
Constitution of Nambawan Super Limited

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CONSTITUTION OF NAMBAWAN SUPER LIMITED

PRELIMINARY

1.1 Definitions

Unless the context otherwise requires, the following definitions apply in this constitution.

"**Act**" means the Companies Act 1997 as it is amended and applies to the Company from time to time.

"**Alternate Director**" means a person appointed as an alternate director under clause 18.2.

"**Appointor**" means in respect of an Alternate Director, the Director who appoints that Alternate Director under clause 18.2.

"**Auditor**" means the auditor of the Company from time to time.

"**Bank**" means the Bank of Papua New Guinea.

"**Bank Regulated Institution**" means any entity licensed by the Bank under the Superannuation Act , Life Insurance Act 2000, Banks and Financial Institutions Act 2000 and the Savings and Loans Societies (Amendment) Act 1995, or any amendment, re-enactment or replacement thereof.

"**Board**" means the Directors acting collectively under this constitution.

"**Business Day**" means a day on which banks in Papua New Guinea generally are open for the full range of banking business.

"**Chairman**" means the person appointed as chairman of the Board under clause 21.8 from time to time.

"**Chief Executive Officer**" means a person (if any) appointed as a chief executive officer of the Company under clause 19.1 or 19.2.

"**Class**" means a class of ordinary Shares.

"**Common Seal**" means the common seal of the Company.

"**Company**" means Nambawan Super Limited whatever its name may be from time to time.

"**Corporate Governance Prudential Standard**" means Prudential Standard 7/2012 – Corporate Governance - issued by the Bank of Papua New Guinea, as amended or substituted from time to time.

"**Cross-directorship**" occurs where a Director is a director of a company at the same time as another Director is a director of that company.

"Deputy Chairman" means the person appointed as deputy chairman of the Board under clause 21.8 from time to time.

"Director" means a person appointed as a director for the time being of the Company (including, where appropriate, an Alternate Director).

"Dividend" means any distribution to Shareholders in relation to Shares as a dividend of any property (including, without limitation, money and shares (including bonus shares) or other securities of the Company or of any other body corporate).

"Fund" means the Public Officers Superannuation Fund established under a Deed dated 24 December 2002, being the fund formerly known by that name and established under the Public Officers Superannuation Fund Act 1990.

"Independent Director" means a Director who:

- (a) is not a Representative Director;
- (b) is not a Shareholder Controller of the Company, or an officer of or otherwise associated, directly or indirectly, with a Shareholder Controller of the Company;
- (c) does not hold a Cross-directorship or otherwise have connections that could materially interfere with the Director's objectivity or give rise to a conflict of duty or interest;
- (d) has not within the last three years been a principal of a material professional adviser or a material consultant to the Company or an employee materially associated with the service provider;
- (e) has not within the last three years been a material supplier of the Company or an officer, shareholder controller of, or otherwise associated directly or indirectly with a material supplier;
- (f) does not have a material contractual relationship with the Company or its subsidiaries;
- (g) has no other material interests, relationships or associations with any person or entity which affects, or could be perceived to affect the independence of the Director;
- (h) is not employed nor been employed in an executive capacity by the Company unless at least three years has elapsed between ceasing such employment and appointment to the Board; and
- (i) has not been determined by the Board (subject to the Bank's concurrence) to have ceased to be independent in character and judgement.

"Licensed Trustee" has the same meaning as in the Superannuation Act.

"Material" has the same meaning as in the Corporate Governance Prudential Standard.

"**Member**" means a person who has been admitted as or is deemed to be, and is still, a member of the Fund.

"**Official Seal**" means the duplicate common seal referred to in clause 24.7.

"**Prescribed Rate**" means in respect of each clause in which that term is used 10 per cent per annum or any other rate prescribed by the Board from time to time in respect of that clause.

"**Register**" means the register of Shareholders kept pursuant to the Act.

"**Representative Director**" means a Director who is appointed or nominated to represent a third party.

"**Secretary**" means a person appointed as a secretary of the Company from time to time (including any person appointed to perform the duties of a secretary temporarily).

"**Share**" means a share in the capital of the Company.

"**Shareholder**" means a person whose name is entered in the Register as the holder of a Share.

"**Shareholder Controller**" has the same meaning as in the Superannuation Act.

"**Shareholder's Liability**" means, in respect of a Shareholder:

- (a) all money due and payable by the Shareholder to the Company; and
- (b) all money (whether payable or not) called or payable at a fixed time in respect of Shares held by that Shareholder.

"**Superannuation Act**" means the *Superannuation (General Provisions) Act 2000* and the Regulations, prudential standards and determinations made under that Act and any amendments to it.

"**Voting Shareholder**" means a Shareholder:

- (a) who is entitled to be present at a meeting of Shareholders;
- (b) present at the meeting in any of the ways set out in clause 12.1; and
- (c) in respect of whom there is at least one item of business to be considered at the meeting on which the Shareholder is not disqualified from voting.

1.2 Interpretation

In this constitution, unless the context otherwise requires:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation or statutory instrument issued under, that legislation or legislative provision;

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- (b) the singular includes the plural and vice versa;
 - (c) a reference to an individual or person includes a corporate body, partnership, joint venture, association, authority, trust, state or government and vice versa;
 - (d) a reference to a person is also to the legal personal representative of that person;
 - (e) a reference to any gender includes all genders;
 - (f) a reference to a clause or a schedule is to a clause of or schedule to this constitution;
 - (g) a schedule is part of this constitution;
 - (h) a reference to any agreement or document (including this constitution) is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
 - (i) an expression defined in, or given a meaning for the purposes of, the Act (except where defined, or given a meaning, in this constitution) has the same definition or meaning in this constitution where it relates to the same matters for which it is defined, or given a meaning, in the Act;
 - (j) a reference to a matter being written includes that matter being in any mode of representing or reproducing words, figures or symbols in written form;
 - (k) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - (l) a reference to power is also to authority and discretion;
 - (m) where an expression is defined anywhere in this constitution it has the same meaning throughout;
 - (n) a reference to a particular Part, Division, section, sub-section, paragraph or sub-paragraph is a reference to a Part, Division, section, sub-section, paragraph or sub-paragraph of the Act.

1.3 **Headings**

In this constitution headings are for convenience of reference only and do not affect interpretation.

1.4 **Mode of consent**

A Shareholder consents to a matter if and only if the Company receives a notice signed by the Shareholder (or the Shareholder's attorney):

- (a) which is delivered at the registered office of the Company or of which a legible copy is received there by electronic mail and facsimile transmission; and

(b) which sets out the matter to which the Shareholder consents,

and the Company has not received a notice, similarly signed and delivered, revoking that consent.

