



Constitution of Credit Corporation (PNG) Limited

(Pursuant to the Companies Act 1997)

After a special resolution to repeal and replace the Constitution by the Shareholders in the Annual General Meeting held on the 29th of June 2017 and a Form 9 was lodged dated 5th July 2017.

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1 Definitions and Interpretation

The following definitions apply in this Constitution unless the context otherwise requires.

Act means the *Companies Act 1997* of Papua New Guinea.

AMUCTF Act means the *Anti-Money Laundering and Counter Terrorist Financing Act 2015*.

board means directors of the company, who number not less than the required quorum, acting together as a board of directors.

Board Charter means the board charter described in clause 668.

B&FI Act means the *Banks and Financial Institutions Act 2000*.

Business Day:

- (a) if the company is Listed, has the meaning given in the ~~POMSoXPNGX~~ Rules; and
- (b) otherwise means a day, other than a Saturday or Sunday, on which banks in Papua New Guinea are open for the full range of banking business.

Business Rules means the Business Rules of the ~~POMSoXPNGX~~ and any other business rules that, if the company is admitted to the official list of ~~POMSoXPNGX~~, are applicable to or in relation to the company.

company means Credit Corporation (PNG) Limited (Company No. ~~21~~-6856).

Compliance Function Requirements means the policies, strategies and functions prescribed by Prudential Standard BPS320 issued by the Bank of Papua New Guinea, as amended or replaced from time to time.

Corporate Governance Requirements means the requirements prescribed by Prudential Standard BPS300 issued by the Bank of Papua New Guinea, as amended or replaced from time to time.

Dividend has the meaning given in section 51(1) of the Act.

entity means a body corporate, a partnership, an unincorporated body, an individual or a trustee of a trust.

Fit and Proper Requirements means the fit and proper requirements for responsible persons prescribed by Prudential Standard BPS310 issued by the Bank of Papua New Guinea, as amended or replaced from time to time.

Group means the company and its holding company and subsidiaries, as applicable.

Independent Director means a non-executive director who is free from any business or other association with the company, including those arising out of a substantial shareholding, involvement in past management or as a supplier, customer or adviser, or in a business relationship that could materially interfere with the exercise of their independent judgement. If the company is a subsidiary (within the meaning of Section 5 of the Companies Act), a person who qualifies as an Independent Director of the holding company also qualifies as an Independent Director of the company.

interest group has the meaning given in section 97(1) of the Act.

interested has the meaning given in section 117 of the Act.

Listed means admitted to the official list of the POMSoXPNGX.

PNG Citizen means a person who is, under the Constitution of the Independent State of Papua New Guinea, a citizen of Papua New Guinea.

POMSoXPNGX means ~~Port Moresby Stock Exchange~~ PNGX Markets Limited or the financial market operated by PNGX Markets ~~Port Moresby Stock Exchange L~~ Limited, as the context requires.

POMSoXPNGX Rules means the listing rules of POMSoXPNGX and any other rules of POMSoXPNGX or its subsidiaries that are applicable while the company is admitted to the official list of POMSoXPNGX, each as amended or replaced from time to time, except to the extent of any express waiver or modification relevant to the company.

Prescribed Rate means the rate payable under the company's overdraft facility with its principal bankers, plus 2% per annum.

Register means the share register of the company required to be kept under Section 67 of the Act and if the company is Listed, includes any additional share register permitted to be kept under Section 68 of the Act.

Responsible Person has the same meaning as in the Fit and Proper Requirements and includes:

- (a) a board member or chief executive officer;
- (b) a senior manager, being a manager that reports to board committees, direct, report to the chief executive officer, or an employee who:
 - (i) exercises managerial functions; or
 - (ii) is responsible for maintaining the accounts or other records of the company; or
 - (iii) is responsible for any business which is material to the company; or heads of any risk management functions including credit, treasury and compliance;
 - (iv) the maintenance of systems of control to protect the company against involvement in money laundering.
- (c) the head of the internal audit function or the most senior external auditor (audit partner) of the company; and
- (d) a consultant contractor or employee of a subsidiary or related company acting in the position of a Responsible Person.

Seal means the common seal of the company.

securities includes shares, stock, rights to shares or stock, options to acquire shares or stock and other securities with rights of conversion to equity and debentures, debenture stock, notes and other obligations of the company.

Shareholder Present means, in connection with a meeting:

- (a) where the shareholder is an individual - a shareholder present in person or by proxy; and
- (b) where the shareholder is a body corporate - a shareholder present by proxy or representative.

special resolution has the meaning given to that term in section 2 of the Act.

Uncertificated Transfer System means any system operated under the ~~POMSoXPNGX~~ Rules and Business Rules for the transfer or the settlement of transactions affecting securities in uncertificated form.

wholly owned means wholly owned, whether directly or indirectly.

2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

- (1) A gender includes all genders.
- (2) The singular includes the plural and conversely.
- (3) Expressions used to denote persons generally include a body politic or corporate as well as an individual.
- (4) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (5) A reference to an Article is a reference to an article of this Constitution.
- (6) A reference to a paragraph or sub-paragraph is to a paragraph or sub-paragraph, as the case may be, of the Article or paragraph, respectively, in which the reference appears.
- (7) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (8) Except in so far as a contrary intention appears in this Constitution, an expression has, in a provision of this Constitution which relates to a particular provision of the Act, the same meaning as in that provision of the Act.

3 Commencement

This Constitution takes effect -upon adoption by special resolution of the company and revokes all previous constitutions.

4 The relationship between this Constitution and the Rules of ~~POMSoXPNGX~~

For so long as the company is Listed the following paragraphs apply.

- (1) Notwithstanding anything contained in this Constitution, if the ~~POMSoXPNGX~~ Rules prohibit an act being done, the act must not be done.
- (2) Nothing contained in this Constitution prevents an act being done that the ~~POMSoXPNGX~~ require to be done.
- (3) If the ~~POMSoXPNGX~~ Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- (4) If the ~~POMSoXPNGX~~ Rules require this Constitution to contain a provision and it does not contain such a provision, this Constitution is deemed to contain that provision.

- (5) If the ~~POMSoXPNGX~~ Rules require this Constitution not to contain a provision and it contains such a provision, this Constitution is deemed not to contain that provision.
- (6) If any provision of this Constitution is or becomes inconsistent with the ~~POMSoXPNGX~~ Rules, this Constitution is deemed not to contain that provision to the extent of the inconsistency.

Capital

5 Power of board to issue securities

- (1) Subject to Article 6, the ~~POMSoXPNGX~~ Rules and the B&FI Act, but without prejudice to any special rights conferred on the holders of already issued shares, options or other securities:
 - (a) the board may issue shares or options over shares in, and other securities of, the company; and
 - (b) any share, option or other security may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividends, voting, return of capital, payment of calls or otherwise, as the board may decide.
- (2) The board must decide the consideration for which shares, options or other securities are to be issued, in accordance with the Act.

6 No allotment to pass a controlling interest without shareholder approval

The board shall not authorize the issue of any shares in the company which would pass a controlling interest in the company without the prior approval (by ordinary resolution) of the company in general meeting.

7 Issue of shares to executive directors

The board shall not authorize the issue of any shares in the company to an executive director as part of an issue to employees of the company without the prior approval (by ordinary resolution) of the company in general meeting.

8 Preference shares

Subject to Article 5, the board may issue preference shares that are, or at the option of the company are to be liable to be redeemed.

9 No pre-emptive rights on issue

The requirements of section 45(1) of the Act shall not apply to the issue or proposed issue of shares in the company.

10 Classes of shares

- (1) The company shall not take any action that affects the rights attached to shares in the company unless that action has been approved by a special resolution of each interest group in relation to that action.
- (2) The provisions of Schedule 2 of the Act (as negated or modified in the manner set out in this Constitution) together with Articles 48 to 60 (both inclusive) apply in so far as they are capable of application to each interest group meeting.

- (3) The rights conferred on the holders of ordinary shares, or options to subscribe for ordinary shares, shall not be taken to be varied, abrogated or otherwise affected by the creation or issue of further ordinary shares, or options to subscribe for ordinary shares.
- (4) The rights conferred on the holders of the shares of any class issued with preferred or other special rights shall not, unless otherwise provided by this Constitution, or by the terms of issue of the shares of that class, be taken to be varied, abrogated or otherwise affected by the creation or issue of further shares ranking equally with those shares.
- (5) The issue of any securities ranking in priority, or any conversion of existing securities to securities ranking equally or in priority-, to an existing class of preference shares, is a variation or abrogation of the rights attaching to that existing class of preference shares.
- (6) Where, by virtue of this Article, the creation or issue of further securities is not to be taken as varying, abrogating or affecting rights, that creation or issue is, for the purposes of section 98(3) of the Act, to be regarded as expressly permitted by this Constitution.

11 Brokerage and commission

The company may pay brokerage or commission on the issue of shares or other securities of the company.

11A Additional share register

If the company is Listed, the Register may be divided into two or more registers kept in different places.

