

DATED 16 June 2000

CONSTITUTION

OF

EASTPACK LIMITED

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CONSTITUTION
EASTPACK LIMITED

1. PRINCIPAL ACTIVITY

The principal activity of the Company is to grade, process, pack, store, transport and market fruit supplied or provided by shareholders of the Company and to supply associated services to and enter into commercial transactions with or for the shareholders of the Company concerning the growing, processing and marketing of fruit.

2. EFFECT OF THIS CONSTITUTION

The Company, the Board, each director and each shareholder of the Company have the rights, powers, duties and obligations set out in the Act and the CC Act except to the extent that they are negated or modified, in accordance with the Act or the CC Act, by this Constitution.

3. INTERPRETATION

3.1 In this Constitution, unless the context otherwise requires:

the “Act” means the Companies Act 1993;

“Appointed Director” means a director appointed pursuant to clause 21.9 of this Constitution;

the “Board” means the directors of the Company who number not less than the required quorum acting together as a board of directors;

the “CC Act” means the Co-operative Companies Act 1996;

the “Constitution” includes any amendment or extension for the time being in force;

the “Company” means the EastPack Limited;

“Directors” means the directors for the time being of the Company;

“Financial Year” means the period of 12 months ending on expiration of the 31st day of December;

“Investor Shares” means those shares in the Company issued under Clause 4.2 which bear no par or nominal value, and “Investor Shareholders” means the holders of those shares;

“Kiwifruit” means Class 1 kiwifruit, as defined from time to time by Zespri Group Limited;

“KPIN” means Kiwifruit Property Identification Number, which will be recorded with the Company in respect of each orchard property in relation to which shares are held;

“Number of Trays” - to determine the number of trays packed by any particular Transacting Shareholder the highest volume(s) of production in the three years of the previous four years production will be taken and averaged on an annual basis;

“Produce” means kiwifruit other than Class 1 Kiwifruit and any other fruit supplied by any Transactor Shareholder to the Company, and in respect of which that shareholder holds shares;

“Registered Orchard” means an orchard property for which the Company has a KPIN recorded;

“Special Resolution” means a resolution approved by a majority of 75 percent of the votes of those shareholders entitled to vote and voting on the question;

“Transactor Shares” means those shares in the Company having a nominal value held by and issued to Transacting Shareholders as defined in the CC Act, and “Transactor Shareholders” means the holders of those shares;

“Tray” means the equivalent of kiwifruit represented by a tray equivalent as defined by Zespri Group Limited and containing approximately 3.6kg of fruit.

- 3.2 Expressions defined in the Act and the CC Act where used in this Constitution have the meanings so defined.
- 3.3 Subject to the provisions of the CC Act, the directors may decide whether any person is at any time a Transacting Shareholder of the Company.
- 3.4 Headings have been included for convenience only and shall not affect the interpretation of clauses in this Constitution.

4. SHARES

4.1 Classes of Shares

Subject to clause 4.2, the Board may issue shares in different classes and may in the terms of issue of any or all classes of shares negate, alter or add to the rights attaching to any share specified in section 36(1) of the Act.

4.2 Transactor Shares and Investor Shares

The shareholding in the Company shall be divided into two classes, Transactor Shares and Investor Shares, with the rights respectively specifically set out hereinafter attached to them.

Transactor Shares shall:

- (a) Be issued under the terms of the CC Act and shall have a nominal value of \$1.00. They shall be issued by the Company in replacement for Transactor Shares previously held by the shareholders at the date of adoption of this Constitution. Further Transactor Shares shall be issued by the Company to growers of kiwifruit, or other produce approved by the Board wishing to become shareholders in the Company. They shall not be freely tradeable but shall be tradeable between existing Transactor Shareholders or with the approval of the Board may be sold by an existing Transactor Shareholder to a third party otherwise eligible to be a Transactor Shareholder and shall otherwise be surrendered back to the Company when the grower retires from the industry or ceases to supply kiwifruit to the Company;

- (b) Give the holder the right to participate in any annual rebate declared by the directors of the Company, and shall carry the first right of redemption on liquidation of the Company at \$1.00 each;
- (c) Always carry 60% of the voting power of all shares on issue, notwithstanding the number of shares on issue in any particular class at any one time. The votes of the Transactor Shareholders shall be divided proportionately with shareholding held to make up that 60% of the total voting block;

and further as set out more specifically in this Constitution.

