
Constitution of Kingfish Limited

TABLE OF CONTENTS

	INTRODUCTION.....	1
1	Defined Terms	1
2	Construction	1
	SHARES AND SHAREHOLDERS.....	2
3	Company’s shares	2
4	Board to issue Shares	2
5	Board need not comply with statutory pre-emptive rights	2
6	Board may make calls	3
7	Company may acquire and hold Shares	3
8	Company may issue and redeem Shares	3
	DIRECTORS	3
9	Number of Directors.....	3
10	Shareholders may appoint Directors	3
11	Shareholders may remove Directors	4
12	Notices of appointment or removal of Directors.....	4
13	Directors to elect chairperson of the Board	4
14	Chairperson to hold office on certain terms	4
15	Meetings of the Board	4
16	Written resolutions of Board permitted	4
17	Written resolutions may be in counterparts	4
18	Committee proceedings	5
19	Directors may act in interests of holding company	5
20	Board’s power to authorise remuneration and other benefits is limited	5
21	Expenses.....	5
22	Directors may appoint and remove alternate Directors	6
23	Alternate Director has powers of appointor	6
24	Termination of appointment of alternate Director	6
	GENERAL	6
25	Company may indemnify directors and employees for certain liabilities	6
26	Company may effect insurance for directors and employees	6
27	Manner of execution of deeds.....	7
28	Distribution of assets in kind	7
	SCHEDULE: PROCEEDINGS OF THE BOARD	8
1	Director’s power to convene meetings	8
2	Notice to be sent to Director’s address.....	8
3	Notice to contain certain details	8
4	Period of notice required to be given to Directors	8
5	Absent directors	8
6	Directors may waive irregularities in notice	8

CONSTITUTION OF KINGFISH LIMITED

7	Methods of holding meetings.....	8
8	Quorum for Board meeting	9
9	Meeting adjourned if no quorum	9
10	Chairperson to chair meetings.....	9
11	Voting on resolutions	9
12	Chairperson does not have casting vote.....	9
13	Board must keep minutes of proceedings	9
14	Board may regulate other proceedings.....	9

INTRODUCTION

1 Defined Terms

In this constitution:

1.1 The following expressions have the following meanings:

the Act means the Companies Act 1993;

the Board means Directors who number not less than the required quorum acting together as the board of directors of the Company or, if the Company only has one Director, that Director;

the Company means Kingfish Limited;

this constitution means this constitution as it may be altered from time to time in accordance with the Act;

Director means a person appointed as a director of the Company in accordance with this constitution;

the Majority Shareholder means one or more shareholders holding Shares which carry more than 50 percent of the total votes attaching to Shares;

Share means a share in the Company;

written or in writing in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

1.2 Subject to *clause 1.1*, expressions which are defined in the Act (whether generally, or for the purposes of one or more particular provisions) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning is governed by the context in which it appears in this constitution.

2 Construction

In this constitution:

2.1 Headings appear as a matter of convenience and do not affect the interpretation of this constitution;

- 2.2 The singular includes the plural and vice versa, and words importing one gender include the other genders;
- 2.3 A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- 2.4 The Schedule forms part of this constitution.

SHARES AND SHAREHOLDERS

3 Company's shares

At the date of its registration under the Act the Company has 100 Shares.

4 Board to issue Shares

- 4.1 The Board may issue Shares or securities that are convertible into Shares or options to acquire Shares at any time, to any person, and in any number it thinks fit, provided:

- (a) those Shares are issued to existing shareholders in such proportions as maintain the voting and distribution rights which the shareholders had immediately prior to the issue; or
- (b) that issue has first been approved in writing by the Majority Shareholder];
or
- (c) all entitled persons in the Company have first agreed to or concurred in the issue, in writing; or
- (d) in the case of Shares, those Shares are issued in accordance with:
 - (i) the terms of conversion of securities convertible into Shares, or
 - (ii) the terms of any option to acquire Shares,

which have been issued in accordance with this constitution.

- 4.2 Subject to this constitution, the Board may issue Shares that rank as to voting or distribution rights, or both, equally with or prior to any existing Shares, and any such issue will not be treated as an action affecting the rights attached to existing Shares.

5 Board need not comply with statutory pre-emptive rights

If the Board issues Shares that rank as to voting or distribution rights, or both, equally with or prior to existing Shares, the Board need not first offer those

Shares to existing shareholders for acquisition, unless any other provision of this constitution requires otherwise.

6 Board may make calls

The Board may make calls on any shareholder for any money that is unpaid on that shareholder's Shares and not otherwise payable at a specified time or times under this constitution, the terms of issue of those Shares or any contract for the issue of those Shares.