12 Recognition of third party interests

Except as required by law or the ~~POMS~~~~XPNGX~~ Rules, the company is not bound to recognise:

- (a) any equitable, contingent, future or partial interest in any share or unit of a share; or
- (b) any other right in respect of a share, except an absolute right of ownership of the shareholder or as, otherwise provided by this Constitution or by law.

Certificates for Shares

13 When certificates not required

If the company is Listed, it need not issue any certificate for any share to the extent that it is not required to do so under:

- (1) the ~~POMS~~~~XPNGX~~ Rules; and
- (2) an exemption that is in force under Section 77 of the Act,

and the company may cancel any certificate that has previously been issued without issuing a substitute or new certificate.

14 Share certificates

- (1) Subject to Article 13, a person whose name is entered as a shareholder in the share register is entitled without payment to receive a certificate in respect of the shareholder's shares under the Seal in accordance with the Act.
- (2) The company is not bound to issue more than one certificate in respect of a share or shares held jointly by several persons.
- (3) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all of the joint holders.
- (4) A certificate for shares shall contain the particulars required by the Act and shall otherwise be in a form that the board from time to time decides.

15 Worn out or defaced share certificates

- (1) Subject to paragraph (2), the provisions of the Act with respect to certificates which are lost or destroyed shall apply to certificates which are worn out or defaced. The board may exercise all the powers in relation to certificates which are lost, destroyed, worn out or defaced as are exercisable by the company or its board under the Act in relation to certificates that are lost or destroyed.
- (2) Subject to the Act, the company:
 - (a) shall issue a certificate in replacement of a worn out or defaced certificate only if the certificate to be replaced is received by the company for cancellation and is cancelled; and
 - (b) may require the payment of any amount as the board determines in (c) connection with the issue of a replacement certificate.

Lien on share

16 Lien on shares

- (1) The company has a first and paramount lien on every share for:
 - (a) any amount due and unpaid in respect of the share which has been called or is payable at a fixed time;
 - (b) any amounts which remain outstanding on loans made by the company to acquire shares under an employee incentive scheme; and
 - (c) all amounts that the company may be called upon by law to pay in respect of the share.
- (2) Subject to the Act, the board may at any time exempt a share wholly or in part from the provisions of this Article.
- (3) The company's lien (if any) on a share extends to all Dividends payable and entitlements deriving in respect of the share. The board may retain those Dividends or entitlements and may apply them in or towards satisfaction of all amounts due to the company in respect of which the lien exists.

- (4) No person shall be entitled to exercise any rights or privileges as a shareholder in respect of those shares upon which calls are due and payable until the shareholder has paid all calls due and payable in respect of those shares.
- (5) Paragraph (6) shall apply if the company is or may in the future be liable, under the law of Papua New Guinea or any other jurisdiction:
 - (a) in respect of any shares registered in the name of a shareholder (whether solely or jointly with others); or
 - (b) in respect of any Dividends, interest, bonuses or other moneys or distributions paid or payable or entitlements derived or deriving in respect of any such shares;
 - (c) to pay any amount for or on account or in respect of any shareholder, whether in consequence of the death of that shareholder, the non-payment of any income or other tax by that shareholder, the non-payment of any estate, probate, succession, death, stamp or other duty by the shareholder or by the executor or administrator of the estate of that shareholder or otherwise.
- (6) The company:
 - (a) shall be fully indemnified by the shareholder referred to in paragraph (5) or the shareholder's estate from and against the liability referred to in that sub-clause;
 - (b) shall have a lien on the shares registered in the name of that shareholder for all moneys paid or payable by the company in respect of those shares under or in consequence of the liability; and
 - (c) may recover, as a debt due from that shareholder or the shareholder's estate, those moneys by deducting from any Dividend or any other amount payable to the shareholder in respect of the shares or otherwise (together with interest on the sum from the day of payment by the company to the time of actual repayment by the shareholder or the shareholder's estate at a rate not exceeding the Prescribed Rate, but the board may waive payment of interest wholly or in part).

17 Exercise of lien

- (1) Subject to paragraph (2), the company may sell any shares on which the company has a lien, in the manner that the board thinks fit.
- (2) A share on which the company has a lien shall not be sold unless:
 - (a) a sum in respect of which the lien exists is payable; and
 - (b) at least five (5) Business Days before the date of the sale, the company has given to the shareholder or the person entitled to the share by reason of the death or bankruptcy of the shareholder, a notice in writing demanding payment of the sum.

18 Completion of sale

- (1) For the purpose of giving effect to a sale of shares under lien, the board may authorise a person to do everything necessary to transfer the shares sold to the purchaser of the shares.

- (2) The company shall register the purchaser as the holder of the shares comprised in any transfer, after which the validity of the sale may not be impeached by any person, and the purchaser is not bound to see to the application of the purchase money.
- (3) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.
- (4) The purchaser shall be discharged from liability for any calls which may have been due before the purchase of those shares, unless otherwise expressly agreed.

The remedy of any person aggrieved by any sale shall be in damages only and against the company exclusively.

19 Application of proceeds of sale

The proceeds of a sale made under a lien shall be applied by the company in payment of the part of the amount in respect of which the lien exists as is presently payable. Any residue shall be paid to the person entitled to the shares immediately prior to the sale.

Calls on shares

20 Board's power to make calls

- (1) The board may make calls on the shareholders in respect of any money unpaid on the shares of the shareholders which is not by the terms of issue of those shares made payable at fixed times.
- (2) The company shall give not less than ten (10) Business Days' notice of any call, specifying the time and place of payment.
- (3) Each shareholder shall, on receiving a notice specifying the time and place of payment, pay to the company at the time and place so specified the amount called on the shareholder's shares.
- (4) The board may revoke a call.
- (5) Subject to the Act, the board may postpone a call.
- (6) A call may be required to be paid by instalments.
- (7) A call is made at the time when the resolution of the board authorising the call was passed.
- (8) The non-receipt of a notice of a call by, or the accidental omission to give notice of a call to, any shareholder shall not invalidate the call.

21 Liability of joint holders for calls

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

22 Interest on unpaid amounts

- (1) If a sum called or otherwise payable to the company in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at a rate determined by the board but not exceeding

the Prescribed Rate together with expenses incurred by the company by reason of non-payment.

- (2) The board may waive payment of that interest wholly or in part.

23 Fixed sums taken to be called

- (1) Any sum that, under the terms of issue of a share, becomes payable on allotment or at a fixed date shall, for the purposes of this Constitution, be taken to be a call duly made and payable on the date on which under the terms of issue the sum becomes payable.
- (2) If any other sum is not paid when due, all the provisions of this Constitution relating to payment of interest and expenses, forfeiture or otherwise apply as if that sum had become payable by virtue of a call duly made and notified.

24 Differentiation between holders

Subject to the Act, 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.

25 Prepayments of calls

The board may accept from a shareholder the whole or a part of the amount unpaid on a share even if that amount has not been called.

The board may authorise payment by the company of interest on the whole or any part of an amount accepted under paragraph (1), until the amount becomes payable, at a rate, not exceeding the Prescribed Rate, which is agreed between the board and the shareholder paying the sum.

The board may at any time repay the whole or any part of any amount paid in advance on serving the shareholder with one month's notice of its intention to do so.

Transfer of shares

26 Transferability of shares

- (1) Subject to this Constitution and the Act, a shareholder's shares may be transferred by instrument, in writing, in any usual or common form or in any other form that the board approves.
- (2) No fee shall be charged by the company on the transfer of any shares.
- (3) A transferor of shares remains the holder of the shares transferred until the transfer is registered.

27 Registration of transfers

- (1) Where shares are transferred the following documents must be lodged for registration at the registered office of the company or the location of the relevant share register:
 - (a) the instrument of transfer;
 - (b) the certificate (if any) for the shares; and
 - (c) any other information that the board may require to establish the transferor's right to transfer the shares.

- (2) On compliance with paragraph (1) the company shall, subject to the powers of the company to refuse registration, register the transferee as a shareholder.
- (3) The board may waive compliance with paragraph (1)(b) on receipt of satisfactory evidence of loss or destruction of the certificate.

28 Transfers if the company is Listed

If the company is Listed:

- (1) a transfer of shares may be effected by a transfer under and in accordance with any system (whether electronic or paper based or a combination of both) recognised or prescribed by the ~~POMSoXPNGX~~ Rules and/or the Business Rules to the extent permitted by an exemption that is in force under section 77 of the Act; and
- (2) the board may take such action as it thinks fit to comply with the ~~POMSoXPNGX~~ Rules and/or the Business Rules and may, in its discretion, ask the ~~POMSoXPNGX~~ to apply a holding lock to prevent a transfer of securities in any circumstances in which a holding lock is permitted by the ~~POMSoXPNGX~~ Rules and/or the Business Rules; and
- (3) the company and the board may do anything necessary or desirable to facilitate participation by the company in any Uncertificated Transfer System.