Investor Shares shall:

- (a) Be issued under the terms of the Companies Act 1993 and shall have no par or nominal value;
- (b) Be tradeable in accordance with and subject to the restrictions in this Constitution;
- (c) Carry the right to participate in any annual dividends declared by the Directors of the Company, and shall carry the right to participate in any surplus assets upon liquidation of the Company after the holders of the Transactor Shares have been paid out;
- (d) Always carry 40% of the voting power of all shares on issue, notwithstanding the number of shares on issue in any particular class at any one time. The votes of the Investor Shareholders shall be divided proportionately with shareholding held to make up that 40% of the total voting block;

and further as set out more specifically in this Constitution.

4.3 Pre-Emptive Rights

The requirements of section 45 of the Act regarding the issue of shares are hereby negated.

5. RIGHTS, PRIVILEGES AND OBLIGATIONS OF TRANSACTOR SHAREHOLDERS

5.1 Suppliers of fruit to first become shareholders

Unless otherwise approved by the Board every person desiring to supply fruit to or otherwise transact with the Company shall, before being permitted to do so, become a shareholder of the Company upon such terms and conditions as the Board may decide and shall sign an application form as required by the Board. Any approval given by the Board to enable a person to supply fruit to or otherwise transact with the Company without becoming a shareholder, may be amended or revoked by the Board at any time.

5.2 Allotment of Shares

No shares shall be allotted to any person other than to a Transacting Shareholder, a person who establishes to the satisfaction of the Board his bona fide intention within a reasonable period of time to become a Transacting Shareholder or to a person otherwise entitled to be a shareholder, in any case approved by the Board or by an ordinary resolution of the Company.

5.3 Requirement of Shareholders to Contract to Supply Produce

The Board may from time to time determine:

- (a) The quantity of fruit to be supplied to the Company by each shareholder;
- (b) The services of the Company to be utilised by each shareholder, and the terms on which those services are to be utilised;
- (c) The terms of sale and purchase of goods between the Company and each shareholder.

5.4 Authorised Deductions

The Company is authorised to direct, on behalf of each shareholder, that the proceeds of sale of all produce handled by the Company for any shareholder be paid directly to the Company, without deduction. The Company is further authorised to deduct from such proceeds when received all expenses incurred by the Company in handling that produce and all amounts owed by the shareholder to the Company in relation to the handling of that produce.

5.5 Written Contract

The Board may from time to time require any shareholder or shareholders to enter into a written contract to record the terms of the arrangements described in clauses 5.3 and 5.4. If any shareholder fails to sign such a contract, the Board can authorise the Company to sign it on the shareholder's behalf.

5.6 Change in Terms

The Board can from time to time change the terms of the arrangements described in clauses 5.3 and 5.4, and of the contract referred to in clause 5.5. With the further approval of a special resolution, such change may be made retrospective in its effect.

5.7 Constitution Subject to Clauses

The terms of this Constitution have effect subject to the terms of clauses 5.3 to 5.6 (inclusive) above.

5.8 Shareholder's First Obligation to Supply Fruit to Company

So long as the Company has the processing capacity to handle the fruit every shareholder shall supply the whole of his crop or crops of fruit to the Company unless the written consent of the Board to sell any specified quantity of fruit other than to the Company has been first obtained. All fruit supplied to the Company shall be supplied on the terms and conditions determined pursuant to this Constitution unless the Board otherwise agrees in writing.

5.9 Demand for Costs

If any shareholder acts in breach of this clause the Board may make demand on the shareholder as liquidated debt due immediately to the Company for the additional costs (including an assessed share of overheads, interest, cool storage and packing margins) or any loss of profit incurred by the Company as the result of such breach such sums determined by the Board.

5.10 Board to Fix Quantities and Varieties of Fruit

Notwithstanding the entitlement of shareholders elsewhere appearing in this Constitution, no shareholder shall be entitled to supply other varieties or greater quantities of fruit than the Board shall from time to time determine.

5.11 Other Fruit

Subject to the provisions of any existing contract or contracts with any person who is not a shareholder, every Transactor Shareholder shall have a prior right to supply other fruit produced by him or her to the Company for grading, packing and cool storage provided such other fruit conforms to the quality, tests and standards set by the Board or by any Government department or authority or other body which is entitled or obliged to set such quality, tests and standards.

5.12 Cessation of Supply

Every Transactor Shareholder shall give the Company at least four (4) month's written notice of his or her intention to cease supplying his or her kiwifruit to the Company provided that this provision shall not apply in the case of any Transactor Shareholder who has entered into a contract for the sale of his or her orchard or orchards and who supplied his or her kiwifruit to the Company up to the date of settlement of such sale and provided that if it is a condition of such sale that all kiwifruit produced on the orchard sold shall remain the property of the selling shareholder, notwithstanding that settlement has been completed, all such kiwifruit shall be supplied to the Company. If a Transactor Shareholder fails to comply with this clause, that shareholder shall pay to the Company on demand a penalty of 10 cents per Tray based on the number of Trays supplied by the Transactor Shareholder to the Company in the previous packing season recoverable as a debt due by such shareholder to the Company.