2. SHARES

2.1 Control by the Board

Subject to clauses 2.4, 2.5 and 2.6, the Board may issue or grant options over or otherwise dispose of Shares in the Company to the persons, on the terms and conditions, with the rights and privileges (including, without limitation, different Classes of Shares and Shares which rank equally with, or in priority to, existing Shares), and at the times that the Board, with the prior approval of the Bank, with no more than one Director voting against, determines.

2.2 No pre-emptive rights

Section 45 shall not apply to the issue of Shares by the Company unless the terms of issue of any Shares otherwise provide.

2.3 Buy back of Shares

The Company, by special resolution of Shareholders is authorised to:

- (a) agree to purchase or otherwise acquire any of its own Shares from one or more Shareholders; and
- (b) redeem any redeemable Shares.

2.4 Ordinary Shares

As at the adoption of this constitution: the capital of the Company comprises ordinary Shares and all Shares rank equally in all respects.

2.5 Conditions attaching to Shares

Each Shareholder agrees that as a condition of becoming a Shareholder which condition attaches to each Share:

- (a) the Share is held in trust for the Members, from time to time, of the Fund;
- (b) the Share Certificate for the Share is to be held by the Secretary;
- (c) no Share entitles a Shareholder to any distribution or dividend;
- (d) if the Shareholder ceases to be a Director (the "Outgoing Director"), the Share held by the Outgoing Director shall be:

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- (i) automatically transferred for no consideration to the person who is appointed in accordance with clause 15 as a Director (the "Incoming Director") in place of the Outgoing Director, such transfer taking effect on the date of appointment of the Incoming Director; or
 - (ii) if there is no Incoming Director, automatically transferred for no consideration to the Company and cancelled; and
- (e) for the purposes of paragraph (d) each of the Secretary of the Company, each Director of the Company is hereby irrevocably appointed as the attorney of the Outgoing Director and as such is authorised and directed:
- (i) to complete and execute a transfer of the Share to the Incoming Director as trustee for the Members, from time to time, of the Fund; and
 - (ii) to sign such other documents and do such other things as may be necessary or desirable to transfer the Share to the Incoming Director as trustee for the Members, from time to time, of the Fund.

2.6 **Maximum shareholding**

No person may hold more than one (1) Share.

3. **CERTIFICATES**

3.1 **Certificates of title**

Subject to clause 3.2 certificates of title to securities of the Company which are issued by it must be issued in accordance with the Act.

3.2 **Certificate for joint holders**

Where two or more persons hold any securities of the Company, the Company is only required to issue the same number of certificates as if those securities were held by one person and delivery of a certificate so issued to any of those persons is sufficient delivery to all of them.

3.3 **Replacement of lost certificates**

Where a certificate is lost or destroyed, the Company may issue a duplicate certificate in accordance with the Act.

3.4 **Replacement of worn out certificates**

Where a certificate is defaced or worn out and is produced to the Company and the Company is paid a reasonable fee determined by the Board, the Company may cancel that certificate and issue a new certificate in substitution.

4. REGISTER

4.1 Joint holders

If two or more persons are the holders of a Share, the person whose name first appears in the Register in respect of that Share is to be treated as the sole owner of the Share in relation to all matters concerning the Company (including the giving of notice) except in relation to the transfer of the Share, right to vote, receipt of Dividends, delivery of certificates and liability for instalments or calls.

4.2 Recognition of trusts

Subject to the Act and except as required by law or by this constitution, the Company is entitled to regard each Shareholder as owning its Shares as trustee for the Members, from time to time, of the Fund.

5. CALLS ON SHARES – NOT USED

6. FORFEITURE OF SHARES – NOT USED

7. LIEN – NOT USED

8. ALTERATION OF CAPITAL, SHARES AND RIGHTS – NOT USED

9. TRANSFER OF SHARES

9.1 Modes of transfer

A Shareholder may only transfer the Shareholder's Share by instrument in writing which is in a form approved by the Board or is in any other usual or common form and where the transferee is a Director.

9.2 Transfer by instrument

Where a Shareholder seeks to transfer all or any of the Shareholder's Shares in accordance with clause 9.1, the Company may only register a transfer of Shares where an instrument satisfying clause 9.1 is delivered to the Company and the instrument:

- (a) is duly stamped, if necessary;
- (b) is executed by the transferor (or attorney as provided for in this constitution) and the transferee, except where a law provides that execution by either or both transferor and transferee is not required or is deemed to be present;
- (c) except where otherwise permitted by law, is accompanied by the certificate for the Shares the subject of the transfer together with such other evidence as the Board may require to prove the title of the transferor or the transferor's right to transfer the Shares;

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- (d) is accompanied by a declaration of trust by the transferee to the effect that the subject Shares are held in trust for the Members, from time to time, of the Fund; and
 - (e) complies with clause 2.6.

9.3 **Retention of instruments**

On an instrument of transfer or a purported instrument of transfer being delivered to the Company, property to and title in that instrument (but not the Shares the subject of it) pass to the Company which is entitled as against all persons to the possession of the instrument.

9.4 **Powers of Attorney**

Where a power of attorney granted by a Shareholder is lodged with, or produced or exhibited to, the Company and that power of attorney confers power on the attorney to transfer any or all of the Shareholder's Shares, the Company is entitled to assume, as against the Shareholder, that the power remains in full force and effect and may be relied on by the Company until the Company receives express notice in writing at its registered office of either:

- (a) the revocation of the power of attorney; or
- (b) the death of the Shareholder.

10. **TRANSMISSION OF SHARES**

If a Shareholder either dies or becomes bankrupt the only person that the Company may recognise as having any title to or interest in a Share held by that Shareholder is the person appointed to replace the deceased or bankrupt Shareholder as a Director of the Company and who is thereby entitled to a transfer of that Share.

11. **MEETINGS OF SHAREHOLDERS**

11.1 **Methods of holding meetings**

A meeting of Shareholders may be held either -

- (a) by a number of Shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or
- (b) if determined by the Board, by means of audio, or audio and visual, communication by which all Shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

11.2 **Annual meeting**

Except as provided by the Act, the Company must, in addition to any other meeting held by it, hold an annual meeting in accordance with the Act.

11.3 **Convening of special meeting**

The Board may convene a special meeting of the Company at any time.

11.4 **Requisition of special meeting**

Shareholders may requisition the holding of a special meeting as provided by section 102(b).

11.5 **Notice of meeting of Shareholders**

Written notice of the date, time and place of a meeting of Shareholders shall be sent to every Shareholder entitled to receive notice of the meeting and to every Director and an Auditor of the Company not less than 14 days before the meeting.

11.6 **Contents of notice**

The notice shall:

- (a) 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
- (b) include the text of any special resolution to be submitted to the meeting.

11.7 **Waiver of irregularity in notice**

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

11.8 **Omission to give notice**

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.

11.9 **Cancellation or postponement of special meeting**

Where notice of a special meeting of Shareholders has been given, the Board may by notice given to all persons entitled to be given notice of the meeting, postpone or cancel the meeting.