29 Board may decline to register

The board may:

- (1) decline to register a transfer of securities upon which the company has a lien; and
- (2) in the case of securities which are not fully paid up, decline to register a transfer of those securities to a transferee of whom it does not approve (and for this purpose, the board shall not be bound to assign any ground or reason for so declining).

30 Board shall refuse to register

The board shall refuse to register a transfer of shares unless:

- (1) the transfer is in the form required by Article 24(1);
- (2) the board is satisfied that the transfer will not contravene any applicable law.

31 Notice of non-registration

Subject to Article 29(b), if the board declines to register any transfer of shares, the company shall, within 5 days after the transfer was lodged with the company, give to the person who lodged the transfer written notice of, and the precise reasons for, the decision to decline registration.

32 Suspension of transfers

To the extent permitted by law and, if the company is listed, by the ~~POMSoXPNGX~~ Rules and the Business Rules, the registration of transfers of shares may be suspended at any time and for any period as the board from time to time decides, provided that the total period of such suspensions shall not exceed in the aggregate 30 days in any calendar year.

Transmission of shares

33 Entitlement to shares on death

- (1) Where a shareholder dies:
 - (a) the survivor or survivors, where the shareholder was a joint holder; and
 - (b) the legal personal representatives of the deceased, where the shareholder was a sole holder,shall be the only persons recognised by the company as having any title to the shareholder's interest in the shares.
- (2) The board may require evidence of a shareholder's death as it thinks fit.
- (3) This Article does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by the holder with other persons.

34 Registration of persons entitled

- (1) Subject to law and to the production of any information that is properly required by the board, a person becoming entitled to a share in consequence of the death or bankruptcy of a shareholder may elect to:
 - (a) be registered personally as holder of the share; or
 - (b) have another person registered as the transferee of the share.
- (2) All the limitations, restrictions and provisions of this Constitution relating to:
 - (a) the right to transfer;
 - (b) the registration of the transfer of; and
 - (c) the issue of certificates with respect to,shares are applicable to any transfer as if the death or bankruptcy of the shareholder had not occurred and the notice or transfer were a transfer signed by that shareholder.

35 Dividends and other rights

- (1) Where a shareholder dies or becomes bankrupt, the shareholder's legal personal representative or the trustee of the shareholder's estate (as the case may be) is, on the production of all information as is properly required by the board, entitled to the same Dividends, entitlements and other advantages and to the same rights (whether in relation to meetings of the company or to voting or otherwise) as the shareholder would have been entitled to if the shareholder had not died or become bankrupt.
- (2) Where two or more persons are jointly entitled to any share as a result of the death of a shareholder, they shall, for the purposes of this Constitution, be taken to be joint holders of the share.

Forfeiture of shares

36 Liability to forfeiture

- (1) If a shareholder fails to pay a call or instalment of a call on or before the day appointed for payment of the call or instalment, the board may, at any time afterwards while any

part of the call or instalment remains unpaid, serve a notice on the shareholder requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all expenses of the company incurred as a result of the non-payment.

- (2) The notice shall:
 - (a) specify another day (not earlier than 14 days after the date of service of the notice on or before which and a place at which the payment required by the notice is to be made; and
 - (b) state that, if payment is not made at or before the time specified. The shares in respect of which the call was made shall be liable to be forfeited.

37 Surrender of shares

Subject to law the board may accept the:

- (1) surrender of any fully paid share by way of compromise of any question as to the proper registration of the holder or in satisfaction of any payment due to the company; and
- (2) gratuitous surrender of any fully paid share.

Any share so surrendered may be disposed of in the same manner as a forfeited share.

38 Power to forfeit

- (1) If the requirements of a notice served under Article 33 are not complied with, any share in respect of which the notice has been given may at any time afterwards, but before the payment required by the notice has been made, be forfeited by a resolution of the board to that effect.
- (2) Such a forfeiture shall include all Dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

39 Powers of board

- (1) A forfeited share may be sold or otherwise disposed of on the terms and in the manner that the board thinks fit.
- (2) The forfeiture may be cancelled on the terms that the board thinks fit at any time before a sale or disposition.
- (3) Any residue from the proceeds of sale of a forfeited share, after satisfaction of any calls or instalments due and unpaid and accrued interest and expenses in respect of those shares, shall be paid to the person entitled to those shares at the time of the forfeiture, to the executors, administrators or assigns of the person or as the person directs.

40 Consequences of forfeiture

A person whose shares have been forfeited:

- (1) ceases to be a shareholder in respect of the forfeited shares at the time and on the date of the passing of the board's resolution approving the forfeiture;
- (2) shall have no claims or demands against the company in respect of those shares;

- (3) shall have no other rights incidental to those shares except the rights that are expressly provided by the Act or saved by this Constitution; and
- (4) remains liable to pay to the company all money that, at the date of forfeiture, was payable by the person to the company in respect of those shares (including, if the board thinks fit, interest from the date of forfeiture at the Prescribed Rate on the money for the time being unpaid). The board may (but shall not be obliged to) enforce the payment of the money or any part of the money for which the shareholder is liable as it thinks fit.

41 Notice of forfeiture

- (1) Notice of the resolution of forfeiture shall be given to the shareholder in whose name the share was registered immediately before the forfeiture and an entry of the forfeiture and its date shall be made immediately in the register.
- (2) The provisions of paragraph (1) are directory only and the validity of any forfeiture shall not be affected in any way by any omission to give the notice or to note the entry.

42 Evidentiary matters

Without prejudice to Article 38, a statement in writing by a director or a secretary of the company to the effect that:

- (1) a share in the company has been duly forfeited on a date specified in the statement; or
- (2) a particular sum is payable by a shareholder or former shareholder to the company as at a particular date in respect of a call or instalment of a call (including interest).

is prim a facie evidence of the facts set out in the statement as against all persons claiming to be entitled to the share and against the shareholder or former shareholder who remains liable to the company under Article 37.

43 Transfers after forfeiture and sale

- (1) The company may:
 - (a) receive the consideration (if any) given for a forfeited share on any sale or disposition of the share; and
 - (b) effect a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (2) On the completion of the transfer, the transferee shall be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (3) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

44 Fixed amounts taken to be calls

The provisions of this Constitution relating to forfeiture apply in the case of non-payment of any sum that, under the terms of issue of a share, becomes payable at a fixed time as if that sum had become payable by virtue of a call duly made.

Alteration of capital

45 Power to alter capital

Subject to the ~~POMSeXPNGX~~ Rules if the company is Listed, the company may by resolution passed in a meeting of shareholders:

- (1) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares; and
- (2) subdivide all or any of its shares into shares of smaller amount, but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived.

Acquisition of company's own shares

46 Authority to acquire and hold own shares

The company is authorised to purchase or otherwise acquire shares issued by the company in accordance with the Act and, subject to Section 57 A, to hold shares in itself.

Meetings of shareholders

47 Modification of Schedule 2

The provisions of Schedule 2 of the Act are negated or modified in the manner as set out below.

48 Quorum

- (1) Clause 4(2) of Schedule 2 of the Act shall not apply to the company.
- (2) A quorum for a meeting of shareholders shall be two (2) Shareholders Present who between them hold 10% or more of the total number of issued shares in the capital of the company.
- (3) Where at an adjourned meeting referred to in Clause 4(3)(b) of Schedule 2 of the Act a quorum is not present within 30 minutes after the time appointed for the meeting, any three (3) Shareholders Present constitute a quorum.

48A Meetings by use of one or more technologies

Without limiting clause 3(b) of Schedule 2 of the Act, a meeting of shareholders may be held using one or more technologies that give all persons entitled to attend a reasonable opportunity to participate without being physically present in the same place, and all persons so participating in the meeting are taken for all purposes to be present at the meeting while so participating.

49 Chairman of meetings

- (1) Clauses 1(1) and 1(2) of Schedule 2 of the Act shall not apply and are replaced by paragraphs (2) and (3) below.
- (2) Subject to paragraph (3), the chairman of the board or, in the chairman's absence, the deputy chairman, shall preside as chairman at every meeting of shareholders.
- (3) Where a meeting of shareholders is held and:

- (a) there is no chairman or deputy chairman; or
 - (b) the chairman or deputy chairman is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chairman of the meeting,
- the directors present shall choose one of their number or, in the absence of all directors or if none of the directors present wish to act, the Shareholders Present shall elect one of their number to be chairman of the meeting.
- (4) Clause 5(7) of Schedule 2 of the Act shall not apply and is replaced by paragraph (5) below.
 - (5) In the case of an equality of votes at a meeting of shareholders, the chairman of the meeting has a casting vote in addition to any vote to which the chairman may be entitled as a shareholder.

50 Additional provisions

The following additional provisions relating to meetings of shareholders apply to the extent they are not inconsistent with Schedule 2 of the Act (as negated or modified in the manner set out above).