5.13 Terms of Supply

All fruit supplied to the Company by any Transactor Shareholder shall except as may otherwise be agreed upon in writing be deemed to be supplied upon the terms set out in this Constitution and in any contract or contracts between that shareholder and the Company.

5.14 Share Quota

The shareholding quota to determine the number of shares to be held by each shareholder is, at the date of adoption of this Constitution, one (1) Transactor Share for every one (1) Tray of Class 1 kiwifruit to be supplied by the shareholder to the Company in a processing year as determined by the Board. If a shareholder transacts with the Company other than by the supply of kiwifruit, the Board can from time to time determine a quota policy appropriate to that type and volume of transaction. The Board, without any application therefore, shall allot to any shareholder such number of Transactor Shares or additional shares as he or she shall be required to hold in accordance with this clause and the shareholder shall pay to the Company the amount payable on the shares so allotted to him or her in the manner and at the time determined by the Board and all such moneys shall be recoverable as a debt due by the shareholder to the Company.

5.15 **Additional Shares**

If at any time it appears to the Board that any Transactor Shareholder has held a smaller number of Transactor Shares in the Company than is required to be held by him or her in terms of clause 5.14 the Board may immediately allot to him or her without any application by or on behalf of that shareholder such further number of Transactor Shares as shall be required to bring the number of shares held by him or her up to the number required to be held by him or her in terms of this Constitution.

5.16 **Investor Share Cap**

The Board shall have the power, to be exercised at its discretion, to set and amend from time to time, a limitation on the maximum number of Investor Shares that may be held by any Transactor Shareholder or by other shareholders in the Company. Any such limitation or limitations shall apply in the manner specified by the Board. The Board shall have the right to require a sale of any Investor Shares held by any shareholder in excess of any such limitation set by the Board (hereinafter referred to as "excess shares") and shall have the powers outlined in clauses 12.9 to 12.13 of this constitution in such circumstances. Such rights shall include the ability to require a sale of excess shares, suspend voting and dividend rights attaching to excess shares, and the power to effect a sale of such excess shares (in accordance with clauses 12.11 to 12.13) if any shareholder requested to do so fails to sell excess shares within 12 months of receiving notification of such requirement from the Board.

5.17 **Board Decision Final and Binding**

The decision of the Board as to the number of shares in the Company if any which any Transactor Shareholder shall hold shall be final and binding. The decision of the Board if any as to any maximum number of Investor Shares in the Company which any Transactor Shareholder or other shareholder in the Company shall hold shall be final and binding.

6. **ANNUAL CHARGES**

6.1 **Annual Charge**

The Board shall in each year make a charge on the Transactor Shareholders to cover the cost of grading, packing, cool storage, transport and any associated services for kiwifruit or other produce of the shareholders and all other expenses of the Company; provide that such charge shall not exceed the fair market cost of providing such services as determined by the Board.

6.2 **Other Charges**

The Board may from time to time for the purpose of meeting or partly meeting the additional cost (if any) of the transport, handling, manufacture, marketing and administration of supplies of fruit of whatever kind make such charge per Transactor Shareholder or at such varying rates in respect of different quantities of fruit supplied during the particular financial year as it deems equitable; provide that such charge (or such rates) shall not exceed the fair market cost of providing such services as determined by the Board.

6.3 Payment of Charges

Each Transactor Shareholder shall pay the Company the annual charge referred to in clause 6.1 and any charge made pursuant to clause 6.2 at the time decided by the Board. The Company shall be entitled to charge interest on overdue accounts at a rate set by the Board from time to time. The Company shall also be entitled to claim a lien against the fruit held in coolstorage for the Transactor Shareholder whose account for the annual charges remain unpaid for such period after the date of completion of packing as shall be determined by the Board.

6.4 Irrevocable Authority/Assignment

The Board may in any year require that all the Transactor Shareholders sign an Irrevocable Authority Form ("Assignment") directing the exporters of their kiwifruit or other produce to pay direct to the Company any payments payable by the exporter to the member for kiwifruit or other produce supplied for export through that exporter to cover the annual charges referred to in clauses 6.1 and 6.2 herein provided that if the amount of such said payments is greater than the said annual charges the Company shall refund the differences to the shareholders.

7. ACQUISITION BY THE COMPANY OF ITS OWN SHARES

7.1 Acquisition by Company

The Company may purchase or otherwise acquire shares of any class issued by it in accordance with the Act.

7.2 Special Offers by Company

For the purposes of section 60(1)(b)(ii) of the Act, the Company may make an offer to one or more shareholders to acquire shares issued by it without making such an offer to any other shareholder or shareholders in the Company.