11.10 **Adjournment of meeting**

The chairman of a meeting of Shareholders at which a quorum is present:

- (a) may with the consent of the meeting by ordinary resolution; and
- (b) must if so directed by the meeting by ordinary resolution, adjourn the meeting from time to time and from place to place.

11.11 **Business at adjourned meeting**

The only business which an adjourned meeting of Shareholders may deal with is business which was left unfinished from the meeting which was adjourned.

11.12 **Notice of adjourned meeting**

Where a meeting of Shareholders is adjourned for less than one (1) month, 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.

12. **PROCEEDINGS AT MEETINGS OF SHAREHOLDERS**

12.1 **Representation of Shareholders**

A Shareholder may attend a meeting of Shareholders at which the Shareholder is entitled to be present in any of the following ways (if applicable to the Shareholder):

- (a) in person;
- (b) by proxy;
- (c) by attorney; or
- (d) in the case of a Shareholder which is a body corporate, by a representative appointed in respect of the meeting under clause 13.11.

12.2 **Quorum**

Subject to clause 12.3 no business may be transacted at a meeting of Shareholders unless there is present for that business a quorum of natural persons representing at least half of the Shareholders.

12.3 **Failure of quorum**

Where a quorum is not present within 30 minutes after the time appointed for the 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 present may appoint, and, where, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is cancelled.

12.4 **Chairman**

The Chairman (if any) is or, if the Chairman is absent or is unwilling or unable to be the chairman of a meeting of Shareholders, the Deputy Chairman (if any) is, if willing and able, to be the chairman of any meeting of Shareholders.

12.5 **Chairman absent**

Where a meeting of Shareholders is held and:

- (a) the Chairman and the Deputy Chairman of the Board have not been appointed; or
- (b) the Chairman and the Deputy Chairman of the Board are not present within 15 minutes after the time appointed for the holding of the meeting or being present, are unwilling or unable to act,

the Voting Shareholders present must elect one of their number to be chairman of the meeting.

12.6 **Responsibilities of chairman**

The chairman of a meeting of Shareholders:

- (a) shall allow a reasonable opportunity for Shareholders of the meeting to question, discuss and comment on the management of the Company as required by section 90(1); and
- (b) subject to paragraph (a) of this clause and Schedule 2(12) of the Act, is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning the business transacted at it and for these purposes may, without limitation:
 - (i) prescribe procedures and make rulings, in each case finally and conclusively;
 - (ii) in addition to other powers to adjourn, adjourn the meeting or any item of business of the meeting without the concurrence of the meeting if the chairman determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
 - (iii) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

12.7 **Method of voting**

In the case of a meeting of Shareholders held under clause 11.1(a) unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the chairman of the meeting:

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

and in the case of a meeting of Shareholders held under clause 11.1(b) unless a poll is demanded, voting at the meeting shall be by the Shareholders signifying individually their assent or dissent by voice.

12.8 Declaration by chairman

A declaration by the chairman 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 clause 12.9.

12.9 Demand for poll

At a meeting of Shareholders a poll may be demanded by a Shareholder.

12.10 Time for demanding a poll

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

12.11 Votes on a poll

Where a poll is taken, votes shall be counted according to the votes attached to the Shares of each Shareholder present in person or by proxy, attorney or representative and voting.

12.12 Authority of proxy etc on a poll

The instrument appointing a proxy, attorney or representative 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, attorney or representative for a Shareholder has the same effect as a demand by the Shareholder.

12.13 Effect and withdrawal of demand for poll

The demand for a poll:

- (a) does not prevent the continuance of a meeting of Shareholders for the transaction of any business except in respect of the resolution for which the poll is demanded; and
- (b) may be withdrawn.

12.14 Conduct of poll

If a poll is properly demanded for the voting on a resolution:

- (a) if the resolution is for the adjournment of the meeting of Shareholders, the poll must be taken immediately at the place and in the manner that the chairman of the meeting determines and declares to the meeting;
- (b) in all other cases, the poll must be taken at the time and place and in the manner that the chairman of the meeting of Shareholders determines and declares to the meeting; and
- (c) the result of the poll, as disclosed by the chairman of the meeting of Shareholders at which the result is declared, is a resolution of the meeting at which the poll is demanded.

12.15 **Resolutions determined by majority**

Both on a show of hands and on a poll, an ordinary resolution is passed if the proportion that the number of votes cast in favour of that resolution bears to the total number of votes cast on the resolution is greater than one half.

12.16 **Casting vote of chairman**

The chairman of a meeting of Shareholders has a casting vote in addition to any vote that the chairman has as a Shareholder.

12.17 **Written resolutions**

For the purposes of section 103, two or more documents in identical terms, each signed by one or more Shareholders (or such Shareholders' attorneys or representatives, as the case may be) are to be treated as one document provided that:

- (a) each document is delivered to the registered office of the Company or a legible copy of it is received there by facsimile transmission; and
- (b) where more than one Shareholder, representative or attorney signs the document the date of execution of the document by each Shareholder, attorney or representative is set out,

and the date of the resolution is the last date of execution of any of those documents by a Shareholder or its attorney or representative.

12.18 **Minutes to be kept**

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

12.19 **Signed minutes**

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

13. **ENTITLEMENTS TO ATTEND AND VOTE**

13.1 **Entitlement to attend**

Subject to this constitution and any terms of issue of any Share, each Shareholder and each Director is entitled to notice of each meeting and to be present and to speak at that meeting.

13.2 **Entitlement to vote**

Subject to this constitution and any terms of issue of any Share:

- (a) on voting by voice or a show of hands, each natural person present at a meeting of Shareholders who is a Voting Shareholder or a proxy (other than a person who is

present only as one of two proxies appointed by the same Shareholder), representative or attorney appointed by a Voting Shareholder has one vote; and

- (b) on a poll, each natural person present at a meeting of Shareholders has the number of votes calculated as the aggregate of the following:
 - (i) the number of fully paid Shares held by the person;
 - (ii) the number of fully paid Shares in respect of which Voting Shareholders holding those Shares have appointed the person as proxy, representative or attorney;
 - (iii) in respect of the partly paid Shares held by the person, the aggregate of the fractions determined, in respect of each of those Shares, by dividing the total amount paid (not credited) on the Share by the total of the amounts paid and payable (excluding amounts credited) on the Share; and
 - (iv) the aggregate of the fractions determined on the same basis as paragraph (iii) above in respect of each partly paid Share in respect of which the Voting Shareholder holding that Share has appointed the person as proxy, representative or attorney.

13.3 Votes of joint holders

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

13.4 Entitlement to vote by proxy etc

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

13.5 Entitlement of proxy etc

A proxy, attorney or representative for a Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the proxy, attorney or representative was the Shareholder.