51 Business of meeting of shareholders

- (1) The ordinary business of an annual meeting of shareholders shall be to:
 - (a) receive the company's financial statements, the group financial statements and the auditor's report; and
 - (b) transact any other business which under the Act or this Constitution ought to be or may be transacted at an annual meeting.
- (2) The business to be transacted at a meeting of shareholders shall be:
 - (a) where the meeting is an annual meeting of shareholders - the ordinary business of the annual meeting and any other business set out in the notice of meeting; and
 - (b) where the meeting is a special meeting of shareholders - any business set out in the notice of the meeting.

52 Adjournments

- (1) The chairman may and shall if so directed by the meeting adjourn the meeting from time to time and from place to place.
- (2) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

53 Procedure for polls

- (1) A poll when demanded in accordance with Schedule 2 of the Act shall be taken in the manner and at the time the chairman directs.
- (2) The result of the poll shall be a resolution of the meeting at which the poll was demanded.

- (3) The demand for a poll shall not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded.

54 Representation and voting of shareholders

Subject to this Constitution and any right or restrictions for the time being attached to any class or classes of shares:

- (1) at meetings of shareholders or classes of shareholders each shareholder entitled to attend and vote may attend and vote:
 - (a) where the shareholder is an individual - in person or by proxy; and
 - (b) where the shareholder is a body corporate by proxy or representative.
- (2) on a show of hands, every Shareholder Present having the right to vote at the meeting has one vote;
- (3) on a poll, each Shareholder Present having the right to vote at the meeting has:
 - (a) one vote for each fully paid share and
 - (b) a fraction of a vote for each partly paid share,where in relation to sub-paragraph (ii), the fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited). In this sub-paragraph, amounts paid in advance of a call are ignored when calculating the proportion.

55 Shareholders of unsound mind and minors

- (1) If a shareholder is:
 - (a) of unsound mind;
 - (b) a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (c) a minor,the shareholder's committee or trustee or any other person who properly has the management or guardianship of the shareholder's estate or affairs may, subject to paragraph (2), exercise any rights of the shareholder in relation to a general meeting as if the committee, trustee or other person were the shareholder.
- (2) Any person with powers of management or guardianship shall not exercise any rights under paragraph (1) unless and until the person has provided the board with satisfactory evidence of the person's appointment and status.

56 Objections to qualification to vote

- (1) An objection to the qualification of a person to vote may be raised only at the meeting or adjourned meeting at which the vote objected to is tendered.
- (2) Any objection shall be referred to the chairman of the meeting, whose decision shall be final.
- (3) A vote allowed after an objection shall be valid for all purposes.

57 Number of proxies

- (1) A shareholder may appoint not more than two proxies. A proxy need not be a shareholder.
- (2) An appointment of two proxies shall be of no effect unless each proxy is appointed to represent a specified proportion of the shareholder's voting rights.
- (3) If a shareholder appoints two proxies, neither proxy shall be entitled to vote on a show of hands.

58 Form of proxy

- (1) The requirement in Clause 6(3) of Schedule 2 of the Act that a proxy be signed by the shareholder shall, if the appointor is a corporation, require that the instrument be either under seal or under the hand of a duly authorised officer.
- (2) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution. Where it does so, the proxy is not entitled to vote on the resolution except as specified in the instrument. A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (3) An instrument appointing a proxy shall be in any form that the board may accept or stipulate.

59 Lodgement of proxies

- (1) An instrument appointing a proxy shall not be treated as valid unless the instrument and a declaration or statement by the proxy of the non-revocation of that power or authority are lodged not less than 24 hours (or any shorter period as the board may permit) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the place which is specified for that purpose in the notice convening the relevant meeting or, if none, at the registered office of the company.
- (2) For the purposes of this Article, any document a legible facsimile of which is received at a place shall be taken to have been duly lodged at that place at the time when the facsimile is received.

60 Validity of proxies

A vote exercised in accordance with the terms of an instrument of proxy is valid despite:

- (1) the previous death or unsoundness of mind of the appointor;
- (2) the revocation of the instrument; or
- (3) the transfer of the share in respect of which the instrument is given,

if no notice in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at its registered office at least 24 hours (or any shorter period as the board may permit) before the commencement of the meeting or adjourned meeting at which the power is exercised or the instrument is used.

61 Where proxy is incomplete

- (1) No instrument appointing a proxy shall be treated as invalid merely because:
 - (a) it does not contain the address of the appointor or of a proxy;
 - (b) it is not dated; or
 - (c) it does not contain in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (2) Where the instrument does not specify the name of a proxy, the instrument shall be taken to be given in favour of the chairman of the meeting.

62 Right of officers and advisors to attend meeting of shareholders

- (1) A director who is not a shareholder shall be entitled to be present and to speak at any meeting of shareholders.
- (2) A secretary who is not a shareholder shall be entitled to be present and, at the request of the chairman, to speak at any meeting of shareholders.
- (3) Any other person (whether a shareholder or not) requested by the board to attend any meeting of shareholders shall be entitled to be present and, at the request of the chairman, to speak at that meeting of shareholders.

63 Resolutions in lieu of meetings under section 103 of the Act

A shareholders' resolution in lieu of meeting authorized by section 103 of the Act may consist of several documents in like form, each signed by one or more shareholders. A facsimile of any such signed resolution shall be as valid and effectual as the original signed document.

Appointment, Removal and Remuneration of Directors

64 Appointment and removal

- (1) The number of directors shall, unless otherwise determined by the company in general meeting, be not less than five or more than ten.
- (2) At all times:
 - (a) Independent Directors must be in the majority; and
 - (b) directors ordinarily resident in PNG must be in the majority.
- (3) Subject to the Act and to paragraphs (1) and (2) above, the company may at any time by ordinary resolution passed at a meeting of shareholders:
 - (a) appoint a person who satisfies the Fit and Proper Requirements to be a director; or
 - (b) remove any director from office.
- (4) Subject to the Act and to paragraph (1) and (2) above, the board may at any time appoint any person who satisfies the Fit and Proper Requirements to be a director, either to fill a casual vacancy or as an addition to the existing directors.

- (5) Any director appointed under paragraph (4) above shall hold office only until the next annual meeting of shareholders and shall be eligible for re-election at that meeting.

65 No share qualification

No share qualification is required of a director.

66 Retirement at each meeting of shareholders

- (1) No director ~~shall~~ may hold office without re-election beyond the third annual meeting of shareholders following the meeting at which the director was last elected or re-elected for a period in excess of three years, or until the third annual meeting of shareholders following the director's appointment, whichever is the longer, without submitting himself for re-election.
- (2) To the extent that the PNGX Rules require an election of directors to be held and no director would otherwise be required for election or re-election (by Article 66(1)) the director to retire is any director who wishes to retire (whether or not he or she intends to stand for re-election), otherwise it is the director who has been longest in office since their last election or appointment. As between directors who were last elected or appointed on the same day, the director to retire must be decided by lot (unless they can agree among themselves). At every annual meeting of shareholders, one-third of the directors or, if their number is not a multiple of three, then the number nearest to but not exceeding one-third (or such number as is necessary to ensure compliance with paragraph (1) above), shall retire from office and be eligible for re-election.
- ~~(3) The director or directors to retire in every year shall be the director or directors longest in office since last being elected or re-elected. Between directors who were elected on the same day the director or directors to retire shall be decided by lot unless they agree otherwise.~~
- ~~(4)~~(3) A director retiring under this Article shall be eligible for re-election without needing to give any prior notice of an intention to submit for re-election and shall hold office as a director until the end of the meeting at which the director retires.
- ~~(5)~~(4) Any director retiring under Article 66 ~~(34)~~ shall not be taken into account in deciding the number or identity of the directors to retire by rotation under this Article.
- ~~(6)~~(5) No person other than a director retiring under Article 66 ~~(34)~~, ~~a director retiring under this Article~~ shall be eligible to be elected as a director at any meeting of shareholders unless a notice of the director's candidature is given to the company at least 30 Business Days before the meeting.

67 Remuneration

- (1) Subject to the Act and to paragraph (2), and the Board Charter, the directors shall be paid for their services as directors such fees as the board determines.
- (2) Any director who is remunerated as an executive director shall not be paid fees under paragraph (1).
- (3) The fees fixed under paragraph (1):
- (a) shall be divided among the directors in the proportions as they may agree or, if they cannot agree, equally among them; and

- (b) are exclusive of any benefits which the company provides to directors in satisfaction of legislative schemes including, without limitation, benefits provided under superannuation guarantee or similar schemes or any other benefit permitted by the Act or this Constitution.
- (4) The directors shall also be entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the board, committee of the board, meeting of shareholders or otherwise in connection with the business or affairs of the company.
- (5) If any director, with the approval of the board, performs extra services or makes any special exertions for the benefit of the company, the board may approve the payment to that director of special and additional remuneration as the board thinks fit having regard to the value to the company of the extra services or special exertions. Any special or additional remuneration shall not include a commission on or percentage of profits or operating revenue or turnover.
- (6) Subject to the Act, a director may be engaged by the company in any other capacity (other than auditor) and may be appointed on such terms as to remuneration, tenure of office and otherwise as may be agreed by the board.
- (7) Fees payable by the company and any entity under its control to non-executive directors shall be by a fixed sum, and not by a commission on, or percentage of the profits or operating revenue of the company.
- (8) Remuneration payable by the company and any entity with which it is associated to any executive director shall not include a commission on, or percentage of, the operating revenue of the company.