7.3 Additional Power to Surrender Shares

The powers conferred by clauses 7.1 and 7.2 are in addition to the powers of the Company to surrender shares pursuant to the CC Act and to this Constitution.

8. REDEMPTION OF SHARES

8.1 Redeemable Shares

The Company may issue a further class of shares which are redeemable:

- (a) at its option; or
- (b) at the option of the holder of the share; or

- (c) on a date for redemption specified by a special resolution which alters this Constitution by adding such a date;

in each case for a consideration that is either specified, calculated by reference to a formula, or required to be fixed by a suitably qualified and independent person as provided by section 68 of the Act.

- 8.2 The Company may exercise an option to redeem shares in relation to one or more shareholders in accordance with sections 69(1)(b) of the Act.

9. SURRENDER OF TRANSACTOR SHARES

9.1 By Agreement

Where a Transactor Shareholder has ceased to be a Transactor Shareholder, the Board may at any time resolve to accept an offer by that shareholder to surrender all or any of that shareholder's shares having a nominal value.

9.2 At the Option of Company

The Company may require any Transactor Shareholder to surrender to the Company any or all shares having a nominal value held by that shareholder if:

- (a) The shareholder has ceased to be a Transactor Shareholder; or
- (b) The shareholder has failed to comply in a material respect with the requirements relating to transactions with the Company contained in any contract between the Company and the shareholder; or
- (c) The shareholder has failed to comply with the requirements of clause 5.1 or 5.5; or
- (d) The shareholder has failed to pay the annual charge required by clause 6.1 or any charge made under clause 6.2 within 30 days after he or she has received notice of demand from the Company stating that in the event of non-payment all or any of his shares may be required to be surrendered; or
- (e) The Board is of the view that:
 - (i) That shareholder (or a person who in the opinion of the Board is a related company or associated person of that shareholder) is, or is likely to become, a competitor of the Company; or
 - (ii) That shareholder has never been a Transacting Shareholder; or
 - (iii) That shareholder is bringing the Company into disrepute or causing significant loss or disruption to the business of the Company;

and the Board resolves that the surrender of the nominal value shares held by that shareholder is in the best interests of the Company.

9.3 **Partial Surrender**

The Company may require a Transactor Shareholder to surrender to the Company all or any shares in the Company having a nominal value held by that shareholder in excess of the number which the shareholder is required to hold under this Constitution.

10. **CONSIDERATION FOR SURRENDERED TRANSACTOR SHARES**

10.1 **Standard Consideration**

Subject to clauses 10.2 and 10.6, the consideration of the surrender of Transactor Shares shall be the nominal value of the shares at the date the surrender takes effect or, if it is less than the nominal value of the shares, the amount paid up on the shares.

10.2 **Special Consideration**

Where the level of consideration for the surrender of Transactor Shares payable pursuant to clause 10.1 would, if it were required to be paid in respect of all shares which the Board considers may be surrendered within a period specified by the Board, cause the Company to fail to meet the solvency test, the Board may resolve that the consideration be set in accordance with the procedure prescribed in clause 10.3.

10.3 **Special Consideration Procedure**

The Board shall nominate a fair and reasonable level of consideration for the surrender of Transactor Shares having regard to the following matters:

- (a) the amount which the shares would be worth if the Company had at the time of the valuation passed a resolution to be wound up voluntarily;
- (b) the value of the shares on the assumption that the Company would continue to operate as a going concern;
- (c) the amounts (if any) which have been paid by the Company on any previous voluntary surrenders of shares;
- (d) the future prospects of the Company having regard to the likelihood or otherwise of the continuation in the normal course of the principal activity of the Company;
- (e) the ability of the Company to meet the cost of surrender and its effect on the remaining Transacting Shareholders;
- (f) whether the failure of the Company is imminent;
- (g) whether the shareholder is under any obligation or liability as a guarantor or surety under any instrument given by him in respect of any obligation incurred by or liability of the Company; and
- (h) any other matter which the Board or the shareholder reasonably considers has a bearing on the fair value of the shares.

10.4 Notice to Shareholder

The Board shall notify the shareholder of the nominated price.

10.5 Arbitration

If the shareholder considers that the nominated price is not fair and reasonable, the shareholder shall notify the Company within 10 working days of receiving notice of the price, and section 112 of the Act shall apply, as if the nominated price were a price fixed by the Board under Section 112(1).

10.6 Agreement

Notwithstanding clauses 10.1 and 10.2, the consideration may be an amount agreed by the Company and the shareholder, provided that it is less than the amount determined under clause 10.1.

10.7 Payment of Consideration

The consideration owed by the Company for any surrender of shares to the Company shall be payable at a date decided by the Board no later than 5 years after surrender is accepted or deemed to take effect.

