shall affect any amount paid to an executive Director upon or in connection with the termination of his or her employment with the Company, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme.

### **10.0 Indemnity and Insurance**

- 10.1 Except as provided in Regulations 10.2 to 10.6, the Company must not indemnify, or directly or indirectly effect insurance for, a Director or employee of the Company or a Related Company in respect of:
- (a) Liability for any act or omission in his or her capacity as a Director or employee; or
- (b) Costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability.
- 10.2 The Company shall indemnify every Director and every employee of the Company and of each wholly-owned subsidiary of the Company for any costs incurred by him or her in any proceeding:
- (a) That relates to liability for any act or omission in his or her capacity as a Director or employee; and
- (b) In which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.
- 10.3 The Company shall indemnify every Director and every employee of the Company and of each wholly-owned subsidiary of the Company in respect of:
- (a) Liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee; or
- (b) Costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability;
- not being criminal liability or liability in respect of a breach, in the case of a Director, of the duties of a director specified in the Act or, in the case of an employee, of any fiduciary duty owed to the Company or related company.
- 10.4 The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company and of each wholly-owned subsidiary in respect of:
- (a) Liability, not being criminal liability, for any act or omission in his or her capacity as a



Director or employee; or

- (b) Costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability; or
- (c) Costs incurred by that Director or employee in defending any criminal proceedings:
  - (i) that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee; and
  - (ii) in which he or she is acquitted.

10.5 The Directors who vote in favour of authorising the effecting of insurance under Regulation 10.4 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

10.6 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 forthwith entered in the interests register.

## **11.0 Method of Contracting**

11.1 A contract or other enforceable obligation may be entered into by the Company as follows:

- (a) 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:
  - (i) Two or more Directors of the Company; or
  - (ii) A Director, or other person or persons authorised to do so by the Board whose signature or signatures must be witnessed; or
  - (iii) One or more attorneys appointed by the Company in accordance with s.181 of the Act.
- (b) 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.
- (c) 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.

## **12.0 Auditor**

12.1 The Company must, at each annual meeting, appoint an auditor to:

- (a) Hold office from the conclusion of the meeting until the conclusion of the next annual meeting; and
- (b) Audit the financial statements of the Company for the accounting period next after the meeting.

12.2 The Board may fill any casual vacancy in the office of auditor, but while the vacancy remains, the surviving or continuing auditor, if any, may continue to act as auditor.

### **13.0 Alteration of Constitution - Change of Name Not an Alteration**

- 13.1 Subject to the Act, this Constitution may be altered at any time by Special Resolution.
- 13.2 An application to change the name of the Company is not an amendment of this Constitution for the purposes of this Constitution or the Act, and may be made by a Director with the approval of the Board.

### **14.0 Accounts**

- 14.1 The Board must subject to s.10 Financial Reporting Act 1993, ensure that, within 5 months after the balance date of the Company, or for so long as the Company is Listed, within such earlier time as may be required by the Listing Rules, financial statements that comply with the Financial Reporting Act 1993 are:
- (a) Completed in relation to the Company and that balance date; and
  - (b) Dated and signed on behalf of the Directors by 2 Directors of the Company.

### **15.0 Manner of Service on Shareholders and Creditors**

- 15.1 A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor who is a natural person may be:
- (a) Delivered to that person; or
  - (b) Posted to that person's address or delivered to a box at a document exchange which that person is using at the time; or
  - (c) Sent by facsimile machine to a telephone number used by that person for the transmission of documents by facsimile.
- 15.2 A notice, statement, report, accounts, or other document to be sent to a shareholder or creditor that is a company or an overseas company may be sent by any of the methods of serving documents referred to in s.388 or s.390, as the case may be, of the Act.
- 15.3 Notwithstanding Regulations 15.1 and 15.2, if the shareholder is the holder of a Security and has no registered address within New Zealand and has not supplied to the Company an address within New Zealand for the giving of notices, but has supplied an address outside New Zealand, then notices shall be posted to that Security holder at such address and shall be deemed to have been received by that Security holder 24 hours after the time of the posting.
- 15.4 A notice may be given by the Company to the joint holders of a Security by giving the notice to the joint holder named first in the register in respect of the Security.

### **16.0 Transfer of Place of Incorporation**

- 16.1 Subject to Part XIX of the Act, the Company may be removed from the New Zealand register in connection with becoming incorporated under the law in force, in or in any part of, another country.
- 16.2 The application to be removed from the New Zealand register must be approved by Special Resolution.

## **17.0 Registered Office and Address for Service**

- 17.1 Subject to the Act, the Board may change the registered office of the Company at any time.
- 17.2 Subject to the Act, the Board may change the address for service of the Company at any time.

## **18.0 Inspection of Records**

- 18.1 Except as provided in the Act or unless the Board determines otherwise in any particular case, no holder of Securities shall be entitled to:
- (a) inspect any records, books, papers, correspondence or documents of the Company or
  - (b) require or receive any information concerning the Company's business, trading or customers, or any trade secret or secret process of or used by the Company.

## **19.0 Liquidation**

### **Distribution of surplus**

- 19.1 Subject to the rights of the holders of any Securities in the Company and to Regulations 19.2 and 19.3, upon the liquidation of the Company the surplus assets of the Company (if any) must be distributed among the shareholders in proportion to their shareholding. If any shareholder's share are not fully paid up the liquidator of the Company may require those shares to be fully paid up before the shareholder receives any distribution of the surplus assets of the Company in respect of those shares.

### **Distribution in kind**

- 19.2 With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator of the Company may divide amongst the shareholders in kind the whole or any part of the surplus assets of the Company (whether or not they are of the same kind) and for that purpose the liquidator may:
- (a) attribute values to assets as the liquidator considers appropriate; and
  - (b) determine how the division will be carried out as between the shareholders or different Classes of shareholders.

### **Trusts**

- 19.3 With the approval of the shareholders of the Company by Ordinary Resolution, the liquidator may vest the whole or any part of any surplus assets of the Company in trustees upon trust for the benefit of shareholders of the Company. The liquidator may determine the terms of the trusts.