

CONSTITUTION OF SEEKA LIMITED

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CONSTITUTION OF SEEKA KIWIFRUIT INDUSTRIES LIMITED

1. Status, definitions and interpretation

1.1 Registration

The Company is registered under the Companies Act 1993 and is regulated by the Act and this Constitution.

1.2 Powers and capacity

This Constitution contains no provision restricting the capacity of the Company to carry on or undertake any business or activity or restricting the rights, powers or privileges necessary to carry on any business or activity.

1.3 Definitions

In this Constitution, the following words and expressions have the meanings set out next to them:

“Act”	means the Companies Act 1993.
“Alternate Director”	means a person appointed by a Director as his or her alternate under clause 24.3.
“Board”	means Directors who number not less than the required quorum acting together as a board of Directors of the Company.
“Business Day”	has the meaning given in the Rules.
“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, or not to be, of that class.
"Company"	means Seeka Kiwifruit Industries Limited.
“Constitution”	means this constitution as it may be altered from time to time in accordance with the Act.
“Director”	means a person appointed as a Director of the Company in accordance with this Constitution or the Act, and for the purposes of the Rules, includes any person occupying the position of Director of the Company, by whatever name called.
"dividend"	means a distribution by the Company other than a distribution to which section 59 (acquisition of company's own shares) or section 76 (financial assistance in acquisition of company's shares) of the Act applies.
“Equity Security”	means an Equity Security as defined in the Rules, which has been issued, or is to be issued, by the Company, as

the case may require.

“Executive Director”	means any Director who is an employee or labour only contractor of the Company or any of its related companies.
“Independent Director”	has the meaning given in the Rules.
“Interest Group”	has the meaning given in section 116 of the Act.
“Listed”	means Listed under the Rules.
"meeting"	means any meeting of Shareholders entitled to vote on an issue, called at any time by the Board or by any other person who by this Constitution is entitled to call meetings of Shareholders.
“Minimum Holding”	has the meaning given in the Rules.
“NZX”	means New Zealand Exchange Limited and includes 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 in the Rules.
“Ordinary Resolution”	has the same meaning in relation to the Company as the expression “Ordinary Resolution of the Issuer” under the Rules.
“Quoted Security”	has the meaning given in the Rules.
“Rules”	means the listing rules published by NZX in respect of the main board equity security market and the debt security market operated by NZX, as altered from time to time by NZX.
“Ruling”	has the meaning given in the Rules.
“Security”	has the same meaning in relation to the Company as the expression “Security” under the Rules.
“Share”	means a share issued, or to be issued, by the Company, as the case may require.
“Shareholder”	means a person whose name is entered in the Share Register as the holder for the time being of one or more Shares.
“Shareholders’ Funds”	has the same meaning in relation to the Company as the expression “Shareholders’ Funds of the Issuer” under the Rules.
“Share Register”	means the share register of the Company kept in accordance with the Act.
"special meeting"	means any meeting (other than an annual meeting) of Shareholders entitled to vote on an issue, called at any

time by the Board or by any other person who by this Constitution is entitled to call meetings of Shareholders.

- “Special Resolution”** means a resolution approved by a majority of 75% or more of votes of the holders of Securities entitled to vote and voting.
- “Subsidiary”** has the meaning given in the Rules.
- “written” or “in writing”** in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.
- “Working Day”** has the meaning given in section 2(1) of the Act.

1.4 Interpretation

Unless defined in clause 1.3, expressions:

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

1.5 Conflict

If there is any conflict between the meaning given to a word or expression by the Rules and the meaning given to that word or expression by the Act, the meaning given by the Rules prevails.

2. Construction

2.1 In this Constitution:

- (a) headings appear as a matter of convenience and do not affect the interpretation of this Constitution;
- (b) the singular includes the plural and vice versa, and words importing one gender include the other genders;
- (c) a reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations; and
- (d) the Schedules form part of this Constitution.

RELATIONSHIP BETWEEN CONSTITUTION, ACT AND RULES

3. Effect of the Act on this Constitution

- 3.1 The Company, the Board, each Director, and each Shareholder has the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this Constitution.

3.2 Company must comply with Rules while Listed

For so long as the Company is Listed, the Company must comply with the Rules. If this Constitution contains any provision inconsistent with the Rules (as modified by any Ruling relevant to the Company), the Rules shall prevail.

3.3 Incorporation of Rules

While the Company is Listed, those provisions of the Rules which are required to be contained or incorporated by reference in this Constitution (as modified by any Ruling relevant to the Company), shall be deemed to be incorporated in this Constitution as though set out herein in full with any necessary modification.

4. NZX's Rulings

- 4.1 If NZX has granted a Ruling in relation to the Company authorising any act or omission, which in the absence of that Ruling would be in contravention of the Rules or this Constitution, that act or omission will, unless a contrary intention appears in this Constitution, be deemed as being authorised by the Rules and by this Constitution.

5. Failure to comply with Rules has limited effect in some cases

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

6. Shareholders may alter or revoke this Constitution

- 6.1 The Shareholders may alter or revoke this Constitution by Special Resolution.

ISSUE OF EQUITY SECURITIES

7. Board need not comply with statutory pre-emptive rights

- 7.1 If the Board issues Equity Securities that rank as to voting or distribution rights, or both, equally with or in priority to the Equity Securities already issued by the Company, the Board need not first offer those Equity Securities to existing holders for acquisition, unless any other provision of this Constitution or the Rules requires otherwise. 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.

8. Board may issue and redeem Equity Securities

- 8.1 Subject to compliance with applicable provisions of this Constitution and the Rules the Company may:
- (a) issue Equity Securities to any person and in any number it thinks fit;
 - (b) issue redeemable Equity Securities;
 - (c) redeem redeemable Equity Securities in accordance with the Act and the terms of the redeemable Equity Securities; and
 - (d) exercise an option to redeem redeemable Equity Securities issued by the Company in relation to one or more holders of redeemable Equity Securities, in

accordance with the Act and the terms of issue of the redeemable Equity Securities.