11. COMPANY MAY HOLD ITS OWN SHARES

11.1 Company may hold its own Shares

The Company may hold any of its own shares of any class acquired under the Act, or surrendered in terms of the CC Act.

11.2 Transfer of own shares

All the provisions of the Act, the CC Act and this Constitution applying to the issue of shares by the Company shall apply to the transfer of a share in the Company held by the Company in itself.

12. TRANSFER OF SHARES

12.1 Form of Transfer

The Board may from time to time prescribe the form of transfer of shares.

12.2 Execution of Form of Transfer

The form of transfer shall be executed by or on behalf of the transferor and the transferee.

12.3 Delivery of Form of Transfer

The form of transfer must be delivered to the registered office of the Company.

12.4 Delay or Refusal to Register Transfers of Transactor Shares

The Board may delay or refuse to register a transfer of Transactor Shares where:

- (a) the transfer has not received the prior approval of the Board;
- (b) the Company has a lien on a share or shares included in the transfer;
- (c) a call is due and unpaid or any other money is due to the Company and unpaid in respect of a share or shares included in the transfer;
- (d) the form of transfer and any other documentation required has not been provided or has not been duly executed;
- (e) the Board is of the opinion that the proposed transferee is not a desirable person to become a shareholder of the Company;
- (f) the Board resolves that it is not in the best interests of the Company to register the transfer or that it is not likely that the transferee will become a Transacting Shareholder of the Company; or
- (g) the transfer would cause the Company to breach any regulatory or statutory provisions.

12.5 Delay or Refusal to Register Transfers of Investor Shares

The Board may delay or refuse to register a transfer of Investor Shares where:

- (a) the Company has a lien on a share or shares included in the transfer;
- (b) a call is due and unpaid or any other money is due to the Company and unpaid in respect of a share or shares included in the transfer;
- (c) the form of transfer and any other documentation required has not been provided or has not been duly executed;
- (d) the transfer would cause the Company to breach any regulatory or statutory provisions;
- (e) the Board is of the opinion that the proposed transferee is not a desirable person to become a shareholder of the Company; or
- (f) the transfer is in respect of more than one class of share;

and must refuse to register a transfer where:

- (g) the Board is of the reasonable opinion that the transfer is to a person who is not a Transactor Shareholder, an employee of the Company, a Director of the Company or a person otherwise approved by the Board.

12.6 Closure of Share Register

The share register may be closed during such times as the Board think fit not exceeding in aggregate 30 working days in each year.

12.7 Custody of Form of Transfer

All forms of transfer shall when registered be retained by the Company, but any form of transfer which the Board refuses to register shall be returned to the person who delivered the form to the Company within one month after the date on which the form was lodged with the Company.

12.8 Share Register

The Company may divide its share register into two or more registers kept in different places and shall maintain any such registers in accordance with the relevant law in force.

12.9 Power of Directors to Require Disposal of Investor Shares

Where the Board is satisfied on reasonable grounds that any holder of Investor Shares is not or has ceased to be a Transactor Shareholder, an employee of the Company or a Director of the Company, the Board may call upon such shareholder to dispose of all Investor Shares held by such shareholder, and until the shareholder has disposed of the Investor Shares the Board may:

- (a) suspend the right to vote attaching to those shares; and
- (b) suspend any right to receive dividends attaching to those shares.

12.10 Failure to Transfer

If the recipient of a notice under clause 12.9 fails to transfer his or her share or shares within 2 years¹ from service of that notice, the Board may arrange the sale of the shares in accordance with clauses 12.11 to 12.13.

12.11 Sale at Best Price Reasonably Obtainable

Where the Board is entitled under this Constitution to arrange for the sale of Investor Shares in the Company, the Board shall arrange for the sale at the best price reasonably obtainable at the relevant time.

12.12 Board Authorised to Sell

For the purposes of any sale referred to in clause 12.11 the holder of the Investor Shares and any other person having an interest in those shares shall be deemed to have authorised and agreed to indemnify and does hereby authorise and indemnify the Board to act on its behalf in relation to the sale of the relevant shares, and to have appointed a representative of the Board to sign all documents relating to such sale and transfer as may be required to give effect to the same.

12.13 Proceeds Held on Trust

The net proceeds of any such sale shall be held on trust by the Company for and paid (together with interest at such rate as the Board deems appropriate) to the shareholder on surrender of any certificate relating to the relevant shares so sold. The Board shall be entitled to cancel existing share certificates and reissue replacements in order to enable the sale of such shares but shall not be obliged to do so.

¹EastPack Limited Annual Meeting 26th April 2017 - It was moved THAT clause 12.10 of the Constitution be amended by deleting the reference to "12 months" and replacing it with "2 years".