68 Vacation of office

In addition to the circumstances in which the office of a director becomes vacant under the Act, the office of a director becomes vacant if the director is absent without the consent of the board from meetings of the board held during a continuous period of six (6) months.

Powers and the duties of the Board

69 Powers of the board

- (1) Subject to the Act and this Constitution, and if the company is listed the ~~POMS~~XPNGX Rules, the business of the company shall be managed by the Board, which may exercise all powers of the company which are not, by the Act or this Constitution, required to be exercised by a meeting of shareholders.
- (2) Without limiting the generality of paragraph (1), the board may exercise all the powers of the company:
 - (a) to borrow money, to charge any property or business of the company or all or any or its uncalled capital;
 - (b) to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person; and
 - (c) in relation to any Seal and any register.

70 Banks and Financial Institutions Act

So long as the company or a subsidiary holds a licence under the B&FI Act:

- (1) it will not, and the board will not permit the company to do anything or exercise any of the powers conferred by this Constitution or the Act in such a manner as would:
 - (a) constitute or result in a breach of the B&FI Act the conditions of any licence issued under that Act or the prudential standards issued under the Act by the Bank of Papua New Guinea; or
 - (b) if the thing or the exercise of power was disclosed in an application for a licence under the B&FI Act, cause the Bank of Papua New Guinea not to grant that licence, and
- (2) the provisions set out in Schedule 1 apply to the company.

71 Board Charter

- (1) The board must adopt a written board charter consistent with the Corporate Governance Requirements that sets out, to the extent not provided for in this constitution, the roles and responsibilities of the board with respect to the:
 - (a) short-term and long-term enterprise-wide business objectives, strategy and plans of the company, including the Risk Management Framework;
 - (b) significant strategic initiatives, such as mergers and acquisitions; and
 - (c) internal control framework;
 - (d) code of conduct;
 - (e) maintenance of an up-to-date register of interests and recording and managing conflicts of interest;
 - (f) selection, appointment, and performance review of the chairman, the board as a whole, each of the board committees, including board renewal and succession planning;
 - (g) fees and expenses of the chairman and directors;
 - (h) on-going training and development of directors and senior management;
 - (i) appointment, performance review and compensation of the chief executive officer and other members of senior management;
 - (j) succession plans with respect to the board, the chief executive officer and other members of senior management, including the heads of key oversight functions such as the Chief Compliance Officer and company secretary or equivalent;
 - (k) independent and adequate resourcing of the internal audit functions; and
 - (l) external audit plan, including fees and the scope of the audit;
 - (m) conflict of interest policy and register of directors' interests (which must also be consistent with Sections 374 to 375 of the Capital Market Act 2015).

72 Committees of the Board

- (1) The board must adopt separate written charters for each committee that it establishes for the purposes of the Corporate Governance Requirements, detailing responsibilities, reporting obligations and any delegation of authority.
- (2) The committees of board must include a board remuneration committee and an audit and risk committee.

73 Fit and Proper Person Policy

- (1) The board must maintain and regularly review a written fit and proper person policy in conformity with the Fit and Proper Requirements and Schedule 2 of the B&FI Act.
- (2) The board must ensure that before appointing a Responsible Person, a fit and proper assessment is conducted and submitted to and approved by the Bank of Papua New Guinea.

74 Chief Compliance Officer

The board must ensure the appointment of a Chief Compliance Officer with responsibility for identification and management of the compliance risks and obligations:

- (1) of the company in accordance with the Compliance Function Requirements and the Corporate Governance Requirements, and
- (2) of the Group in accordance with the AML/CTF Act,
- (3) with resources appropriate to the activities, size and complexity of the business of the company and the Group.

75 Sale of the company's main undertaking

The company must not sell or otherwise dispose of its main undertaking unless such sale or disposal has been approved by ordinary resolution of the company in general meeting.

76 Appointment of attorneys

- (1) The board may, by power of attorney, appoint any person to be the attorney of the company for the purposes, with the powers, authorities and discretions vested in or exercisable by the board for any period and subject to any conditions as they think fit.
- (2) Any appointment under paragraph (1) may be made on terms for the protection and convenience of persons dealing with the attorney as the board thinks fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

77 Negotiable instruments

Subject to the Act, all negotiable instruments of the company shall be executed by the persons and in the manner that the board decides from time to time.

Proceedings of the Board

78 Non-application of Schedule 4

The provisions set out in Schedule 4 of the Act governing the proceedings of the board of the company shall not apply to the company and are replaced by the following provisions.

79 Proceedings

- (1) The board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.
- (2) A director may at any time, and on the request of a director a secretary shall, convene a meeting of the board.
- (3) Not less than 14 days' notice must be given to every director of the place, date and hour of every meeting of the board

80 Meetings by telecommunications

Where the directors are not all in attendance at one place and are holding a meeting through a system of communication and each of the directors can hear and be heard by one another:

- (1) the participating directors shall, for the purpose of every provision of this Constitution concerning meetings of the board, be taken to be assembled together at a meeting and to be present at that meeting;
- (2) the meeting shall be taken to be held at the place agreed to by the participating directors so long as at least one participating director is physically present at that place; and
- (3) all proceedings of a meeting conducted in that manner shall be as valid and effective as if conducted at a meeting at which all of them were present.

81 Quorum at meetings

At a meeting of the board, the number of directors whose presence is necessary to constitute a quorum is three directors who are entitled to vote, of whom the majority must be Independent Directors.

82 Chairman of the board

- (1) Unless the Company is a subsidiary and an exemption is granted by the Bank of Papua New Guinea for the chairman to be a non-executive director, the directors must elect one of the Independent Directors as the chairman of the board and may decide the period for which the chairman is to hold office as chairman. The chairman must be ordinarily ~~be~~ resident in PNG, except as agreed by the Bank of Papua New Guinea and must not have served as chief executive officer of the company at any time in the previous three years.
- (2) Where a meeting of the board is held and:
 - (a) a chairman has not been elected as provided by paragraph (1); or
 - (b) the chairman is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting.
 - (c) the directors present shall elect an Independent Director to be the chairman of the meeting.
- (3) The remuneration of the chairman from the remuneration fixed under Article 64(1) shall be decided by the board in accordance with Article 64(3).

83 Voting at board meetings

- (1) Questions arising at a meeting of the board shall be decided by a majority of votes and, subject to the provisions of Article 76, each director present shall have one vote.
- (2) Subject to paragraph (3), in the case of an equality of votes, the chairman of the meeting has a casting vote in addition to the chairman's deliberative vote.
- (3) The chairman shall not have a casting vote on a question arising at a meeting of the board unless there are two directors present at the meeting who are competent to vote on the question.
- (4) The chairman shall not have a casting vote on the chairman's reappointment to the position of chairman.

84 Disclosure of interests

- (1) For the purposes of this Article, a director is interested in a matter relating to the company:
 - (a) where the matter is a transaction or proposed transaction with the company - if the director has an interest in the transaction or proposed transaction of the type referred to in section 117(1) of the Act (other than an interest of the type referred to in section 117(2) of the Act); and
 - (b) where the matter is not of the type referred to in (a) above - if the director has a material interest in that matter (whether direct or indirect, whether actual or potential and whether financial or otherwise).
- (2) A director who becomes aware of the fact that he is interested in any matter relating to the company must:
 - (a) where the matter is a transaction or proposed transaction with the company - comply with the requirements of section 118 of the Act in relation to that interest;
 - (b) where the matter is not of the type referred to in (a) above - comply with the requirements of section 118 of the Act as if the matter was a transaction or proposed transaction with the company, with such modifications as are necessary;
 - (c) not act or continue to act in relation to the matter without obtaining the approval of the board to him so acting or continuing to act (which approval may be given or withheld at the total discretion of the board and, if given, may be given subject to conditions); and
 - (d) where the approval referred to in paragraph (2)(c) above is given subject to conditions - comply in full with those conditions of approval.
- (3) Where the board meets to consider whether to give the approval referred to in paragraph (2)(c) above or to impose conditions (if any) on such an approval, the director seeking the approval must not vote on that approval, although he may, subject to the Act, attend such meeting and be counted in the quorum for that meeting.

- (4) Where a director has complied with paragraph (2) above:
 - (a) the director is not disqualified by the director's office from contracting with the company in any capacity; and
 - (b) other than as provided by the Act, a contract or arrangement made by the company with a director or in which a director is in any way interested shall not be avoided merely because the director is interested in it.
- (5) Where a director has complied with paragraph (2) above and the provisions of the Act in relation to a matter in which he has an interest, the director is not liable to account to the company for any profit derived in respect of the matter, merely because of the director's office or the fiduciary relationship it entails.
- (6) Without limiting paragraph (2) above, a director who is interested in a matter relating to the company must not:
 - (a) do any other thing in his capacity as a director in relation to the matter;
 - (b) unless the director has complied with the requirements of paragraph (2)(a) or (2)(b) above, as the case may be, obtained the approval referred to in paragraph (2)(c) above and complied with (and remained in compliance with) any conditions of approval as required by paragraph (2)(d) above.
- (7) Subject to the Act, a director may hold any office of employment or profit in the company (other than auditor) in addition to holding office as a director.