- 8.2 A transfer by the Company of treasury stock of the Company shall be deemed to constitute an issue of Equity Securities.

9. Further issues of Equity Securities do not affect rights of existing holders

- 9.1 The Company shall, before taking action affecting the rights attached to any Equity Securities, comply with the applicable provisions of the Act, this Constitution and the Rules. For the purposes of this clause, the issue of further Equity Securities that rank as to voting or distribution rights, or both, equally with or in priority to any existing Equity Securities in the Company will not be treated as an action affecting the rights attached to the existing Equity Securities unless the terms of issue of those Equity Securities expressly provide otherwise.

10. Consolidation and subdivision

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

11. Actions taken not invalid

- 11.1 The taking of an action by the Company affecting the rights attached to Equity Securities is not invalid by reason only that the action was not approved in accordance with clause 13.

12. Cancellation of unpaid amounts subject to Security holder approval

- 12.1 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.

13. Modification of rights of Security holders

- 13.1 The Company shall comply with the provisions of sections 116 and 117 of the Act, but those sections shall be deemed to be modified so that:
- (a) the references in those sections to "shares" shall (subject to clause 13.2) be deemed to include references to all Equity Securities of the Company, and references to "shareholders" shall be read accordingly; and
 - (b) in respect of Equity Securities which are not Shares:
 - (i) references to a special resolution shall be deemed to be references to a resolution approved by a majority of 75% of votes of the holders of those Securities entitled to vote and voting; and
 - (ii) references to the constitution shall be deemed to be references to the document which governs the rights of those Equity Securities.
- 13.2 The Company is required by clause 13.1 to comply with sections 116 and 117 of the Act but shall not be required by the modifications deemed to be made thereto by clause

13.1 to comply with those sections in respect of actions that affect the rights attached to:

- (a) Equity Securities which are not Quoted; or
- (b) Equity Securities which are not Shares of the Company if:
 - (i) those Equity Securities were issued before 30 April 1995; or
 - (ii) those Equity Securities were issued on terms which expressly permitted the action in question to be taken without the prior 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.

14. Calls on Shares

14.1 Board may make calls

- (a) The Board may make such calls as the Board thinks fit on the Shareholders in respect of any moneys unpaid on their Shares and not by the conditions of issue made payable at a fixed time or times.
- (b) Shareholders must comply with the terms of payment set out in the Board resolution.
- (c) A call may be revoked or postponed by the Board.

14.2 Time of call

A call is deemed to be made at the time the resolution of the Board making the call is passed.

14.3 Notice of call

- (a) Notice and particulars of a call must be given to the holder of those Shares at the time the call is made.
- (b) The Company is not required to give notice and particulars of call to a subsequent holder of those Shares.

14.4 Liability

- (a) The joint holders of a Share are jointly and severally liable to pay all calls in respect of those Shares.
- (b) The liability for a call which has become due and payable attaches to the holder of those Shares and not a prior holder of those Shares.

14.5 Interest and expenses

If a call is not paid, the person from whom the sum is due must pay:

- (a) all interest on that sum from the day payment was due to the day of actual payment at such rate as the Board may determine; and
- (b) all expenses which the Company has or may incur by reason of non-payment of the call.

The Board may waive payment of all or part of that interest or expense.

14.6 Instalments

Any sum which by the terms of issue of a Share becomes payable on issue or at any fixed time will, for all purposes, be deemed to be a call duly made and payable at the time at which by the terms of issue it becomes payable. In case of non-payment all the relevant provisions of this Constitution relating to payment of interest and expenses, forfeiture, or otherwise will apply as if the sum had become payable by a call duly made and notified.

14.7 Different amounts

The Board may, on the issue of Shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

15. Lien and forfeiture

15.1 Liens

(a) The Company has a first and paramount lien on each Share registered in the name of a Shareholder (whether solely or jointly with others), on the proceeds of sale of the Share and on all dividends or other distributions made in respect of the Share, for:

- (i) all unpaid calls, instalments, premiums or other amounts, and any interest payable on such amounts, payable in respect of the Share; and
- (ii) any amount as the Company may be required to pay under any legislation in respect of the Share, whether the period for the payment, fulfilment or discharge respectively has actually arrived or not.

15.2 Sale on exercise of lien

The Company may sell, in such manner as the Board thinks fit, any Shares on which the Company has a lien. No sale may be made unless:

- (a) a sum in respect of which the lien exists is due and payable; and
- (b) until the expiration of 14 days after a notice which requires payment of the amount owing in respect of which the lien exists, has been given to the registered Shareholder at the time or the person entitled to that Share by reason of the registered Shareholder's death or bankruptcy.

15.3 Application of proceeds of sale

The net proceeds of the sale of any Shares sold for the purpose of enforcing a lien must be applied in or towards satisfaction of any unpaid calls, instalments or any other money payable by the Shareholder in respect of which the lien existed. The residue, if any, must be paid to the former Shareholder or to the executors, administrators or assigns of the former Shareholder.

15.4 Certificate that power of sale has arisen

A certificate signed by a Director stating that the power of sale provided in clause 15 of this Constitution has arisen and is exercisable by the Company under this Constitution will be conclusive evidence of the facts stated in the certificate.

15.5 Giving effect to sale

In order to give effect to any sale enforcing the lien in the exercise of the powers given to it under clause 15.2 the Board may authorise any person to execute a transfer of the Shares to the purchaser. The purchaser will be registered as the holder of the Shares which are transferred, and will not be bound to see to the application of the purchase money. The purchaser's title to the Shares will not be effected by any irregularity or invalidity in the proceedings in reference to the sale. The remedy of any person aggrieved by the sale will be in damages only and against the Company exclusively. If the certificate for the Shares is not delivered to the Company the Board may issue a new certificate distinguishing it as the Board thinks fit from the certificate not delivered.