13. ANNUAL SHARE STATEMENTS

13.1 Annual Share Statement

The Board shall at least once in each year give a share statement to all shareholders detailing as at a specified date the name of all shareholders, the KPIN of any orchard in respect of which shares are held or required to be held, the number of shares held by each of them, the number of shares required to be held by each of them in terms of this Constitution, and the class to which the shares belong.

13.2 Delivery to Joint Holders

In respect of a share or shares held jointly by several persons the Company shall not be bound to issue more than one Annual Share Statement, and delivery of an Annual Share Statement to one of several joint holders shall be sufficient delivery to all.

13.3 No Recognition of Trusts

The Company shall be entitled to treat the person whose name appears on the register as the absolute owner of that share, and shall not be under any obligation to recognise any trust or equity, or partial, equitable, or other claim to or interest in any share whether or not it has express notice of such claim or interest.

13.4 Receipts from Joint Holders

If several persons are registered as joint holders of any share, any one of those persons may give receipts for any money payable in respect of that share.

14. CALLS

14.1 Power to Call

Subject to clause 14.2, the Board may from time to time make such calls as it thinks fit upon the shareholders in respect of all money unpaid on the shares held by them respectively and which is not by the conditions of allotment made payable at fixed times. Such calls may be based on a shareholder's kiwifruit production. Each shareholder shall pay the amount of every call so made on him or her to the persons and at the times and places appointed by the Board. A call may be made payable by instalments and may be revoked or postponed as the Board may determine.

14.2 Notice and Arrears of Call

Fourteen days notice of any call shall be given specifying the time and place of payment and the person or persons to whom the call shall be paid.

14.3 Joint Holders

The joint holders of a share shall be jointly and severally liable to pay all calls.

14.4 **Call Made**

A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed.

14.5 **Interest**

If the call payable in respect of any share is not paid on or before the day appointed for payment, the holder for the time being of the share shall be liable to pay interest on the same at such rate as the Board may determine from the day appointed for payment to the time of actual payment. However, the Board may waive payment of that interest wholly or in part.

14.6 **Proof of Liability**

In any proceedings for the recovery of any money due for any call, it shall be sufficient to prove that:

- (a) the name of the shareholder sued is entered in the register of shareholders of the Company as the holder or one of the holders of the shares in respect of which the debt accrued;
- (b) the resolution making the call is duly recorded in the minute book; and
- (c) notice of the call was duly given to the shareholder,

and it shall not be necessary to prove the appointment or qualification of the directors who made the call nor any other matter whatsoever. Proof of the matters aforesaid shall be conclusive evidence of the debt.

14.7 **Different Terms**

The Board may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in times for payment.

14.8 **Different Amounts**

Notwithstanding anything in this Constitution but subject to any applicable rule of law, the Board may, if it deems it advisable so to do, call up the balance due by any shareholder upon his or her shares without the necessity of making a similar call on all or any of the other shareholders for the time being.

14.9 **Calls in Advance**

The Board may, if it thinks fit, receive from any shareholder willing to advance the same, all or any part of the money uncalled and unpaid upon any shares held by him, and upon all or any part of the money so advanced may (until the same would, but for the advance, become payable) pay interest at such rate as may be agreed upon between the Board and the shareholders paying the sum in advance, and the Board may agree with the shareholders that the shareholders may participate in profits upon the amount so advanced, and the Board may at any time repay the amount so advanced upon giving to the shareholders three months' notice in writing. No shareholder shall be entitled as of right to any notice in writing. No shareholder shall be entitled as of right to any payment on any amount paid in advance unless agreed as aforesaid and the Board shall be under no obligation to agree to pay interest or allow participation.

15. FORFEITURE OF SHARES

15.1 Failure to Pay

If any shareholder fails to pay any call or instalment of a call on or before the day appointed for payment the Board may serve notice upon the shareholder requiring him or her to pay the call or instalment, together with interest and any expenses that may have accrued by reason of the non-payment.

15.2 Notice

The notice shall:

- (a) name a further day (not being less than 14 days from the date of the notice) on or before which the call or instalment and all interest and expenses (if any) that have accrued by reason of the non-payment are to be paid;
- (b) name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable; and
- (c) state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which the call or instalment is made will be liable to be forfeited.

15.3 Non-Compliance

If the shareholder does not comply with requirements of any such notice, any shares in respect of which the notice has been given may at any time thereafter, before payment of all calls or instalments, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the Board to that effect. Such forfeiture shall include all distributions authorised in respect of the forfeited shares.

15.4 Forfeited Shares

Any share or shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Board think fit and as this Constitution permits.