85 Vacancies

If there are any vacancies in the offices of directors and the number of remaining directors is not sufficient to constitute a quorum at a meeting of the board, the remaining director or directors may act only for the purpose of increasing the number of directors to the minimum number required to constitute a quorum.

86 Committees

- (1) The board of the company may delegate any of its powers (other than the powers set out in Schedule 3 of the Act) to a committee or committees consisting of any number of them as they think fit.
- (2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the board. A power so exercised shall be taken to have been exercised by the board.
- (3) Articles 71, 72, 73, 74 (other than sub-clause (3) and 75 shall apply to any committee as if each reference in those Articles to the directors was a reference to the members of the committee and each reference to a meeting of the board were to a meeting of the committee.
- (4) Subject to Article 80(3), minutes of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the board are required by the Act to be made, entered and signed.

87 Circular resolutions

- (1) A resolution in writing signed by all directors or a resolution in writing of which notice has been given to all directors and which is signed by a majority of directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of be heard) is as valid as if it had been passed at a meeting of the board duly called and constituted.
- (2) For the purposes of paragraph (1):
 - (a) two or more separate documents containing the resolution in identical terms each of which is signed by one or more of the directors shall together be taken to constitute one document containing the resolution in those terms signed by those directors on the respective days on which they signed the separate documents; and
 - (b) a facsimile or email which is received by the company and is expressed to have been sent by, for or on behalf of a director shall be taken to be signed by that director at the time of receipt of the facsimile or email by the company in legible form.
- (3) Where a committee consists of one director only, a document signed by that director and recording a decision of the committee shall be valid and effective as if it were a decision made at a meeting of that committee and that document shall constitute a minute of that decision.

88 Defects in appointments

- (1) All acts done by any meeting of the board, committee of the board, or person acting as a director are as valid as if each person was duly appointed and qualified to be a director or a member of the committee.
- (2) Paragraph (1) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of a committee or to act as a director or that a person so appointed was disqualified.

Chief Executive Officer

89 Power to appoint Chief Executive Officer

- (1) The board may appoint a chief executive officer for the period and on the terms as they think fit.
- (2) The chief executive officer shall be the chief executive officer of the company. Subject to the terms of any agreement entered into in a particular case, the board may at any time revoke any appointment.

90 Remuneration

A chief executive officer shall, subject to the terms of any agreement between him or her and the company, receive remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another), as the board decides.

91 Delegation of powers to Chief Executive Officer

- (1) The board may, on the terms and conditions and with any restrictions as it thinks fit, confer on a chief executive officer any of the powers exercisable by it (other than the powers set out in Schedule 3 of the Act).
- (2) Any powers so conferred are concurrent with the powers of the board.
- (3) The board may at any time withdraw or vary any of the powers conferred on the managing director.

Secretaries and other officers

92 Secretaries

- (1) Subject to the Fit and Proper Requirements, the board may appoint one or more secretaries.
- (2) Every secretary of the company shall be a natural person ordinarily resident in Papua New Guinea.
- (3) A secretary of the company holds office on such terms and conditions, as to remuneration and otherwise, as the board decides.
- (4) The board may at any time terminate the appointment of a secretary.

93 Other officers

- (1) Subject to the Act and the Fit and Proper Requirements, the board may from time to time:
 - (a) create any other position or positions in the company with such powers and responsibilities as the board may from time to time confer; and
 - (b) appoint any person, whether or not a director, to any position or positions created under paragraph (1)(a).
- (2) The board may at any time terminate the appointment of a person holding a position created under paragraph (1)(a) and may abolish the position.

Seals

94 Seals and their use

- (1) The company may have in addition to its common seal one or more official seals for use outside the jurisdiction where the common seal is kept. An official seal shall be a facsimile of the common seal of the company with the addition on its face of the name of every place where it is to be used. The person affixing an official seal shall certify on the instrument to which it is affixed the date on which and the place at which it is affixed.
- (2) A Seal shall be used only by the authority of the board, or of a committee of the board authorised by the board to authorise the use of the Seal. Every document to which the Seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the board to countersign that document or a class of documents in which that document is included.

- (3) Subject to the Act, certificates in respect of shares or other securities shall be issued under a Seal.
- (4) For the purposes of paragraph (3) any impression of any Seal or any signature may be a facsimile impression or signature which has been printed, stamped or impressed on the relevant certificate.

Inspection of records

95 Inspection of records

Except as provided by law or as authorised by the board, a shareholder does not have any right to inspect any document or record (including, without limitation, accounting records) of the company.

Dividends

96 Power to authorise distribution of dividends

- (1) Subject to the Act (and, in particular, sections 50(J) and 51(2)) and to any special rights or restrictions attached to any shares, the board may from time to time authorise the distribution of a Dividend, determine whether the Dividend is to take the form of money or other property and fix a time for its distribution.
- (2) No Dividend (whether in money or otherwise) shall bear interest against the company.

97 Crediting of Dividends

- (1) Subject to any special rights or restrictions attached to any shares, every Dividend shall:
 - (a) be distributed according to the amounts paid on the shares in respect of which it is to be distributed; and
 - (b) be apportioned and distributed proportionately to the amounts paid on the particular shares during any part or parts of the period in respect of which the Dividend is distributed.
- (2) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of paragraph (1) to be paid or credited as paid on the share.
- (3) Subject to any special rights or restrictions attached to any shares, the board may from time to time resolve that a Dividend is to be distributed out of a particular source or particular sources, and where the board so resolves, it may, in its absolute discretion:
 - (a) allow each or any shareholder to elect from which specified source that particular shareholder's Dividend may be distributed by the company; and
 - (b) where such elections are permitted and any shareholder fails to make such an election, the board may, in its absolute discretion, identify the particular source from which a Dividend will be capable of being distributed.
- (4) To the extent permitted by law, the board may from time to time resolve that monetary Dividends may be paid:
 - (a) in the case of any shareholder who is a resident of PNG, in Kina; or

- (b) in the case of any other shareholder, in any other currency at the exchange rate at which the company in accordance with its normal practice would be able to purchase the relevant currency with Kina as at a date selected by the board after the date a Dividend is authorised and prior to the date for payment of the Dividend after deducting any premiums and costs payable in connection with the purchase.

98 Deduction of unpaid amounts

The board may:

- (1) deduct from any monetary Dividend payable to a shareholder all sums of money presently payable by the shareholder to the company on account of calls or otherwise in relation to shares in the company; and
- (2) retain any non-monetary Dividend in respect of which the company has a lien and sell or otherwise realise that property and apply the proceeds in or towards satisfaction of the liability or obligation in respect of which the lien exists.

99 Distributions in kind

- (1) For the avoidance of any doubt, the board may, when authorising a Dividend, by resolution direct payment of the Dividend wholly or partly by the distribution of specific assets, including, without limitation, paid up shares in or debentures of any other body corporate.
- (2) Where a difficulty arises in regard to a distribution of the type referred to in paragraph (1), the board may:
 - (a) settle the matter as it thinks fit and fix the value for distribution of the specific assets or any part of those assets;
 - (b) decide that cash payments will be made to any shareholder on the basis of the value so fixed in order to adjust the rights of all parties; or
 - (c) vest any specific assets in trustees.

100 Payment of distributions

- (1) Any Dividend distributed as money and any interest or other money payable in cash in respect of shares may be paid, at the sole risk of the intended recipient:
 - (a) by cheque sent through the post directed to:
 - (i) the address of the shareholder as shown in the share register or, in the case of joint holders, to the address shown in the share register as the address of the joint holder first named in the register; or
 - (ii) to any other address as the shareholder or joint holders in writing directs or direct; or
 - (b) by electronic funds transfer to an account with a bank or other financial institution nominated by the shareholder and acceptable to the company; or
 - (c) by any other means determined by the board or otherwise disposed of according to law.

- (2) Subject to law, all Dividends unclaimed may be invested or otherwise used by the board for the benefit of the company until claimed.