16. Distributions to Shareholders

16.1 Board may authorise distributions

The Board may authorise a distribution by the Company to Shareholders in accordance with the Act.

16.2 Dividends on Shares not fully paid up to be paid pro rata

- (a) All dividends on Shares not fully paid up must be authorised and paid in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in respect of the Shares. This provision does not apply where Shares have been issued with special rights as to dividends.
- (b) No amount paid or credited as paid on a Share in advance of calls is to be treated for these purposes as paid on the Share.
- (c) All dividends are to be apportioned and paid proportionately to the amounts paid or credited as paid on the Shares during any portion or portions of the period in respect of which the dividend is paid, but if any Share is issued on terms providing that it ranks for dividend as from a particular date that Share ranks for dividend accordingly.

16.3 Manner of payment

Any dividend may be paid in any manner (whether by direct credit or otherwise) directed by the person entitled to it. Failing any direction a dividend may be paid by cheque sent through the post to the registered address of the Shareholder or person entitled to it or in the case of joint holders to any one of the joint holders at their registered address, or to such person and address as the Shareholder or person entitled or joint holders as the case may be, may direct, and the Company shall not be responsible for any loss arising from those modes of transmission. Any one of 2 or more joint holders may give a receipt for any dividends, bonuses, or other money payable in respect of Shares held by them as joint holders.

16.4 No interest on dividend

No dividend shall bear interest against the Company but this clause shall not preclude the holder of any preference Share from being paid interest upon any arrears of a fixed dividend upon a winding up or liquidation of the Company if the terms of issue of the preference Shares provided for interest to be paid.

16.5 **Deductions from dividends**

The Directors may deduct from the dividends payable to any Shareholder entitled to receive dividends all sums of money due from him or her to the Company on account of calls, instalments or premiums or otherwise or any debt or liability upon the specific Shares in respect of which the dividend is payable, and on account of any amounts the Company may be called upon to pay under any statute in respect of the specific Shares.

16.6 **Persons to whom dividends payable**

Dividends (in those cases where the holder of Shares is entitled to receive dividends) and distributions shall be payable to the persons who are the registered holders of the Shares in respect of which they are declared:

- (a) at the time of declaration of the dividend; or
- (b) any time when the dividend is declared to be payable, or the right to entitlements are to be calculated, pursuant to the terms of the resolution declaring the dividend.

16.7 **Right not transferred**

A transfer of any Share shall not pass the right to any dividend declared on it before the registration of the transfer, subject to the terms of the resolution declaring the dividend.

16.8 **Dividends or bonuses by way of distribution of assets**

The Directors may, with the sanction of the Shareholders in meeting, distribute in kind among the Shareholders by way of dividend any of the assets of the Company, and in particular any shares or securities of other companies to which the Company is entitled. Where, any dispute, difficulty or uncertainty arises in regard to the distribution, the Directors may settle the matter in the way they think expedient and in particular may issue fractional certificates, and for the purposes of the distribution, may fix the nature of the specific assets or any part of them and may determine that cash payments shall be made to any Shareholder or Shareholders upon the basis of the value so fixed in order to adjust the entitlement of Shareholders.

16.9 **Unclaimed dividends**

- (a) All dividends, bonuses and other distributions unclaimed for one year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed and the Company shall be entitled to mingle and spend the amounts of any of those dividends, with other money of the Company and shall not be required to hold them or regard them as being impressed with any trust.
- (b) All dividends, and any other money payable to any Shareholder or former Shareholder in respect of Shares in the Company and/or interest in respect of debt securities (as that term is defined in the Securities Act 1978) issued by the Company remaining unclaimed for 5 years after having been declared or otherwise having become payable, may, at the expiry of the 5 year period be forfeited by the Directors for the benefit of the Company. The Directors may at any time after forfeiture, annul the forfeiture and pay the dividend or interest or issue the bonus (as the case may be) forfeited to any person producing evidence that he or she is entitled to it and shall do so unless in the opinion of the Directors the payment or issue would embarrass the Company.

17. Sale of less than Minimum Holding

17.1 Compulsory sale of less than Minimum Holding

The Company may sell Securities of less than a Minimum Holding in accordance with clauses 17.2 to 17.4.

17.2 Notice to holder with less than Minimum Holding

- (a) Where Securities registered in the name of a holder are less than a Minimum Holding, the Board may at any time, after giving at least 3 months' prior written notice to the holder, sell such Securities through NZX or in some other manner approved by NZX, provided that the Securities then registered in the name of the holder are less than a Minimum Holding.
- (b) A certificate, signed by a Director which records that a power of sale under clauses 17.2 and 17.3 has arisen and is exercisable by the Company is conclusive evidence of the facts stated in that certificate.

17.3 Sale procedures

The holder of the Securities shall be deemed to have authorised the Company to act on behalf of the holder in relation to the sale of the relevant Securities, and to sign all necessary documents relating to such sale. The Board may authorise the transfer of the Securities sold to the purchaser on behalf of the holder and the purchaser is not bound to see to the application of the purchase money, nor shall the title to the Securities be affected by any irregularity or invalidity in the procedures under this Constitution relating to the sale. The remedy of any person aggrieved by the sale is in damages only and against the Company exclusively.

17.4 Application of proceeds

The proceeds of the sale of any Securities sold under clauses 17.2 and 17.3 must be applied as follows:

- (a) first, in payment of any reasonable sale expenses;
- (b) second, in satisfaction of any unpaid calls or any other amounts owing to the Company in respect of the Securities; and
- (c) the residue, if any, must be paid to the person who was the holder immediately before the sale or his or her executors, administrators or assigns.