13.6 Appointment of proxy

A proxy shall be appointed by notice in writing signed by the Shareholder, the notice shall state whether the appointment is for a particular meeting or a specified term not exceeding one year and the notice shall be in the form of Schedule 1 or in any other form that the Board may from time to time prescribe or accept.

13.7 Production of proxy etc

Any appointment of a proxy, attorney or representative is effective in respect of a particular meeting of Shareholders if, and only if, the following instruments are actually received (which includes receipt of a copy of those instruments by legible facsimile transmission) by the

Company at its address for service or registered office (or another place notified by the Board) at least 48 hours before the time notified for that meeting:

- (a) in the case of a proxy, the instrument of proxy and, if it is executed by an attorney, the relevant power of attorney or an office copy or notarially certified copy of the power of attorney;
- (b) in the case of an attorney, the power of attorney or an office copy or notarially certified copy of the power of attorney; and
- (c) in the case of a representative of a body corporate, an instrument of appointment executed under the common seal of the body corporate and, if it is executed by an attorney, the relevant power of attorney or an office copy or notarially certified copy of the power of attorney executed under the common seal of the body corporate, or other evidence satisfactory to the Board.

13.8 **Effect of incomplete proxy form**

An instrument of proxy is not invalid or ineffective merely if any or all of the following applies:

- (a) it does not contain the address of the Shareholder giving it;
- (b) it does not contain the address of the person appointed by it;
- (c) it is not dated; and
- (d) it does not contain a direction to the appointee as to how to vote on any or all items of business.

13.9 **Effect of the appointment**

An instrument of proxy which is valid and effective except that it does not specify an appointee in respect of any of the Shares of the relevant Shareholder is to be treated as validly appointing the chairman of the meeting of Shareholders to which it relates in respect of all of the Shares of that Shareholder.

13.10 **Proxy must vote as directed**

Where a Shareholder in a valid instrument of proxy directs the appointee to vote in a specified way in respect of a particular item of business at the relevant meeting of Shareholders:

- (a) the appointee must cast or abstain from casting (as the case may be) a vote on that item of business; and
- (b) the appointee must, on a poll, cast the votes as to which a direction is given by the instrument of proxy in accordance with that direction,

but, if in respect of any vote in respect of that item of business, the Shareholder does not on the instrument of proxy indicate how the appointee is to cast that vote, the appointee may cast, or abstain from casting, that vote as the appointee determines.

13.11 **Corporate bodies 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.

13.12 **Multiple appointments**

Where the Company has received an instrument of proxy in respect of a Share from a Shareholder the appointment made by that instrument is and remains valid and effective, except that where the Company subsequently receives:

- (a) a power of attorney or office copy or notarially certified copy of a power of attorney entitling the attorney to attend and vote at the meeting, the appointment is revoked;
- (b) intimation in writing either of the revocation of the appointment under the instrument of proxy or of the death of the Shareholder, the appointment is revoked; and
- (c) another instrument of proxy from the Shareholder in respect of that Share, the instrument of proxy bearing the later date (or if the instruments bear the same date, the instrument later received by the Company) is an intimation in writing of the revocation of the appointment under the other instrument.

13.13 **Presence of Shareholder**

If a Shareholder is present in person at a meeting of Shareholders and a person appointed by that Shareholder as proxy or attorney is also present at that meeting, that person may not exercise the rights conferred by the instrument of proxy or power of attorney while the Shareholder is present.

13.14 **Ruling on entitlements and votes**

An objection may be raised with the chairman of a meeting of Shareholders as to the qualification of a purported voter or the admission or rejection of a vote by any person present and entitled (or claiming to be entitled) to vote but that objection may be made only at the meeting of Shareholders or adjourned meeting at which the purported voter wishes to vote or the vote objected to is given or tendered and, in relation to that objection:

- (a) the decision of the chairman is final and conclusive; and
- (b) a vote not disallowed as a result is valid and effective for all purposes.

14. SHAREHOLDER PROPOSALS

14.1 Notice to the Board

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.

14.2 Notice to Shareholders at Company's expense

Where the notice is received by the Board not less than one month before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board shall, 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.

14.3 Notice to Shareholders at proposing Shareholder's expense

Where the notice is received by the Board not less than seven days and not more than one month before the last day on which notice of the relevant meeting of Shareholders is required to be given by the Board, the Board shall, 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.

14.4 Late notice

Where the notice is received by the Board less than seven 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.

14.5 Proposing Shareholder's written statement

Where the Directors intend that Shareholders may vote on the proposal by proxy, they shall give the proposing Shareholder the right to include in or with the notice given by the Board a statement of not more than 1,000 words prepared by the proposing Shareholder in support of the proposal, together with the name and address of the proposing Shareholder.

14.6 Defamatory statements etc

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.

14.7 Deposit 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

shall, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

15. DIRECTORS

15.1 Number of Directors

The maximum number of Directors shall be nine and the minimum number of Directors shall be five (in each case excluding Alternate Directors, if any).

15.2 Residence

The majority of Directors must be ordinarily resident in Papua New Guinea.

15.3 Independent Directors

The majority of Directors must be Independent Directors.

15.4 Continuing Directors

Subject to this constitution the Directors holding office at the date of adoption of this constitution continue in office.

15.5 Compulsory retirement

Subject to clause 15.8, at each Annual Meeting, any Director (other than each Alternate Director) who, if that Director did not retire at that Annual Meeting, would at 30 June in the calendar year of that Annual Meeting, have held that office (since last being elected or re-elected) for more than four years automatically retires and is eligible for re-appointment (and if not re-appointed, that retirement takes effect at the conclusion of that Annual Meeting).

15.6 Maximum Period of Service

No Director may hold office for more than three terms, whether consecutive or not, or for a period exceeding in aggregate 9 years, whichever is the lesser. A Director who has completed the maximum period of service under this sub-clause is not eligible for further election or appointment at any time.

15.7 Other Directorships

A Director may not be a director of more than two Bank Regulated Institutions or hold more than five directorships in total at any one time. The latter limitation does not include directorships of family, charitable, sporting or religious entities.

15.8 Selection of rotating Directors

No more than three Directors shall retire at each Annual Meeting and if pursuant to clause 15.5 more than three Directors would have otherwise been required to retire, the three Directors who retire are those of the Directors the subject of that clause who have been in

office (since last being appointed or re-appointed) the longest and, as between Directors who have been in office for an identical period, those to retire are (unless they otherwise agree among themselves) to be selected by lot and the Board shall ensure that those Directors are ascertained not less than 30 days before the Annual Meeting at which those Directors are to retire.

15.9 **Qualification of Directors**

A person is only qualified to be appointed or continue to be a Director (or Alternate Director) if that person:

- (a) satisfies the fit and proper criteria specified in the Superannuation Act and clause 11 of the Corporate Governance Prudential Standard; and
- (b) is not an employee of a Licensed Trustee (save that the Chief Executive Officer may be an employee of the Company).