Dividend Reinvestment and bonus share plans

101 Dividend reinvestment and bonus share plans

- (1) Subject to section 52 of the Act, the board may:
 - (a) establish one or more plans (on such terms as the board think fit) under which some or all shareholders may elect to receive shares in the company in lieu of monetary Dividends;
 - (b) on or after establishment of any plan, extend participation in it, in whole or in part, to some or all of the holders of debt obligations of the company in respect of interest upon such obligations in like manner as if that interest were Dividends; and
 - (c) vary, suspend or terminate the plan.
- (2) Any such plan shall have effect in accordance with its terms and the board shall do all things necessary and convenient for the purpose of implementing the plan, including, without limitation, the making of each necessary allotment of shares and of each necessary appropriation, capitalization, application, payment and distribution of funds which may lawfully be appropriated, capitalized, applied, paid or distributed for the purpose of the allotment.
- (3) For the purpose of giving effect to any such plan, such appropriations, capitalisations applications, payments and distributions may be made and the powers of the board under Article 92(2) shall apply and may be exercised (with such adjustments as may be required) even if only some of the shareholders or holders of shares of any class participate in the appropriations, capitalization, application, payment or distribution.
- (4) In offering opportunities to shareholders to participate in any such plan, the board may give such information as in their opinion may be useful to assist shareholders in assessing the opportunity and making requests to their best advantage. The board, the company and its officers shall not be responsible for, nor shall they be obliged to provide, any legal, taxation or financial advice in respect of the choices available to shareholders.
- (5) The board shall be under no obligation:
 - (a) to admit any shareholder as a participant in any such plan; or
 - (b) to comply with any request made by a shareholder who is not admitted as a participant in any such plan.
- (6) In establishing and maintaining any such plan, the board shall act in accordance with the provisions of this Constitution and may exercise all or any of the powers conferred upon it by the terms of any such plan, by this Constitution or by the Act.
- (7) This Article does not affect the validity of any plan referred to in paragraph (1)(a) established before the adoption of this Constitution.
- (8) Section 45 of the Act is negated for the purposes of this Article.

Notices

102 Notices generally

- (1) Any shareholder who has not left at or sent to the registered office a place of address (for registration in the register) at or to which all notices and documents of the company may be served or sent shall not be entitled to receive any notice.
- (2) Any notice, statement, report, accounts or other document to be given or sent by the company to a shareholder may be given or sent by any of the methods authorised by sections 432, 434 and 435 of the Act, and the provisions of section 436 shall apply.

103 Notices of meetings of shareholders

- (1) Notice of every meeting of shareholders shall be given:
 - (a) subject to Article 97, to every shareholder;
 - (b) to every person entitled to a share in consequence of the death or bankruptcy of a shareholder who, but for death or bankruptcy, would be entitled to receive notice of the meeting;
 - (c) to every director of the company;
 - (d) to the auditor to the company.
- (2) No other person is entitled to receive notice of meetings of shareholders.

Joint Holders

104 Joint holders

- (1) Joint holders of a share shall give to the company notice of:
 - (a) a single address for the purpose of all notices given by the company under Article 95, and for the distribution of Dividends in accordance with this Constitution; and
 - (b) a single account for the payment of monies by electronic funds transfer in accordance with Article 93(1)(h), if so desired.in respect of that share.
- (2) Where the company receives notice under paragraph (1), the giving of notice, the payment of Dividends (where payable in money) or the distribution of Dividends (where payable in other property), to the address or account so notified shall be deemed given paid or made to all joint holders of the relevant share.
- (3) Where joint holders of a share fail to give notice to the company in accordance with paragraph (1), the company may give notice, pay and distribute Dividends to the address of the joint holder whose name first appears in the register
- (4) Any of the joint holders of a share may give effective receipt for all Dividends and payments in respect of the share.

Liquidation

105 Liquidation

- (1) If the company is liquidated and the assets available for distribution among the shareholders are insufficient to repay the whole of the paid up capital, the assets shall be distributed so that, as nearly as may be, the losses shall be borne by the shareholders in proportion to the capital paid up, or which ought to have been paid up, at the commencement of the liquidation, on the shares held by them respectively.
- (2) If, in a liquidation, the assets available for distribution among the shareholders are more than sufficient to repay the whole of the capital paid up at the commencement of the liquidation, the excess shall be distributed among the shareholders in proportion to the capital at the commencement of the liquidation paid up, or which ought to have been paid up, on the shares held by them respectively.
- (3) If the company is liquidated, the liquidator may:
 - (a) with the sanction of a special resolution, divide among the shareholders in kind the whole or any part of the property of the company;
 - (b) for that purpose set a value the liquidator considers fair on any property to be so divided; and
 - (c) decide how the division is to be carried out as between the shareholders or different classes of shareholders.
- (4) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any property in trustees on any trusts for the benefit of the contributories as the liquidator thinks fit, but so that no shareholder is compelled to accept any shares or other securities in respect of which there is any liability.

Indemnity and insurance

106 Indemnity and insurance

- (1) To the extent permitted by law and without limiting the powers of the company, the company must indemnify each person who is, or has been, a director or employee of the company or any subsidiary of the company in relation to:
 - (a) (i) liability to any person other than the company or a related company for any act or omission in his capacity as a director or employee; or
 - (ii) costs incurred by that director or employee in defending or settling any claim or proceeding relating to any such liability,
not being criminal liability or liability in respect of a breach, in the case of a director, of the duty to act in good faith and best interests of the company, or in the case of an employee, of any fiduciary duty owed to the company or to a related company;
- (b) costs incurred by him in any proceeding:
 - (i) that relates to liability for any act or omission in his capacity as director as a director or employee; and

- (ii) in which judgement is given in his favour, or in which he is acquitted, or which is discontinued.
- (2) The company need not indemnify a person as provided for in paragraph (1) in respect of a liability to the extent that the person is entitled to an indemnity in respect of that liability under a contract of insurance.
- (3) To the extent permitted by law and without limiting the powers of the company, the board may authorise the company to, and the company may, effect insurance for a person who is, or has been, a director or employee of the company or of a subsidiary of the company in respect of:
- (a) liability, not being a 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; or
 - (c) costs incurred by that director or employee in defending any criminal proceedings in which he is acquitted.
- (4) The benefit of each indemnity given in paragraph (1) continues, even after its terms or the terms of this Article are modified or deleted, in respect of a liability arising out of acts or omissions occurring prior to the modification or deletion.

Removal from the Register of companies

107 Board may apply for removal

If:

- (1) the company has ceased to carry on business, discharged in full its liabilities and distributed its surplus assets in accordance with this Constitution and the Act; or
- (2) 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 291 of the Act for an order that a liquidator be appointed,

the board may request the Registrar of Companies to remove the company from the Papua New Guinea register of companies.

Schedule 1

Banks and Financial Institutions Act Compliance for the purpose of Article ~~70-70~~

1 Definitions

In this Schedule 1, unless the context otherwise requires:

Act means the Banks and Financial Institutions Act (2000) (PNG).

Associate has the meaning given in section 3 of the Act.

Central Bank means the Bank of Papua New Guinea.

Disposal Notice has the meaning given in **clause ~~99~~** of this Schedule.

Divestment Date means the period or date which must not be less than 30 days from the date of a Disposal Notice.

Divestment Rules at any time means the rules, procedures and matters (if any) then most recently adopted and published by the company under **clause ~~1343~~** in this Schedule.

Indirect Controller means either:

- (a) a person or persons in accordance with whose direction or instructions the directors of the company are accustomed to act or are under an obligation whether formal or informal, to act;
- (b) a person or persons declared by the Central Bank to be an indirect controller for the purposes of the Act.

Shareholder Controller means a person who, either alone or with any Associate or Associates has a stake in the Company of more than 15%.

stake means the aggregate of the voting power that a person controls in a body corporate at a general meeting.

Unacceptable Ownership Situation exists where a person:

- (a) has become a Shareholder Controller or an Indirect Controller of the company; or
- (b) increased their stake in the company beyond the maximum specified by the Central Bank pursuant to section 20(2) of the Act, in breach of the Act.

~~in breach of the Act.~~

~~the shareholder (or any person on whose behalf the shareholder holds the shares) is or is not; or
the applicant (or any person on whose behalf the applicant is applying) for shares is, or, consequent
on the application will become;~~

~~an application for shares is made (including an application consequent on the exercise of an option);
or~~

~~registration of a transfer or transmission application under which the shareholder has first acquired the
shares.~~

2 Information on ownership

(a) A shareholder or applicant for shares must notify the Directors in a form and in a
manner approved by the Directors whether:

(i) the shareholder (or any person on whose behalf the shareholder holds the
shares) is or is not; or

(ii) the applicant (or any person on whose behalf the applicant is applying) for
shares is, or, consequent on the application, will become,

a person with respect to whom an Unacceptable Ownership Situation exists.

(b) Notification under this **clause 2** must be made at the same time as or within 5
Business Days after:

(i) an application for shares is made (including an application consequent on the
exercise of an option) or

(ii) registration of a transfer or transmission application under which the
shareholder has first acquired the shares.

(c) Notification may be made under this **clause 2** by a broker or other person on behalf of
the shareholder.