18. Issues and buybacks of Securities affecting control

18.1 Notwithstanding the provisions of clauses 8 and 19, no issue, acquisition, or redemption of Securities shall be made by the Company if:

- (a) there is a significant likelihood that the issue, acquisition, or redemption will result in any person or group of associated persons materially increasing their ability to exercise, or direct the exercise of (either then or at any future time) effective control of the Company; and
- (b) that person or group of associated persons is entitled before the issue, acquisition, or redemption to exercise, or direct the exercise of, not less than 1% of the total votes attaching to Securities of the Company;

unless the precise terms and conditions of the issue, acquisition or redemption have been approved by an Ordinary Resolution.

19. Buybacks and redemptions of Equity Securities and financial assistance

19.1 Powers to acquire, hold and redeem Securities: The Company may:

- (a) purchase or otherwise acquire Shares or other Equity Securities from one or more of the holders;
- (b) hold any Shares or other Equity Securities so purchased or acquired; and
- (c) redeem any redeemable Shares or other Equity Securities held by one or more of the holders,

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

19.2 Restrictions on financial assistance: 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 Rules.

20. Transfer of Shares

20.1 Methods of Transfer

Subject to any determination by the Board, Shares (and, subject to their terms of issue, any other Equity Securities) may be transferred by any method permitted by law and by the Rules.

20.2 Board may refuse or delay transfer

The Board may in its absolute discretion refuse or delay the registration of any transfer of Equity Securities (subject to their terms of issue) only if:

- (a) the Company has a lien on those Securities; or
- (b) the transfer is not accompanied by documentation that establishes the entitlement to transfer; or
- (c) registration of the transfer, together with the registration of any further transfer or transfers then held by the Company and awaiting registration, would result in the proposed transferee holding Securities of less than the Minimum Holding; or
- (d) such action is permitted by the Rules.

21. Transmission of Shares

21.1 Persons recognised on death of Shareholder

When a Shareholder dies the survivor or survivors where the deceased was a joint holder, and the legal personal representatives where he or she was the sole holder, shall be the only persons recognised by the Company as having any title to or interest in his or her Shares. Nothing in this clause shall release the estate of a deceased joint holder from any liability in respect of any Share which had been jointly held by the deceased.

21.2 **Registration on death, bankruptcy or mental disorder**

- (a) Any manager of a mentally incapacitated person or any person entitled to a Share due to the death or bankruptcy of a Shareholder, may upon producing evidence properly required by the Directors and subject to clause 21.2(b), elect either to be registered himself or herself as the holder of the Share or transfer the Share in the same way as the mentally disordered, deceased or bankrupt Shareholder could have done. The Directors will, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the Share by that Shareholder before becoming mentally incapacitated or before his or her death or bankruptcy, as the case may be.
- (b) If the person entitled elects to be registered in their own name, he or she shall deliver or send to the Company a notice in writing signed by them stating their election. If they elect to have another person registered they shall testify their election by executing a transfer in favour of that person. All the provisions of this Constitution relating to the right to transfer and the registration of transfers of Shares shall be applicable to that notice or transfer as if the mental incapacity, death or bankruptcy of the Shareholder had not occurred and the notice of transfer were a transfer signed by the deceased, disordered or bankrupt Shareholder.
- (c) Where a Shareholder becomes mentally incapacitated, dies or becomes bankrupt his or her manager, personal representative or the assignee of his or her estate, as the case may be, shall, upon the production of evidence properly required by the Directors, be entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, voting, or otherwise) as the Shareholder would have been entitled to if he or she had not died or become mentally incapacitated or bankrupt. Where two or more persons are jointly entitled to any Share due to the death of a Shareholder they shall, for the purpose of this Constitution, be deemed to be joint holders of the Share.

22. **Share Register**

22.1 **Status of registered Shareholder**

The Company may treat the registered Shareholder as the only person entitled to:

- (a) exercise any right to vote attaching to the Share; and
- (b) receive notices in respect of the Share; and
- (c) receive any distribution in respect of the Share; and
- (d) exercise any other rights and powers attaching to the Share.

The Board may determine in a notice of meeting that for the purpose of voting at that meeting those registered holders as at 5:00pm on a day not more than 2 Business Days before the meeting (or in the case of a meeting to which Rule 9.3.1 applies, 5 Business Days) shall be the only persons entitled to exercise the right to vote at that meeting before the meeting. This clause does not limit the right of the registered Shareholder to appoint a proxy or corporate representative.

22.2 **Registration of separate parcels**

A holder of Securities of the Company or a transferee may request the Company to register the Securities held by that person in two or more separately identifiable parcels. Where the Company agrees to such a request, the Company may, so far as it considers

convenient, communicate with the holder of the Securities, pay dividends and otherwise act in respect of such parcel, as if the separately identifiable parcels belonged to different persons.

23. Shareholders rights and obligations

23.1 Meetings of Shareholders

- (a) The provisions of the First Schedule of this Constitution shall govern proceedings at meetings of Shareholders and at meetings of any Interest Group or any relevant group required to be held by the Act, the Rules, or this Constitution, except that the quorum for a meeting of any Interest Group shall be Shareholders of the Interest Group holding 5% or more of the total number of Shares held by all Shareholders of that Interest Group having the right to vote at the meeting.
- (b) For the purposes of voting by relevant groups, one meeting may be held of holders constituting all relevant groups so long as voting is by way of poll, and proper arrangements are made to distinguish between the votes of Shareholders of each relevant group.