15.5 Ceasing to be a Shareholder

Any shareholder whose shares have been forfeited shall cease to be a shareholder in respect of the forfeited shares, but shall remain liable to pay to the Company all money which at the date of forfeiture was payable by the shareholder to the Company in respect of the shares and interest thereon to the date of payment. The shareholder's liability shall cease if and when the Company receives payment in full of the amount so owing by the shareholder.

15.6 Evidence of Forfeiture

A record in the minute book of the Company that a share in the Company has been duly forfeited on a date stated in the record shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

15.7 Sale of Shares

The Company may receive the consideration, if any, given for the share on any sale or disposition thereof, and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of, and he or she shall thereupon be registered as the holder of the share, and shall not be bound to see to the application of the purchase money, if any, nor shall his or her title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

15.8 Fixed Time Payments

The provisions of this Constitution as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time as if the same had been payable by virtue of a call duly made and notified.

15.9 Cancellation of Forfeiture

If all calls, instalments, and interest due in respect of any forfeited share are paid before the share has been disposed of, together with such sum as the Board may require to repay expenses incurred in respect of non-payment, the forfeiture may be cancelled by the Board at its discretion; and if the forfeiture is cancelled and an entry thereof made in the minutes of the Board, the share shall then revert to the person entitled to it before the forfeiture and be held by him or her thereafter in the same manner as if no such forfeiture had taken place.

16. TRANSMISSION OF SHARES

16.1 Transmission on Death of Shareholder

In the event of the death of a shareholder, the legal personal representative of a deceased sole holder of a share shall be the only person recognised by the Company as having any title in the share. In the case of a share registered in the names of two or more persons, the survivor or survivors or where all survivors of the first deceased joint holder are later deceased the legal personal representative of the last surviving joint holder on his or her death shall be the only person recognised by the Company as having any title to the share.

16.2 Assignee in Bankruptcy

Any person becoming entitled to a share in consequence of the bankruptcy of a shareholder shall, upon such evidence being produced as may from time to time be properly required by the Board, have the right to make such transfer of the share as the bankrupt person could have made; but the Board shall have the same right to decline or delay registration as they would have had in the case of a transfer of the share by the person before the bankruptcy.

16.3 Right of Personal Representative or Assignee

Where the registered holder of any share dies or becomes bankrupt, his or her personal representative or the assignee of his or her estate, as the case may be, shall, upon the production of such evidence as may from time to time be required by the Board, be entitled to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been entitled to if he or she had not died or become bankrupt. Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall for the purposes of this Constitution be deemed to be joint holders of the share.

17. LIEN ON SHARES

17.1 Lien on Shares

The Company shall have a first lien for all debts, obligations and liabilities of any shareholder of the Company, owed to the Company or to any subsidiary of the Company, upon all shares held by the shareholder, whether alone or jointly, and upon all money payable to the shareholder.

17.2 Discharge of Lien

If the Company shall register any transfer of any share upon which it has such a lien without giving to the transferee notice of its claim, the said share shall be freed and discharged from the lien of the Company.

17.3 Sale of Shares

The Company may sell, in such manner as the Board thinks fit, any share on which the Company has a lien, if

- (a) some sum in respect of which the lien exists is presently payable; and
- (b) fourteen (14) days' notice in writing, demanding payment of such, has been given to the shareholder or the person entitled thereto by reason of the shareholder's death or bankruptcy.

17.4 Execution of Sale

For giving effect to any such sale the Board may authorise some person to transfer the share sold to the purchaser. The purchaser shall be registered as the holder of the shares comprised in any such transfer, and he or she shall not be bound to see to the application of the purchase money, nor shall his or her title to the shares be affected by any irregularity or invalidity in the sale proceedings.

17.5 Proceeds

The proceeds of the sale shall be received by the Company and applied in payment of:

- (a) First, in and towards the satisfaction of the amount in respect of which the lien exists;
- (b) Secondly, in payment of all costs and expenses of such sale and any attempted sale; and

- (c) Thirdly, (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) in payment to the person entitled to the shares at the date of the sale.

17.6 Discharge from Calls

Upon registration of the transfer to the purchaser of shares sold by the Company pursuant to clause 15.7 ("the Transferee"), the Transferee shall hold such shares free from all calls due prior to such purchase.

17.7 Former Shareholder's Remedy

The remedy of the former shareholder and of any person claiming under or through the former shareholder shall be against the Company exclusively and in damages only.

18. ALTERATION OF SHAREHOLDER RIGHTS

The Company may issue shares which rank equally with existing shares, whether as to voting rights or distributions and any such issue is deemed not to be an action which affects the rights attached to existing shares.