3 Required Information

(a) The Directors may at any time send to a shareholder or applicant for shares who:

(i) has notified the Directors (in accordance with **clause 2**) that the shareholder or
applicant for shares has or, consequent on the application, will acquire a stake
in the company;

(ii) has not given a notification in accordance with **clause 2**; or

(iii) the Directors have reason to believe, or are concerned, may be a person with
respect to whom an Unacceptable Ownership Situation exists,

a request in a form approved by the Directors which requires the shareholder or
applicant for shares to inform the Directors of any (or all) of the following:

(iv) whether the shareholder or applicant for shares is or is not a person with
respect to whom an Unacceptable Ownership Situation exists;

(v) in the case of a shareholder, the number of shares held by that shareholder and
their Associates;

(vi) in the case of an applicant that is not a shareholder, the number of shares held by the applicant's Associates; and

(vii) other such information as the Directors may reasonably require for the purposes of determining whether the shareholder or applicant for shares is a person with respect to whom an Unacceptable Ownership Situation exists or may exist,

(the information so requested being the **Required Information**).

(b) Within the period specified by the Directors in the request given under **clause 3(a)**, the shareholder or applicant for shares must give the Directors information in the form requested which:

(i) contains the Required Information; and

(ii) is signed by that shareholder or applicant for shares or, in the case of a corporation, an officer of that shareholder or applicant for shares.

(c) The Directors may send a request under **clause 3(a)** ~~clause 4(a)~~ which requires the shareholder or applicant for shares to inform the Directors of the Required Information at the times or at the intervals specified in the request, in which case the shareholder or applicant for shares must give the Directors information in the form requested at the times or the expiration of each interval so specified but otherwise in compliance with **clause 3(b)**~~4(b)~~.

~~(i) is, or is likely to become, a Shareholder Controller or Indirect Controller; or~~

~~(ii) is, or is likely to exceed, the maximum stake that the shareholder or applicant for shares is entitled to pursuant to section 20(2) of the Act,~~

~~in breach of the Act.~~

4 Offending Securities

In determining which particular shares give rise to a shareholder or applicant for shares being, or being likely to be, a person with a stake in the company in breach of the Act (the **Offending Securities**) the Directors must, unless in their opinion it would be inequitable or not in the best interests of the Directors to do so, have regard to the chronological order in which the shares became registered, on the basis that the last registered share is to be the first treated as an Offending Security.

5 Directors' power to suspend voting rights

A registered holder of Offending Securities shall, unless the prior written approval of the Directors' has been given, not be entitled to exercise voting rights in respect of such Offending Securities at any shareholders' or class meeting of the ~~C~~company. This shall be without prejudice to the right of any such registered holder to attend or speak at any shareholders' or class meeting of the ~~C~~company.

26 Warning Notice

If the Directors believe at any time that a shareholder:

(a) is, or is likely to become, a Shareholder Controller or Indirect Controller; or

~~(a)~~(b) is, or is likely to exceed the maximum stake that the shareholder is entitled to pursuant section 20(2) of the Act;

in breach of the Act, the Directors may (but are not obliged to), by notice in writing or in any other form approved by the Directors (**Warning Notice**), inform a shareholder who is, or holds on behalf of, a person with a stake in the cCompany in breach of the Act, that the shareholder may be required to dispose of shares.

37 Disposal Notice

(a) If the Directors believe at any time that a shareholder:

(i) is, or is likely to become, a Shareholder Controller or Indirect Controller; or

(ii) is, or is likely to exceed the maximum stake that the shareholder is entitled to pursuant section 20(2) of the Act;

in breach of the Act, the Directors may (but are not obliged to), by notice in writing or in any other form or manner approved by the Directors (**Disposal Notice**), require a shareholder who is, or holds on behalf of, a person with a stake in the cCompany in breach of the Act, to dispose of such number of shares as would ensure that the shareholder is:

~~(i)~~(iii) no longer a Shareholder Controller or Indirect Controller; or

~~(ii)~~(iv) no longer holds a stake in the company in excess of the maximum stake that the shareholder is entitled to pursuant to section 20(2) of the Act,

by no later than the Divestment Date, consistent with the Divestment Rules. The Disposal Notice may specify circumstances, consistent with the Divestment Rules, in which the relevant shareholder need not dispose of all or any of the shares the subject of a Disposal Notice if certain events happen.

(b) A Disposal Notice may require the shareholder to whom it is addressed to dispose of all or any of that shareholder's shares as specified in the Disposal Notice.

(c) If a Disposal Notice is not complied with by the shareholder to whom it is addressed, the Directors may, at any time, sell all or any of that shareholder's shares specified in the Disposal Notice.

~~(b)~~(d) For purposes of paragraph (c) above:

- (i) the Directors may sell the relevant shareholder's shares at the best price reasonably obtainable at the relevant time. For this purpose, any sale of shares by the Directors on the ~~POMS~~XPNGX will be regarded as discharging this obligation;
- (ii) each shareholder appoints each Director as its attorney (with power to appoint sub-attorneys) in the name of the shareholder and on behalf of the shareholder to execute any documents and implement any procedures as may be necessary or desirable in the opinion of the attorney to procure the transfer of shares on behalf of the shareholder; and

- (iii) the title of the transferee to any shares so sold is not affected by any irregularity or invalidity in connection with the sale of the shares to the transferee (but nothing in this **clause 7(d)8(d)** prevents the exercise by the Directors of its powers under this Schedule if the transferee is a person with a stake in the cCompany in breach of the Act).

48 Proceeds of Sale

The Directors may receive and give a good discharge for the proceeds of a sale under **clause 7(c)8(e)**, may pay or recoup out of those proceeds all reasonable costs and expenses of or incidental to the sale (including, but not limited to, any brokerage, duties, taxes or registry or administration costs) and shall pay the net amount to the person who immediately before the Divestment Date was the shareholder in respect of the shares sold (*Former shareholder*).

59 Payment of Net Amount

The net amount payable under **clause 89** may be paid by cheque posted to the Former shareholder at the relevant address appearing in the register immediately before the Divestment Date.

610 Exercise of powers by the Directors

- (a) Each shareholder or applicant for shares acknowledges and recognises that the exercise of the powers given to the Directors under this Schedule may cause individual shareholders or applicants for shares, or persons on whose behalf they hold shares or make application, considerable disadvantage (including possible adverse financial and taxation consequences) but each shareholder and applicant for shares acknowledges that such a result is necessary to enable the requirements of the Act to be met.
- (b) To the fullest extent permitted by law the Directors shall be under no liability to any shareholder or applicant for shares or persons on whose behalf they hold shares or make application, and the Directors shall be under no liability to any shareholder or applicant for shares or persons on whose behalf they hold shares or make application, for any loss or disadvantage incurred by a shareholder or applicant for shares or persons on whose behalf they hold shares or make application, as a result, whether directly or indirectly, of the Directors exercising the powers provided by this Schedule.
- (c) Any resolution, determination or decision to exercise any discretion or power by the Directors under this Schedule shall be final and conclusive and may be made or exercised by the Directors at their discretion including, without limitation, a decision to issue a Warning Notice under **clause 67**, Disposal Notice under **clause 7(a)8(a)** and to sell shares under **clause 7(c)8(e)**.

711 Forms and Rules

The Directors, may from time to time, publish:

- (a) the form (whether electronic, written or otherwise) in which, and method by which, information may be provided under **clauses 2 and 3es 3 and 4**;
- (b) the form of request the Directors will use for the purposes of **clause 34**;
- (c) the rules the Directors will apply to determine whether to issue a Warning Notice under **clause 67**, a Disposal Notice under **clause 7(a)(i)8(a)** and to sell shares under **clause 7(c)8(e)**;
- (d) the procedures by which any divestment will be effected;
- (e) any other matters required or permitted to be determined or prescribed by the Directors under this Schedule and related definitions; and
- (f) related matters.

Such rules, procedures and matters (including circumstances in which a shareholder or applicant for shares will be treated as a person with a stake in the cCompany in breach of the Act) may include provisions giving the Directors rights to deal with shares and will be binding on shareholders and applicants for shares.

812 Register

- (a) The Directors may establish and maintain a register (**Compliance Register**) containing such information as they consider appropriate in relation to shares held by, or on behalf of, any persons.
- (b) The Compliance Register does not form part of the Register.
- (c) The Directors may treat any shareholder or applicant for shares who does not comply with **clause 23** or a request for information under **clause 3(a)4** as a person with respect to whom an Unacceptable Ownership Situation exists in breach of the Act.
- (d) The Directors may rely on information contained in the Compliance Register when forming their belief at any time as to whether or not:
 - (i) an Unacceptable Ownership Situation has occurred or is likely to occur; and
 - (ii) The information contained in the Compliance Register is to be taken as correct unless proven otherwise.

13 Delegation

The Directors may delegate any of their powers under this Schedule to any person. The provisions of this Schedule apply to each person to whom the Directors have delegated a power under this Constitution as if a reference to the Directors included a reference to that person.

914 Other Instruments

If any **other instrument (Other Instrument)** issued by the Directors confers a beneficial interest in the income or capital of the cCompany or a right to acquire such an interest, then

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the provisions of this Schedule shall apply to that Other Instrument and Other Instrument holder:

- (a) as though the Other instrument was a share; and
- (b) as though the Other Instrument holder was a shareholder; and
- (c) with such other changes as may be necessary.

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