24. Directors

24.1 Appointment and rotation of Directors

- (a) **Appointment, number and residence:** Any natural person who is not disqualified under the Act may be appointed as a Director by an Ordinary Resolution. The minimum number of Directors of the Company (other than Alternate Directors) shall be three and, unless otherwise determined by Ordinary Resolution, the maximum number of Directors (other than Alternate Directors) shall be 7 (subject to clause 24.1(f), in which case the maximum number of Directors shall be 8). At least two Directors shall be ordinarily resident in New Zealand. While the Company is Listed it shall not have less than the minimum number of Independent Directors prescribed by the Rules.
- (b) **Independent Directors:** While the Company is Listed, the Company and the Board shall comply with the Rules applicable to the appointment and identification of Independent Directors.
- (c) **Nominations:** No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Security holders of the Company unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. There shall be no restriction on the persons who may be nominated as Directors nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this clause 24. 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 date of the annual meeting at which the election is to take place. The Company shall make an announcement to the market no less than three months prior to the date of the proposed annual meeting of Security holders advising of the opening and closing dates for Director nominations.
- (d) **Notice of nominations:** Notice of every 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 the meeting and the Company shall specify in such notice the Board's view on whether or not the nominee would qualify as an Independent Director.

- (e) **Resolutions:** A single resolution for the appointment or re-election of two or more persons as Directors shall not be moved unless a separate resolution that it be so moved has first been passed by the meeting without any vote being cast against it, but nothing in this clause prevents the election of two or more Directors by ballot or poll.
- (f) **Appointment by Board:** The Board may appoint any person who is not disqualified under the Act to be a Director to fill a casual vacancy or as an addition to the existing Directors. The Board may appoint a Director under this clause in excess of the maximum number of Directors set out in clause 24.1(a) (being 7 Directors), such that the maximum number of Directors of the Company, following the appointment of a Director under this clause, is 8 Directors. Any Director appointed under this clause (including any person who subsequent to his or her appointment as a Director becomes an executive Director) may hold office only until the next annual meeting of the Company, and is then eligible for re-election. If a Director is appointed by the Board under this clause in excess of the maximum number of Directors set out in clause 24.1(a) (being 7 Directors), and is re-elected at the next annual meeting of the Company, then the maximum number of Directors will be as set out in clause 24.1(a) (being 7 Directors). If a Director is appointed by the Board under this clause in excess of the maximum number of Directors set out in clause 24.1(a) (being 7 Directors), following the resignation or removal of that Director the maximum number of Directors shall be as set out in clause 24.1(a) (being 7 Directors), and may only be increased again to 8 Directors by appointment of a Director by the Board under this clause.
- (g) **Directors continue:** The persons holding office as Directors of the Company on adoption of this Constitution continue in office and are deemed to have been appointed as Directors pursuant to these provisions of the Constitution. Similarly, the chairperson of the Board continues in office and is deemed to have been appointed as chairperson pursuant to this Constitution.
- (h) **Removal:** Any Director may be removed from office by an Ordinary Resolution passed at a meeting called for the purpose of, or for purposes that include, removal of the Director.
- (i) **Term of Appointment:** No term of appointment of an executive Director of the Company or any of its subsidiaries, shall exceed five years. This provision shall not preclude reappointment of an executive Director upon expiry of a term of appointment, and shall not affect the terms of the engagement of that executive Director as an employee.
- (j) **Rotation:** Subject to clause 24.1(k), at least one-third of the Directors or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected.
- (k) **Exceptions to Rotation:** The following Directors shall be exempt from the obligation to retire pursuant to clause 24.1(j):
 - (i) Directors appointed by the Directors, who are subject to re-election pursuant to clause 24.1(f); and
 - (ii) one executive Director.

The Director referred in sub-clause (ii) shall be included in the number of Directors upon which the calculation for the purposes of clause 24.1(j) is based. The Directors referred to in sub-clause (i) shall be excluded from that number.

24.2 **Management by Board**

The Company's business and affairs must be managed by, or under the direction or supervision of, the Board, except to the extent that the Act or this Constitution provide otherwise. The Board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs except to the extent that the Act or this Constitution provide otherwise.

24.3 **Alternate Directors**

- (a) Each Director has the power from time to time to nominate any person not already a Director, and who is approved by a majority of the other Directors, to act as that Director's alternate in his or her place. No Director may appoint a deputy or an agent otherwise than in accordance with this clause 24.3.
- (b) An Alternate Director can be appointed either for a specified period or generally during the absence from time to time of the appointing Director.
- (c) Unless otherwise provided for by the terms of his or her appointment, an Alternate Director has the same rights, powers and privileges (including the right to receive notice of meetings of Directors but excluding the power to appoint an Alternate Director) and will discharge all the duties of and must be subject to the same provisions as the Director in whose place he or she acts.
- (d) An Alternate Director cannot be remunerated otherwise than out of the remuneration of the Director in whose place he or she acts.
- (e) An Alternate Director ceases to be an Alternate Director:
 - (i) if the Director in whose place he or she acts ceases to be a Director, or revokes the appointment by written notice to the Company;
 - (ii) on the occurrence of any event which would disqualify the Alternate Director if he or she were a Director; or
 - (iii) if the majority of the other Directors resolve to revoke the Alternate Director's appointment,

Any notice appointing or removing an Alternate Director may be given by delivering it or by sending it through the post or by facsimile to the Company and is effective as from the time of its receipt.

24.4 **Proceedings of the Board**

The provisions of the Third Schedule of the Act are deleted and replaced as set out in the Second Schedule of this Constitution.

24.5 **Directors' indemnity**

The Company is expressly authorised to indemnify and insure any Director or employee of the Company or any related company of the Company to the extent permitted by the Act.

24.6 **Shareholding qualification**

A Director shall not be required to hold any Shares to qualify for appointment as a Director.

24.7 Directors' remuneration

- (a) **Fixing Remuneration:** No remuneration shall be paid by the Company or any Subsidiary to a Director in his or her capacity as a Director of the Company or of any Subsidiary of the Company (other than a Listed Subsidiary) 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.