15.10 **Appointment of Directors**

At any Annual Meeting at which a Director retires under clause 15.5 or at any meeting at which a Director is removed or at which it is proposed to appoint a Director to fill a casual vacancy, the Company may by ordinary resolution fill the office vacated by appointing as a Director:

- (a) any retiring Director who offers himself or herself for re-election;
- (b) any person named in the most recent list of candidates recommended by a recognised employment recruitment agency, such list having been prepared and provided to the Company in accordance with clause 15.11; or
- (c) any person nominated by the Board.

15.11 **Appointment process**

To enable the Company to appoint a Director when required, the Board shall use its best endeavours:

- (a) to obtain from a recognised employment recruitment agency a list of not less than three candidates (which need not include any of the candidates identified by the Board under paragraph (b)) which it recommends;
- (b) to identify any other suitable candidates which the Board may recommend for appointment; and
- (c) include in the notice of meeting at which a Director is to be appointed, the list of candidates referred to in paragraph (a) and any other candidate recommended by the Board pursuant to paragraph (b).

15.12 **Casual vacancy**

If at any time a casual vacancy occurs on the Board the Director, whose office is vacated may be replaced by:

- (a) a person referred to in clause 1511(b); or
- (b) a person named in a list prepared in accordance with clause 1511(c); or

by a resolution of the Board such appointment to take effect from the conclusion of the meeting at which the Director was elected or as provided for in the resolution.

Casual vacancies must be filled within a maximum period of 6 months. Casual vacancies which result in the total number of the Board being less than below the required minimum, must be filled immediately.

15.13 **Shareholding by Directors**

Except in the case of the Chief Executive Officer and Alternate Directors, upon being appointed as a Director, each Director shall become a Shareholder and shall hold that Share in trust for the Members, from time to time, of the Fund.

15.14 **Removal of Director**

The Shareholders may only remove a Director by a unanimous resolution of Shareholders (excluding the Shareholder/Director the subject of the resolution).

15.15 **Vacation of office**

The office of a Director automatically becomes vacant if the Director:

- (a) becomes an insolvent
- (b) dies;
- (c) is not permitted by the Act (or an order made under the Act) to be a Director;
- (d) becomes of unsound mind;
- (e) is no longer qualified to hold the office of a Director;
- (f) no longer satisfies the fit and proper criteria provided for in the Superannuation Act;
- (g) nominates for or is elected to the National Parliament or a Provincial Assembly;
- (h) either personally or by an Alternate Director fails to attend:
 - (i) Board meetings for a continuous period of 6 months;
 - (ii) two consecutive meetings of the Board; or

(iii) more than half of the meetings of the Board held in the previous 12 months, without leave of absence from the Board;

(i) resigns by notice in writing in accordance with the Act.

16. DIRECTORS' REMUNERATION

16.1 Fees of non-executive Directors

The fees of the Directors (excluding the Chief Executive Officer):

- (a) may not in any period of 12 months starting at the end of a financial year of the Company (a "year") exceed in aggregate the amount last fixed before the end of that year for those fees by ordinary resolution;
- (b) are to be allocated to those Directors as determined by the Board (including those Directors), or, if there is no such determination in any year, equally between them; and
- (c) accrue from day to day.

16.2 Additional remuneration for extra services

If a Director having been requested to do so by the Board, either performs extra services or makes any special exertions for the Company (including, without limitation, going or living abroad), the Company may remunerate that Director by the payment of a fixed sum determined by the Board and that remuneration may be either in addition to or in substitution for any remuneration to which that Director may be entitled under clause 16.1. Any special or additional remuneration must not include a commission or a percentage of operating value/value of the Fund.

16.3 Expenses of Directors

The Company must pay a Director (in addition to any other remuneration) all reasonable expenses including, without limitation, any travelling and accommodation expenses incurred by the Director:

- (a) in attending meetings of the Board or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out that Director's duties as a Director.

17. DIRECTORS' MATERIAL INTERESTS AND DUTIES

17.1 Definition of Material Interest

"Material Interest" means for the purposes of this clause 17, in relation to a Director, but subject to clause 17.5, any interest (other than an interest in relation to which the Act provides

that a director is not, or is not to be taken to be, interested including, without limitation, an interest to which section 117(2) applies) which would result in the Director being "interested" for the purposes of section 117(1) of the Act.

17.2 Disclosure of Material Interest

Where a Director has a Material Interest the Director shall comply with section 118 by causing an entry to be made in the interests register.

17.3 Director with Material Interest not to act

A Director with a Material Interest must not do any of the things otherwise permitted by section 122 and in particular must not:

- (a) vote;
- (b) attend a meeting;
- (c) make up a quorum;
- (d) sign a document on behalf of the Company; or
- (e) do any other thing,

in relation to a matter in which the Director has a Material Interest.

17.4 Director may hold office of Company

Subject to clause 17.3, the Company may appoint a Director:

- (a) to hold any office in, or place of profit in respect of, the Company (except that of Auditor) on terms determined by the Board; or
- (b) alone or by a firm of which the Director is a member, to act in any professional capacity and the Director or that firm may be remunerated for so acting as if the Director were not a Director.

17.5 Application to Alternate Directors

The provisions of this clause 17 apply to the Material Interests of an Alternate Director, but an Alternate Director does not have a Material Interest solely by reason of the fact that the Director who has appointed the Alternate Director has a Material Interest and vice versa.

8. ALTERNATE DIRECTORS

18.1 Power to appoint Alternate Director

A Director (but not an Alternate Director) may from time to time in accordance with the procedures set out in clause 18.2 appoint any person eligible to be a Director to be the

Alternate Director of the Appointor provided that person satisfies the fit and proper criteria specified in the Superannuation Act whether for a specified period or until the appointment is revoked.

18.2 Method of appointment

An Alternate Director is appointed as such where:

- (a) the Appointor gives notice in writing (including, without limitation, by facsimile transmission) to the Company in the form of schedule 2 or in any other form that the Board may from time to time prescribe or accept; and
- (b) the Board (excluding the Appointor from voting) approves the person specified to be the Alternate Director of the Appointor.

18.3 Termination of appointment

The Appointor, at any time and regardless of whether the appointment is for a specified period, may revoke the appointment of a person as the Appointor's Alternate Director by notice in writing (including, without limitation, by facsimile transmission) to the Company to that effect and the appointment is automatically revoked if the Appointor ceases to be a Director.

18.4 Entitlements of Alternate Director

An Alternate Director by reason of being appointed as such:

- (a) is not entitled to receive notice of meetings of the Board unless the Appointor has by notice in writing (including, without limitation, by facsimile transmission) to the Company required it to do so;
- (b) if the Appointor is not present at a meeting of the Board, may attend and vote at that meeting in place of the Appointor;
- (c) if also a Director, may vote both as a Director and as an Alternate Director;
- (d) and when acting as such, is an officer of the Company and not an agent of the Appointor and, in those circumstances, is subject to all the duties and has all the powers and rights of the Appointor as a Director; and
- (e) may not be remunerated except out of the remuneration which would otherwise be available to be paid to the Appointor and, in respect of that remuneration, the Alternate Director's only rights (if any) are against the Appointor and not the Company.