7 Company may acquire and hold Shares

7.1 The Company may purchase or otherwise acquire Shares and may hold those Shares in accordance with the Act. If the Company intends to transfer any Shares which it has acquired and held, such transfer will be treated as a new issue of Shares and the Board must first comply with the requirements of this constitution for issues of Shares.

7.2 The Board may purchase or otherwise acquire Shares from such shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act.

8 Company may issue and redeem Shares

The Company may:

8.1 subject to compliance with applicable provisions of this constitution, issue redeemable Shares; and

8.2 redeem redeemable Shares in accordance with the Act and the terms of issue of the redeemable Shares; and

8.3 exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares, in accordance with the Act and the terms of issue of the redeemable Shares.

DIRECTORS

9 Number of Directors

The minimum number of Directors shall be 1 and the maximum number of Directors shall be 9. The Majority Shareholder may change the minimum and/or the maximum number of Directors by written notice to the Company.

10 Shareholders may appoint Directors

Any person who is not disqualified under the Act may be appointed as a Director or the chairperson of the Board by:

10.1 a written notice to the Company signed by the Majority Shareholder; or

10.2 an ordinary resolution, which may appoint more than one Director.

The persons holding office as directors of the Company on the date of its registration under the Act continue in office and are deemed to have been appointed as Directors pursuant to this constitution.

11 **Shareholders may remove Directors**

Any Director or the chairperson of the Board may be removed from office by:

11.1 a written notice to the Company signed by the Majority Shareholder; or

11.2 an ordinary resolution passed at a meeting called for the purpose of, or for purposes that include, removal of the Director.

12 **Notices of appointment or removal of Directors**

Any notice of appointment or removal of a Director or the chairperson of the Board may be comprised in one or more written notices. The notice takes effect from the time it is served on the Company in accordance with the Act, or from such later time as the notice states that it is to take effect.

13 **Directors to elect chairperson of the Board**

Subject always to the right of the Majority Shareholder to appoint the chairperson of the Board, the Directors must elect one of their number as chairperson of the Board.

14 **Chairperson to hold office on certain terms**

The chairperson of the Board holds that office until he or she vacates office or the Directors elect a chairperson in his or her place or the Majority Shareholder remove him or her from office.

15 **Meetings of the Board**

The Schedule governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Act does not apply to proceedings of the Board.

16 **Written resolutions of Board permitted**

A written resolution signed or assented to by a majority of the Directors then entitled to receive notice of a meeting of the Board and who together would constitute a quorum at a meeting is as valid and effective as if it had been passed at a meeting of the Board duly convened and held.

17 **Written resolutions may be in counterparts**

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the Directors. A copy of a written

resolution, which has been signed and is sent by facsimile or any similar means of communication, will satisfy the requirements of this clause.

18 Committee proceedings

The provisions of this constitution relating to proceedings of the Board also apply to proceedings of any committee of Directors, except to the extent the Board determines otherwise.

19 Directors may act in interests of holding company

If at any time the Company is a wholly-owned subsidiary of a body corporate then, when exercising powers or performing duties as a Director, any Director may act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company.

20 Board's power to authorise remuneration and other benefits is limited

The Board may authorise:

20.1 the payment of remuneration or the provision of other benefits by the Company to a Director for services as a Director or in any other capacity;

20.2 the payment by the Company to a Director of compensation for loss of office;

20.3 the making of loans by the Company to a Director;

20.4 the giving of guarantees by the Company for debts incurred by a Director; and

20.5 the entering into of a contract to do any of the things set out in this clause;

only if the relevant action has been approved by written notice signed by the Majority Shareholder or approved by an ordinary resolution.

21 Expenses

A Director may be reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as a Director of the Company, without requiring the prior authorisation of shareholders.

22 Directors may appoint and remove alternate Directors

Every Director may:

22.1 appoint any person who is not disqualified by the Act from being a director and whose appointment has been approved in writing by the Majority Shareholder, to act as an alternate Director in his or her place; and

22.2 remove that person from that office,

by giving written notice to that effect to the Company.

23 Alternate Director has powers of appointor

While acting in the place of the Director who appointed him or her, an alternate Director:

23.1 has, and may exercise and discharge, all the powers, rights, duties and privileges of that Director (including the right to receive notice of, be counted as part of the quorum of, participate in, and vote at a meeting of the Board and to sign any document, including a written resolution, and to act as chairperson of the Board, but excluding the right to appoint an alternate Director);

23.2 is also subject to the same terms and conditions of appointment as that Director, except in respect of remuneration.

24 Termination of appointment of alternate Director

The appointment of an alternate Director terminates automatically if the Director who appointed him or her ceases to be a Director.