If remuneration is expressed in accordance with sub-clause (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.

No resolution which increases the amount fixed pursuant to a previous resolution shall be approved at a meeting of the Shareholders unless notice of the amount of increase has been given in the notice of meeting. Nothing in this clause shall affect the remuneration of executive Directors in their capacity as executives.

Notwithstanding this clause 24.7(a) Directors' remuneration for work not in the capacity of a Director or of any Subsidiary of the Company may be approved by the Directors without Shareholder approval, subject to the Rules applicable to transactions with related parties of the Company.

- (b) **Payments upon cessation of office:** 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 the payment, is authorised by an Ordinary Resolution.

Nothing in this clause 24.7(b) 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.

24.8 Disqualification

The office of director shall be vacated, if the Director:

- (a) ceases to be a Director by virtue of any of the grounds in section 157(1) or section 157(2) of the Act; or
- (b) is absent from attendance at meetings of the Directors continuously for the space of 6 months without special leave of absence from the other Directors and the other Directors resolve that his or her office be vacated by reason of that absence.

24.9 Vacancies and reduction of numbers

The Directors may act notwithstanding any vacancy in their body, but if and for so long as their number is reduced below the minimum number fixed by clause 24.1(a) (as such number may be amended by the Company from time to time), the continuing Directors may act for the purpose of increasing the number of Directors to that number and/or of summoning a meeting of Shareholders, but for no other purpose.

25. Audit committee

25.1 The Company shall have an audit committee which, while the Company is Listed, shall be constituted in accordance with, and have responsibilities which include those specified in, the Rules.

26. Transactions involving Directors' self interest

26.1 Definition

For the purpose of clause 27.2 "interested" has the meaning given to that term in section 139 of the Act.

26.2 Procedure

A Director shall:

- (a) not vote in respect of a matter in which such Director is interested; or
- (b) not be counted in the quorum for the purposes of consideration of that matter;

unless that 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.

27. Notices

27.1 Service

A notice may be served by the Company upon any Director or Shareholder either personally or by posting it by post in a prepaid envelope or package addressed to such Director or Shareholder at such person's last known address or by delivery to a document exchange or by facsimile to the facsimile telephone number of such Director or Shareholder.

27.2 Time of service by facsimile

A notice served by facsimile is deemed to have been served on the day following completion of its transmission.

27.3 Time of service by post

A notice sent by post or delivered to a document exchange is deemed to have been served:

- (a) in the case of a person whose last known address is in New Zealand, at the end of 48 hours after the envelope or package containing the same was duly posted in New Zealand; and

- (b) in the case of a person whose last known address is outside New Zealand, at the expiration of 7 days after the envelope or package containing the same was duly posted by fast post in New Zealand.

27.4 Proof of service

In proving service by post or delivery to a document exchange it is sufficient to prove that the envelope or package containing the notice was properly addressed and posted or delivered with all attached postal or delivery charges paid. In proving service by facsimile, it is sufficient to prove that the document was properly addressed and sent by facsimile.

27.5 Service on joint holders

A notice may be given by the Company to the joint holders of a Share by giving the notice to the joint holder first named in the Share Register in respect of the Share.

27.6 Service on representatives

A notice may be given by the Company to the person or persons entitled to a Share in consequence of the death or bankruptcy of a Shareholder by addressing it to such person or persons by name or by title or by any appropriate description, at the address, if any, within New Zealand supplied for the purpose by the person or persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which it might have been given if the death or bankruptcy had not occurred.

27.7 Notices, reports, financial statements

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 all Securities entitled to vote at meetings of Shareholders but are not entitled to vote at any such meeting unless the terms of the relevant Equity Security so provide.

27.8 Service of notices outside New Zealand

If a holder of an Equity Security 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 posting.

28. Liquidation

28.1 Distribution of surplus assets

- (a) Subject to the terms of issue of any Shares in the Company and to clause 29.2 upon the liquidation of the Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of winding-up (the "**surplus assets**") will be distributed among the Shareholders in proportion to their holding of Shares.
- (b) The holders of Shares not fully paid up must receive only a proportionate share of their entitlement, being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the Shareholder to the Company in

respect of those Shares, either under this Constitution or pursuant to the terms of issue of the Shares.

28.2 Distribution in specie

- (a) Upon a liquidation of the Company, the liquidator, with the sanction of an Ordinary Resolution and any other sanction required by law, may divide amongst the Shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as the liquidator deems fair upon any property to be so divided and may determine how the division is to be carried out as between the Shareholders or different Classes.
- (b) The liquidator may, with the same sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the Shareholders as the liquidator thinks fit, but so that no Shareholder will be compelled to accept any Shares or other Securities in relation to which there is any liability.

29. Removal from the New Zealand Register

29.1 Directors may apply for removal

In the event that:

- (a) the Company has ceased to carry on business, has discharged in full its liabilities to all its known creditors, and has distributed its surplus assets in accordance with this Constitution and the Act; or
- (b) the Company has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court under section 241 of the Act for an order putting the Company into liquidation,

the Board may in the prescribed form request the Registrar to remove the Company from the New Zealand register.

SCHEDULE 1

PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

1. Chairperson

1.1 Chairperson to be Chairperson of the Board

If the Directors have elected a chairperson of the Board and that chairperson is present at a meeting of Shareholders, he or she must chair the meeting. If the chairperson is not present, the deputy chairperson shall be entitled to take the chair.

1.2 Absence of Chairperson

If there is no chairperson or deputy chairperson present or if at any meeting such person is not present within 15 minutes after the appointed time for holding such meeting or is unwilling to act, the Directors present may choose a chairperson from one of their number.