19. CHIEF EXECUTIVE OFFICER

19.1 Appointment of Chief Executive Officer

The Company by ordinary resolution may from time to time appoint one person to be Chief Executive Officer either for a fixed term (but not exceeding 4 years) or without fixing a term

(but terminable on not more than 3 months' notice) and on any terms and conditions that it determines.

The Chief Executive Officer (and any chief executive officer) must be or become a resident of Papua New Guinea.

19.2 Termination of appointment of Chief Executive Officer

The appointment of the Chief Executive Officer terminates if:

- (a) the term of appointment of the Chief Executive Officer expires; or
- (b) the Board by ordinary resolution revokes the appointment (which this paragraph empowers it to do).

19.3 Remuneration of Chief Executive Officer

The Board may fix the remuneration of the Chief Executive Officer and that remuneration may comprise any or all of:

- (a) salary; or
- (b) fees.

19.4 Powers of Chief Executive Officer

Subject to the Act, and in particular section 111, the Board may, by resolution, from time to time and upon any terms and conditions and subject to any restrictions that it considers appropriate:

- (a) confer on the Chief Executive Officer any or all of the powers of the Board (which powers may be conferred so as to be concurrent with, but not to the exclusion of, the powers of the Board); and
- (b) withdraw or alter any of those powers.

20. POWERS OF THE BOARD

20.1 Powers generally

Except as otherwise required by the Act, in particular section 110, or any other applicable law or another provision of this constitution:

- (a) the business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board; and
- (b) the Board has all the necessary powers for managing, and for directing and supervising the management of, the business and affairs of the Company,

to the exclusion of any meeting of Shareholders and the Shareholders.

20.2 **Appointment of attorney**

Subject to the Act, and in particular section 111, the Board may by resolution by power of attorney appoint any person to be an attorney of the Company for the purposes, with the powers (being powers of the Board), for the period and subject to the conditions determined by it.

20.3 **Contents of power of attorney**

A power of attorney under clause 20.2 may, without limitation:

- (a) contain any provisions for the protection and convenience of persons dealing with the attorney as the Board determines; and
- (b) authorise the attorney to delegate any or all of the powers vested in the attorney.

21. **PROCEEDINGS OF THE BOARD**

21.1 **Mode of meeting**

The Board may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) which allows each person present to hear and be heard by each other person present, and adjourn and otherwise regulate its meetings as it determines.

21.2 **Board Procedures**

Subject to this clause 21, the procedures of the Board shall be in the control of the Board but must at a minimum comply with Clause 12 of the Corporate Governance Prudential Standard.

21.3 **Quorum**

- (a) The quorum of Directors present at a meeting of the Board necessary for the transaction of business at the meeting is at least half of the Directors but in any case not less than three (3) Directors. The majority of the Directors present must be Independent Directors (and for the purpose of calculating the total number of Directors, Alternate Directors shall not be counted).
- (b) For the purposes of this clause and clauses 21.4 and 21.11, a Director is treated as present at the meeting by telephone or other instantaneous means of conferring if the Director is able to hear the entire meeting and be heard by all others attending the meeting.

21.4 **Notice of meeting**

Notice of each meeting of the Board:

(a) must be given to each Director (and each Alternate Director in respect of whom the Appointor has given notice to the Company requiring notice to be given to that Alternate Director); and

(b) may be given by telephone, electronic mail or facsimile message,

but the non-receipt of any notice of a Board meeting by a Director does not affect the validity of the convening of the meeting.

21.5 Place of meeting

Where the Board holds a meeting solely or partly by telephone or other instantaneous means of conferring, the meeting is to be treated as held at the place at which at least one of the Directors present at the meeting is physically located as is agreed by those Directors present at the meeting.

21.6 Period of notice

The Board may determine the period of notice (unless waived by a majority of the Directors to whom notice of a particular meeting is sent) for each meeting of the Board which, until otherwise determined, is seven (7) days or, if the Chairman so determines that it is in the best interests of the Fund, is 48 hours.

21.7 Convening of Board meeting

A Director may at any time, and the Secretary must on request from a Director, convene a meeting of the Board.

21.8 Appointment of Chairman

(a) The Board shall elect one of the Independent Director to be Chairman and shall elect another Director (who need not be an Independent Director) to be Deputy Chairman.

(b) The Chairman and Deputy Chairman may not hold office for more than two terms (whether consecutive or no) or a period exceeding in aggregate 6 years, whichever is the lesser.

21.9 Chairman of Board meetings

Where the Board holds a meeting and:

(a) the Chairman is not present within 15 minutes of the time appointed for the holding of the meeting or is unwilling or unable to act; and

(b) a Deputy Chairman has not been appointed under clause 21.7 or the Deputy Chairman is not present within 15 minutes of the time appointed for the holding of the meeting or is unwilling or unable to act,

the Directors present at the meeting may choose one of their number to be chairman of that meeting.

21.10 Majority decisions

Except as otherwise provided by this constitution, every question arising and resolution dealt with at a meeting of the Board is to be decided by a majority of votes of the Directors present and voting on the question or resolution.

21.11 Votes of Directors

(a) Subject to this constitution (and in particular but without limitation, clause 21.10): each Director (including a person who is only a Director by reason of being an Alternate Director) present at a meeting of the Board has a right to participate in the voting on every question or resolution put to a vote at that meeting; and

(b) the chairman has a casting vote.

21.12 Exercise of powers by Board

A power of the Board is exercisable only:

(a) by resolution at a meeting of the Board at which a quorum is present; or

(b) by a resolution of the Directors under clause 21.14.

21.13 Delegation to committees

Subject to the Act and in particular section 111, the Board may, by resolution, delegate any of its powers (which powers may be delegated so as to be concurrent with, but not to the exclusion of, the powers of the Board) to a committee.

Without limitation to the foregoing, the Board shall establish in accordance with the Corporate Governance Prudential Standard:

(a) a remuneration committee;

(b) an investment committee; and

(c) an audit committee,

together with a charter of responsibilities for each.