GENERAL**25 Company may indemnify directors and employees for certain liabilities**

The Company may indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under the Act. The Board may determine the terms and conditions of any such indemnity.

26 Company may effect insurance for directors and employees

The Company may, with the prior approval of the Board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The Board may determine the amounts and the terms and conditions of any such insurance.

27 Manner of execution of deeds

An obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by:

- 27.1 two or more Directors; or
- 27.2 if there is only one Director, that Director, whose signature must be witnessed; or
- 27.3 a Director, or any other person authorised by the Board whose signature must be witnessed; or
- 27.4 one or more attorneys appointed by the Company in accordance with the Act.

28 Distribution of assets in kind

If the Company is liquidated the liquidator shall, at the direction of the Majority Shareholder and any other sanction required by the Act:

- 28.1 divide among the shareholders in kind the whole or any part of the assets of the Company and for that purpose the liquidator may:
 - (a) fix such values for assets as the liquidator considers to be appropriate, and
 - (b) determine how the division will be carried out as between shareholders or different classes of shareholder;

and

- 28.2 vest the whole or any part of any such assets in trustees upon such trusts for the benefit of such of those shareholders as the liquidator thinks fit,

but so that no shareholder is compelled to accept any shares or other securities on which there is any liability.

SCHEDULE: PROCEEDINGS OF THE BOARD**1 Director's power to convene meetings**

A Director, or any other person at the request of a Director, may convene a meeting of the Board by giving notice in accordance with this Schedule.

2 Notice to be sent to Director's address

The notice of meeting must be a written notice delivered to the Director, or sent to the address or facsimile number, or an electronic mail message sent to the electronic mail address, which the Director provides to the Company for that purpose, or if an address or facsimile number, or electronic mail address, is not provided, then a written notice to his or her last place of employment or residence or facsimile number known to the Company.

3 Notice to contain certain details

The notice of meeting must include the date, time and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable Director to appreciate the general import of the matters.

4 Period of notice required to be given to Directors

At least two days' notice of a meeting of the Board must be given unless the chairperson of the Board (or, in the chairperson's absence from New Zealand, any other Director) believes it is necessary to convene a meeting of the Board as a matter of urgency, in which case shorter notice of the meeting of the Board may be given, so long as at least two hour's notice is given.

5 Absent directors

If a Director, who is for the time being absent from New Zealand, supplies the Company with a facsimile number or address or electronic mail address to which notices are to be sent during his or her absence, then notice must be given to that Director. Otherwise notice need not be given to any Director for the time being absent from New Zealand. However, if he or she has an alternate Director who is in New Zealand, then notice must be given to that person.

6 Directors may waive irregularities in notice

Any irregularity in the notice of a meeting, or failure to comply with *clauses 1 to 5* of this Schedule, is waived if all Directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity or failure, or if all Directors entitled to receive notice of the meeting agree to the waiver.

7 Methods of holding meetings

A meeting of the Board may be held either:

- 7.1 By a number of Directors who constitute a quorum being assembled together at the place, date and time appointed for the meeting; or

7.2 By means of audio, or audio and visual, communication by which a quorum of Directors participating can simultaneously hear each other throughout the meeting.

8 Quorum for Board meeting

The quorum necessary for the transaction of business at a meeting of the Board is a majority of the Directors, unless the Company only has one Director, in which case the quorum is one Director. The Majority Shareholder may change the number of Directors required for a quorum by written notice to the Company. No business may be transacted at a meeting of the Board unless a quorum is present.

9 Meeting adjourned if no quorum

If a quorum is not present within 30 minutes after the time appointed for a meeting of the Board, the meeting will be adjourned automatically until the same day in the following week at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes from the time appointed for the meeting, the Directors present will constitute a quorum.

10 Chairperson to chair meetings

The chairperson will chair all meetings of the Board at which he or she is present. If the office of chairperson of the Board is vacant, or if at a meeting of the Board the chairperson of the Board is not present within 5 minutes from the time appointed for the meeting, then the Directors present may elect one of their number to chair the meeting.

11 Voting on resolutions

Each Director has one vote. A resolution of the Board is passed if it is agreed to by all Directors present without dissent or if a majority of the votes cast on it are in favour of it. A Director present at a meeting of the Board may abstain from voting on a resolution, and any Director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

12 Chairperson does not have casting vote

In the case of an equality of votes, the chairperson of the Board does not have a casting vote.

13 Board must keep minutes of proceedings

The Board must ensure that minutes are kept of proceedings at meetings of the Board. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

14 Board may regulate other proceedings

Except as set out in this Schedule, the Board may regulate its own procedure.