1.3 Chairperson from Shareholders

If no chairperson has been elected by the Directors at any meeting of Shareholders, or if at any meeting no Director is willing to act as chairperson, or if no Director is present within 15 minutes of the time appointed for holding the meeting, the Shareholders present must choose one of their number to be chairperson of the meeting.

2. Notice of Meeting

2.1 Notice in writing

Written notice of the time and place of a meeting of Shareholders must be sent to every Shareholder entitled to receive notice of the meeting and to every Director and to the auditor of the Company, not less than 10 Working Days before the meeting

2.2 Contents of notice

The notice must state:

- (a) 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;
- (b) that a Shareholder entitled to attend and vote at the meeting is entitled to appoint a proxy to attend and vote instead of the Shareholder and that a proxy need not be a Shareholder; and
- (c) the text of any Special Resolution to be submitted to the meeting.

2.3 Irregularities in notice

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

2.4 Adjournment

The chairperson may, and if so directed by the meeting must, adjourn the meeting from time to time and from place to place, but no business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the

adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Except as so provided, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

2.5 Accidental omission to give notice

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

3. Method of Holding Meetings

3.1 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.

4. Quorum

4.1 Necessity for quorum

Subject to clause 4.3 of this Schedule, no business may be transacted at a meeting of Shareholders if a quorum is not present.

4.2 Numbers for quorum

Ten Shareholders present in person or by proxy and entitled to vote shall be a quorum for a general meeting.

4.3 No quorum

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

- (a) in the case of a meeting called under section 121(b) of the Act, the meeting is dissolved;
- (b) 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.

5. Voting

5.1 Voting method

In the case of a meeting of Shareholders held under clause 3.1 of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairperson of the meeting:

- (a) voting by voice; or
- (b) voting by show of hands.

5.2 Evidence that resolution carried

Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution has, on the voices, or on a show of hands, been carried or carried

unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

5.3 **Who may demand poll**

At a meeting of Shareholders a poll may be demanded by:

- (a) not less than 5 Shareholders having the right to vote at the meeting; or
- (b) a Shareholder or Shareholders representing not less than 10 percent of the total voting rights of all Shareholders having the right to vote at the meeting; or
- (c) by a Shareholder or Shareholders holding Shares that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 10 percent of the total amount paid up on all Shares that confer that right; or
- (d) the chairperson, who may demand a poll on a resolution, either before or after a vote on such resolution, by voice or on show of hands.

5.4 **When poll may be demanded**

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

5.5 **Counting of votes**

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.

5.6 **Equality of votes**

In the case of an equality of votes, whether voting is by voice or show of hands or poll, the chairperson of the meeting is entitled to a second or casting vote.

5.7 **Proxy holder may demand poll**

For the purposes of this clause 5, 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.

5.8 **Voting entitlement**

- (a) Subject to any rights or restrictions for the time being attached to any Class of Shares and subject to sub-clause (c), every Shareholder present in person or by proxy and voting by voice or on a show of hands has one vote.
- (b)
 - (i) 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.
 - (ii) In the case of partially paid Shares, each Share will carry a fraction of the vote or votes which would be exercisable if the Share was fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) on that Share bears to the total amounts paid and payable

thereon (excluding amounts credited as paid and amounts paid in advance of calls).

- (c) A Shareholder is not entitled to vote at any meeting of Shareholders or on the appointment and removal of Directors by Shareholders under clause 24 of this constitution, in respect of any Share if any amount is due and payable on that Share by the Shareholder to the Company.

5.9 Withdrawal of demand

The demand for a poll may be withdrawn.

5.10 Poll to be taken as chairperson directs

Except as provided in clause 5.11 of this Schedule, if a poll is duly demanded it must be taken in such manner as the chairperson directs, and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. In cases of dispute as to the admission or rejection of a vote the chairperson shall determine the dispute and a determination made in good faith shall be final and conclusive. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question upon which a poll is demanded. The auditors shall act as scrutineer for the purposes of the poll but, if they are unable or unwilling to act, then persons nominated by the chairperson shall act as scrutineer.

5.11 Poll on election of chairperson

A poll demanded on the election of a chairperson or on a question of adjournment must be taken forthwith. A poll demanded on any other question may be taken at such time and place as the chairperson of the meeting directs, and any business other than that upon which a poll has been demanded may be proceeded with pending the taking of the poll.

6. Proxies

6.1 Right to vote by proxy

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

6.2 Right of proxy to attend

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

6.3 Appointment of proxy

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.

6.4 Proxy

A proxy form shall be sent with each notice of meeting of Quoted Security holders and:

- (a) shall (so far as the subject matter and form of the resolutions reasonably permits) provide for two-way voting on all resolutions, enabling the Security holder to instruct the proxy as to the casting of the vote; and

- (b) shall not be sent with any name or office (e.g. chairman of Directors) filled in as proxy holder.

So far as is reasonably practicable, resolutions shall be framed in a manner which facilitates two way voting instructions for proxy holders.

6.5 Proxy instrument

An instrument appointing a proxy may be in the following form, or in some other form as determined by the Company:

Seeka Kiwifruit Industries Limited
INSTRUMENT APPOINTING A PROXY

I/We _____
of _____
being a shareholder of Seeka Kiwifruit Industries Limited
hereby appoint [print name of proxy] _____
of _____
or failing him/her _____ of _____
as my/our proxy to vote for me/us on my/our behalf at the _____ the Annual/Special Meeting of
the Company to be held at _____
on _____ commencing at _____ am/pm
and at any adjournment of any such meeting.
I/We direct my/our proxy to vote in the following manner

	Vote with a tick	
Resolutions	For	Against
1. _____	-	-
2. _____	-	-

Signed on _____ 200 _____
[Usual signature/s]

6.6 Validity of Vote

A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or revocation of the authority under which the proxy was executed, or the transfer of any Share in respect of which the proxy is given, if no notice in writing of such death, insanity, revocation or transfer has been received by the Company before the start of the meeting or adjourned meeting at which the proxy is used.