21.14 Committee powers and meetings

Where the Board has appointed a committee under clause 21.12:

(a) that committee must exercise the powers delegated to it under clause 21.12 in accordance with any directions of the Board;

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- (b) a power so delegated when exercised by the committee in accordance with clause 21.13(a) and ratified by the Board is treated as exercised by the Board;
 - (c) the members of the committee may elect one of their number to be chairman, who may not hold office for more than two terms (whether consecutive or not) or a period exceeding in aggregate 6 years, whichever is the lesser;
 - (d) the Chairman is not eligible for election and a Director may only be chairman of one committee any one time;
 - (e) where a committee holds a meeting and:
 - (i) has not elected a chairman under paragraph (c) of this clause; or
 - (ii) the chairman so elected is not present at the meeting within 15 minutes of the time appointed for the holding of the meeting or is unwilling or unable to act,the members of the committee present at the meeting may choose one of their number to be chairman of the meeting;
 - (f) the committee may meet in person or by telephone or other instantaneous means of conferring for the dispatch of business (or by any combination of those means) and adjourn and otherwise regulate its meetings as it may determine;
 - (g) every question arising and resolution to be dealt with at a meeting of a committee is to be decided by a majority of votes of the members present and voting on the question or resolution;
 - (h) subject to this constitution (and in particular but without limitation, clause 21.14(g)) each member present at a meeting of a committee has a right to participate in the voting on every question or resolution put to a vote at that meeting;
 - (i) the chairman has a casting vote; and
 - (j) the committee meetings are otherwise governed by the provisions of this constitution which regulate the meetings and procedures of the Board to the greatest extent practicable.

21.15 **Written resolution of Directors**

If all the Directors entitled to receive notice of a meeting of the Board and to vote on a resolution sign a document to the effect that they support the resolution (the terms of which are set out in the document), a resolution in those terms is for all purposes treated as having been passed at a duly convened meeting of the Board held on the date and at the time when the last Director signed the document.

21.16 **Several documents suffice**

For the purpose of clause 21.16:

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- (a) two or more separate documents in identical terms each of which is signed by one or more Directors are treated as one document;
 - (b) the signature by an Alternate Director of a document is not required if the Appointor of that Alternate Director has signed the document;
 - (c) the signature by the Appointor of an Alternate Director of a document is not required if that Alternate Director has signed the document; and
 - (d) electronic mail or facsimile message containing the text of the document expressed to have been signed by a Director and sent to the Company is a document signed by that Director at the time of its receipt by the Company.

21.17 Validity of acts of Directors

Each resolution passed or act or thing performed or done by, or with the participation of, a person acting as a Director or member of a committee in respect of whom it is later discovered there was some defect in appointment to, or continuation in, office of that person or that the person was disqualified or not entitled to perform, vote on or do, the resolution, act or thing, is as valid and effective as if that Director or member of committee had been validly appointed, had validly continued in office, had not been disqualified and was entitled so to perform, vote or do.

21.18 Board Deliberations

- (a) Board meetings must be structured and documented so as to allow the orderly deliberation by all Directors on all matters under discussion and adequate records of the proceedings and of decisions made in support or against any proposition must be kept.
- (b) Directors must receive Board papers at least one week prior to any meeting so that the Directors have the most up-to-date papers and time to read, assess and form a view of matters under discussion.
- (c) All Directors must contribute independently in the decision-making process. Accordingly, significant decisions, including investment decisions, must be made following interactive discussion among Directors.
- (d) Directors must exercise their individual judgement as to whether they possess sufficient information to make prudent decisions. Relevant staff should be diligently questioned and held accountable. Where in doubt about any matter materially affecting a decision, Directors must seek further information and where required, relevant additional independent legal, accounting or other expert advice must be sought.

21.19 Schedule 4 not to apply

Except to the extent that any such provision may be expressly adopted in this constitution, the provisions of Schedule 4 to the Act shall not apply to proceedings of the Board.

22. COMPANY POLICIES

In accordance with the Corporate Governance Prudential Standard ("the Standard"), the Board shall adopt and implement:

- (a) a conflict of interest policy that complies with clause 14 of the Standard;
- (b) a whistleblower policy that complies with Clause 15 of the Standard;
- (c) a board renewal and succession planning policy that complies with clause 18 of the Standard;
- (d) a performance assessment and review policy that complies with clause 19 of the Standard;
- (e) a delegated authority policy that complies with clause 20 of the Standard;
- (f) a remuneration policy that complies with clauses 22 and 24 of the Standard; and
- (g) a risk management framework that complies with clause 26 of the Standard.

23. SUBSIDIARIES

To the extent practicable, the Board shall ensure that the policies and procedures of the Company's subsidiaries are consistent with those contained in or adopted under this Constitution.

24. SECRETARY

24.1 Appointment of Secretary

The Board may:

- (a) appoint any person to be a Secretary of the Company;
- (b) determine the term of appointment, powers, duties and remuneration of that person as a Secretary;
- (c) vary any determination so made; and
- (d) terminate or suspend any appointment of a person as a Secretary.

25. COMPANY ADMINISTRATION

25.1 Minutes to be made

The Board must cause minutes to be made of:

- (a) the names of the Directors present at each Board meeting;
- (b) the names of the committee members present at each meeting of a committee appointed under clause 21.12(b)4;
- (c) the proceedings and resolutions of each meeting of Shareholders;
- (d) the proceedings and resolutions of each Board meeting; and
- (e) the proceedings and resolutions of each meeting of a committee appointed under clause 21.14.

25.2 Minutes to be entered

The Board must cause all minutes made under clause 24.1 to be entered in the relevant minute book of the Company.

25.3 Signature of minutes

The minutes of a meeting made under clause 24.1, if appearing on their face to be signed by the chairman of the meeting or the chairman of the next succeeding meeting of the relevant body, are sufficient but (except where this constitution otherwise provides) not conclusive evidence without proof of any further facts of the matters stated in them.

25.4 Custody of Common Seal

The Board must provide for the safe custody of the Common Seal.

25.5 Use of Common Seal

The Common Seal may only be used with the authority of either:

- (a) the Board; or
- (b) a committee appointed under clause 21.14 empowered to authorise the use of the Common Seal.

25.6 Mode of execution by Common Seal

An instrument is validly executed under the Common Seal where the Common Seal is affixed to it in the presence of:

- (a) at least two Directors; or

(b) two persons appointed by the Board for the purpose,
who each sign the instrument to attest the affixing of the Common Seal.

25.7 **Official Seal**

The Company may have, for use in any place outside Papua New Guinea a duplicate common seal (known as the Official Seal for that place) which shall be a facsimile of the Common Seal but with the addition on its face of the name of the place where it is to be used.

25.8 **Authority to affix an Official Seal**

The Company may by instrument under the Common Seal authorise any person either generally or in specified circumstances to affix the Official Seal for a particular place in that place to any instrument to which the Company is a party and determine any manner required for the affixing by that person of that Official Seal in that place.

25.9 **Effect of Official Seal**

Where an Official Seal is affixed to an instrument in the place to which it relates by a person authorised and in the circumstances authorised for that person under clause 23.8 in the manner described in clause 24.8 (if any), that instrument is to be treated for all purposes as having been validly executed under the Common Seal.

25.10 **Execution of bills and cheques**

All cheques, bills of exchange and other negotiable instruments, all orders for payment and all receipts for money paid to the Company, may only be signed for and on behalf of the Company in the manner (which may include the use of facsimile signatures) determined, and by the persons appointed for the purpose, by the Board from time to time.

26. **DIVIDENDS AND OTHER DISTRIBUTIONS**

The Company must not declare or pay any Dividend or distribution to the Shareholders.

27. **NOTICES**

27.1 **Service**

Any document required to be served by or on the Company may be served in accordance with the provisions of the Act.

27.2 **Notices to joint holders**

Where more than one person holds a Share, a notice required or permitted to be given to the holder of that Share is effectively given when given to the person whose name first appears in the Register in respect of that Share.

27.3 Notices when Shareholder dies

Any notice or document given in accordance with the Act, notwithstanding that the Share in respect of which it is given is then subject to clause 10, is to be treated as validly given to each person entitled to be registered in respect of the Share and all persons who claim through such person.

27.4 Binding on others

Any person entitled to a Share (whether by transfer, operation of law or otherwise) is to be treated as having duly received every notice in respect of that Share which was duly given to the person from whom that person derives that entitlement before the person entitled is entered in the Register as the holder of the Share.

27.5 Signature of notice

The signature to any notice given by the Company may be written or affixed in any way.

27.6 Certificate of Director or Secretary

If a Director or Secretary signs a certificate that a notice was given in the manner set out in the certificate, that certificate is prima facie evidence of the accuracy of the matters set out in it.

28. INSPECTION AND SECRECY

28.1 No right to inspect

No Shareholder is entitled to require discovery of, inspection of, or any information concerning the affairs of the Company, except as provided by the Act or as permitted by the Board.

28.2 Board may permit inspection

Subject to the Act, the Board may determine whether any of the books, accounts and other information of the Company is to be available for inspection by Shareholders and, if so, the extent, time, place and conditions of inspection so permitted.

28.3 Obligation of secrecy

Every officer of the Company must:

- (a) keep strictly secret all transactions and affairs of, the accounts of and all information concerning the Company; and
- (b) if so required by the Board, sign a declaration accepting the obligation of secrecy and undertaking not to disclose any information within the officer's knowledge the subject of that obligation to any person, except in the proper course and performance of the officer's duties, as required by law or as required by the Board.

29. LIQUIDATION

29.1 Power of Board

The Board may by resolution authorise the making of an application by the Company for the appointment by the Court of a liquidator to the Company.

29.2 Distribution if insufficient assets

Subject to the terms of issue of a Share, if the Company is in liquidation and the assets available for distribution among the Shareholders (in that capacity) are insufficient to repay all the paid up capital, those assets will be distributed so that, to the greatest possible extent, the amount distributed to a Shareholder in respect of each Share is proportional to the amount paid up (or which at the commencement of the liquidation ought to have been paid up) on that Share compared with the total paid up capital of the Company.

29.3 Distribution of surplus assets

Subject to the terms of issue of a Share, if the Company is in liquidation and after distribution of assets to repay paid up capital there remain assets available for distribution to the Shareholders (in that capacity), those assets will be distributed so that, to the greatest possible extent, the amount distributed to a Shareholder in respect of each Share is proportional to the amount paid up (or which at the commencement of the liquidation ought to have been paid up) on that Share compared with the total paid up capital of the Company.

30. MISCELLANEOUS

30.1 Indemnity

The Company is authorised to indemnify and shall indemnify to the fullest extent permitted by the Act each Director and employee of the Company or a related company:

- (a) for any costs incurred by that person in any proceeding of the kind described in section 140(3); and
- (b) for any:
 - (i) liability to any person other than the Company or a related company for any act or omission in that person's capacity as a Director or employee; and
 - (ii) costs incurred by that person 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 duty specified in section 112 or, in the case of an employee, of any fiduciary duty owed to the Company or a related company,

but nothing in the preceding provisions of this clause entitles a Director to an indemnity for:

-
- (c) liability for breach of trust if the Director:
 - (i) fails to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the director was required to exercise; or
 - (d) liability for a monetary penalty under a court order.

30.2 **Insurance**

The Company is authorised with the prior approval of the Board, to effect insurance for each Director and employee of the Company or a related company in respect of:

- (a) liability, not being criminal liability, for any act or omission in his capacity as a Director or employee;
- (b) costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability; and
- (c) costs incurred by that Director or employee in defending any criminal proceedings in which he is acquitted.

30.3 **Interpretation**

Words having extended meanings by section 140(9) shall have those extended meanings in clauses 28.1 and 28.2.

30.4 **General authorisation**

Where the Act authorises or permits a company to do any thing if so authorised by its constitution, the Company is authorised by this clause to do that thing.

31. **SPECIAL PROVISIONS**

31.1 **Sole purpose entity**

The Company must not carry on any business other than that of acting as trustee of the Fund and any other fund subject to the Superannuation Act and doing things reasonably incidental to so acting.

31.2 **Restrictions on amendment of constitution**

This constitution may not be amended other than by way of a special resolution of Shareholders, being a resolution approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question.

SCHEDULE 1

(clause 13.6)

PROXY FORM

NAMBAWAN SUPER LIMITED

(Name of shareholder or shareholders)

of

(Address of shareholder or shareholders)

(the "Shareholder "), a shareholder of Nambawan Super Limited, appoints

(Name of proxy)

of

(Address of proxy)

or, failing that person, the Chairman of the meeting as the Shareholder's proxy to vote for the Shareholder and on the Shareholder's behalf at the [special] meeting of Shareholders of the Company to be held on [] at [] am/pm and at any adjournment of that meeting [or until [] being not more than one year from the date of appointment].

The proxy is directed to vote in the following manner:

Resolution #:

For:

Against:

Abstain:

(A mark should be placed in the appropriate box if the Shareholder wishes to direct the proxy to vote in a specified way in relation to the above resolution[s]. If no direction is given, the proxy may vote or not as the proxy sees fit.)

This form must be signed by the Shareholder (in the case of a body corporate under its common seal) or by an attorney of the Shareholder.

Dated:

Signed:

SIGNED for an on behalf of the Shareholder specified above by its duly appointed attorney in the presence of:

Attorney

Signature of witness

Name

Name

Date of Power of Attorney

THE COMMON SEAL of the Shareholder (if a body corporate) specified above, the fixing of which was witnessed by:

Signature of director

Signature of director/secretary

Name

Name

SCHEDULE 2

(clause 18.2)

FORM OF APPOINTMENT OF ALTERNATE DIRECTOR

I, the undersigned, a Director of Nambawan Super Limited, exercise the power given to me by the constitution of that company and appoint, subject to the approval of the Board, [insert name] of [insert address] to act as Alternate Director for me. This appointment takes effect *immediately/*on

[insert date] and extends until *[insert date]/*revoked by me.

Notice of meetings of the Board *is/*is not to be given to the person appointed by this notice.

Dated:

(Signature)

(Name printed)

* Delete and complete as required