6.7 Deposit of Proxy

The instrument appointing a proxy and a power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority must be deposited at the registered office or the Company 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 instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. If it is not, the instrument of proxy is invalid.

7. Minutes

7.1 Minutes must be kept

The Board must ensure that minutes are kept of all proceedings at meetings of Shareholders.

7.2 Evidence

Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

8. Shareholder Proposals

8.1 Notice of matter for discussion or resolution

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.

8.2 Notice of Shareholder proposal at Company's expense

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.

8.3 Notice of Shareholder proposal at Shareholder's expense

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.

8.4 Notice of late Shareholder proposal to be given if practicable

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.

8.5 Proposing Shareholder's written statement

If the Directors intend that 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.

8.6 Limits on obligation to include statement

The Board is not required to include in or with the notice given by the Board:

- (a) 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
- (b) any part of a proposal or resolution prepared by a Shareholder which the Directors consider to be defamatory (within the meaning of the Defamation Act 1992).

8.7 Payment by Shareholder of costs

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.

9. Corporations may act by Representatives

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.

10. Votes of Joint Holders

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.

11. Loss of Voting Rights if Calls Unpaid

If a sum due to the Company in respect of a Share has not been paid, that share may not be voted at a Shareholder's meeting other than a meeting of an Interest Group.

12. Other Proceedings

Except as provided in this Schedule a meeting of Shareholders may regulate its own procedure.

SCHEDULE 2

PROCEEDINGS OF THE BOARD

1. Chairperson

1.1 Election of chairperson

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

1.2 Terms of office

The Director elected as chairperson holds that office until he or she dies or resigns or the Directors elect a chairperson in his or her place.

1.3 Election of chairperson for particular meetings

If no chairperson is elected, or if at a meeting of the Board the chairperson or deputy chairperson is not present within 5 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.

2. Notice of Meeting

2.1 Convening meetings

The following persons may convene a meeting of the Board by giving notice in accordance with this clause:

- (a) the chairperson, or in his or her absence, the deputy chairperson;
- (b) any 2 Directors;
- (c) an employee of the Company, if requested to do so by any of the above persons.

2.2 Period of notice

Not less than 2 clear days' notice of a meeting of the Board must be given to every Director who is in New Zealand, and the notice must include the date, time and place of the meeting and the matters to be discussed.

2.3 Irregularity in notice

An irregularity in the notice of the meeting is waived if all Directors attend the meeting without protest as to the irregularity or if all Directors entitled to receive notice of the meeting agree to the waiver.

2.4 Means of giving notice

Notice of a meeting may be given by any means, including by telephone. Notice given by a letter addressed to a Director at his or her last known residential address will be deemed to have been given on the day following the day the letter is posted.

3. Method of holding meetings

3.1 A meeting of the Board may be held either:

- (a) by a number of Directors sufficient to form a quorum being assembled together at the place, date and time appointed for the meeting; or
 - (b) by means of contemporaneous linking together by instantaneous communication device of a number of the Directors not less than the quorum, whether or not any one or more of the Directors is out of New Zealand, provided the conditions set out in the following clauses are met.
- 3.2 All the Directors for the time being entitled to receive notice of a meeting of the Directors (including any Alternate Director of any Director to whom notice of such meeting is not given) shall be entitled to notice of a meeting by instantaneous communication device and to be linked by instantaneous communication device for the purposes of such meeting. Notice of any such meeting may be given on the instantaneous communication device.
- 3.3 Each of the Directors taking part in the meeting must be able to hear each of the other Directors taking part at the commencement of the meeting.
- 3.4 At the commencement of the meeting each Director must acknowledge his or her presence for the purpose of a meeting of the Directors of the Company to all the other Directors taking part.
- 3.5 A Director must not leave the meeting by disconnecting his or her instantaneous communication device and shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting unless he or she has previously obtained the express consent of the chairperson of the meeting to him or her leaving the meeting.
- 3.6 A minute of the proceedings at such meeting by instantaneous communication device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting.
- 3.7 For the purpose of this clause 3 "instantaneous communication device" shall include telephone, television or any other audio or audio and visual device which permits instantaneous communication.

4. Quorum

4.1 Number constituting quorum

A quorum for a meeting of the Board is 3 of the Directors.

4.2 No business without quorum

No business may be transacted at a meeting of Directors if a quorum is not present.

4.3 Alternate Director may be included

In accordance with clause 26.6 of this Constitution an Alternate Director present at a meeting may be included for the purpose of establishing a quorum.

5. Voting

5.1 Number of votes

Every Director has one vote.

5.2 Chairperson has casting vote

The chairperson has a casting vote.

5.3 Majority

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.

5.4 Presumption as to voting

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 dissents from, or votes against the resolution at the meeting.

5.5 Alternate Director may vote

An Alternate Director may attend and vote at meetings of the Board in accordance with, and subject to, clause 24.3 of this Constitution if the Director that has appointed the Alternate Director is absent from the meeting.

6. Minutes

The Board must ensure minutes are kept of all proceedings at meetings of the Board.

7. Resolutions

7.1 Written resolution

A resolution in writing, signed or assented to by a majority of 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.

7.2 Forms of resolution

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.

7.3 Resolution to be kept in minute book

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

8. No notice to Directors outside New Zealand

It is not necessary to give notice of a meeting of the Board to any Director for the time being absent from New Zealand but if a Director is resident outside New Zealand, or to the knowledge of the Company is temporarily absent from New Zealand and the Director has appointed an Alternate Director under the provisions of this Constitution, notice must (subject to clause 24.3 of this Constitution) be given to the Alternate Director.

9. Other proceedings

Except as provided in this Schedule the Board may regulate its own procedure.