19. MEETINGS OF SHAREHOLDERS

19.1 Annual Meetings

The annual meeting of the Company shall be held once in every calendar year, at such time (not being more than 15 months after the holding of the last preceding meeting) and place as may be determined from time to time by the Board.

19.2 Special Meeting

A special meeting of shareholders entitled to vote on an issue:

- (a) may be called at any time by the Board or if at any time there are not in New Zealand sufficient directors to form a quorum, by any director or any two shareholders of the Company; and
- (b) must be called by the Board at the written request of shareholders holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

19.3 Shareholder Request for Special Meeting

Any request by shareholders to hold a special meeting must specify the issue to be voted on at the meeting and shall be signed by the persons making the same and shall be deposited at the registered office of the Company. It may consist of several documents in the like form each signed by one or more of the requisitionists.

19.4 Alteration of Shareholder Rights by Special Resolution

The Company may not take action except as specifically allowed under this Constitution that affects the rights attached to shares unless that action has been approved by a special resolution of each interest group and further as set out in section 117 of the Act.

19.5 Alteration of Company Status by Special Resolution

The Company may not take action that alters the status of this company under the CC Act unless that action has been approved by a special resolution.

19.6 Proceedings at Meetings

The proceedings of meetings of shareholders shall be governed by the First Schedule of this Constitution.

20. VOTES OF SHAREHOLDERS

Upon a poll, every Transactor Shareholder shall be entitled to one vote for every \$1.00 paid up on the shares registered in his or her name, and the total Transactor Shares shall carry 60% of the total vote; every Investor Shareholder shall be entitled to one vote for each share held, and the total Investor Shares shall carry 40% of the total vote. Votes received shall be scaled to give effect to the percentages required under this clause.

21. DIRECTORS

21.1 Existing Directors

The current directors as at the date of adoption of this Constitution shall hold office as if they had been elected under clause 21.3 or appointed under clause 21.9 (as the case may be). For the purposes of clause 21.4 (rotation) where a director is deemed to have been elected under clause 21.3 (and not appointed under clause 21.9), his or her time in office in the Company shall be calculated from the time that Director last took office as director of the Company.

21.2 Number and Residence of Directors

- (a) Unless altered in accordance with clause 21.2(b), the number of directors (including the Managing and/or Executive Director(s) and any Appointed Director) for the time being shall be not less than 6 nor more than 9.
- (b) The Company at a meeting may from time to time increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.
- (c) *[deleted 2014]*

21.3 Shareholder Directors

Not less than 6 directors shall be elected by the shareholders and unless otherwise determined by the shareholders by ordinary resolution each such director shall be a shareholder (including shareholders of company/s that hold shares within EastPack)² and all such directors are herein referred to as “shareholder directors”. Of those shareholder directors, not less than 4 shall hold Transactor Shares, and not less than 2 shall hold Investor Shares.

21.4 Rotation of Shareholder Directors³

At each annual general meeting, one third of the shareholder directors or, if their number is not a multiple of 3, the number nearest to one third shall retire from office. Those to retire shall be those who have been longest in office. As between 2 or more of such directors who have been in office an equal length of time, the director to retire shall, in default of agreement between them, be determined by lot. The length of time a director has been in office shall be computed from his or her last election or appointment where he or she has previously vacated office. The identity of the retiring directors and (if the information is available) whether they intend to stand for re-election shall be notified to the Shareholders not later 31 January in the year of the annual meeting at which they are to retire.

21.5 Eligibility for Election as a Director

- (a) A retiring director shall be eligible for re-election. Subject to clause 21.6 he or she shall retain office until the dissolution or adjournment of the meeting at which his or her successor is elected.
- (b) No person (not being a retiring director) shall be eligible for election to the office of director at any meeting unless he or she has been nominated in writing provided that such nomination shall not be required if that person is recommended by the Board. Every nomination must be made and signed by a shareholder entitled to attend and vote at the meeting (other than the person nominated) and must be signed by the nominee to confirm acceptance of the nomination. In relation to any annual meeting, nominations will open on the preceding 31 January and close at 4pm on the preceding 28 February or if 28 February is a Saturday, a Sunday, or a public holiday in Edgecumbe, then at 4pm on the following working day (“closing date for nominations”). Every nomination paper must be left at the registered office of the Company by 4pm on the closing date for nominations. Notice of every nomination received by the Company before the closing date for nominations shall be given by the Company to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.
- (c) No person may take office as a director unless he or she has consented in writing to be a director and certified that he or she is not disqualified from being appointed or holding office as a director of the Company in a form approved by the Board.

21.6 Election of Directors

- (a) Subject to clause 21.3, the Company at any meeting at which any directors retire by rotation shall fill up the vacated offices by electing a like number of directors and, without notice may fill up any other vacancies.
- (b) If a vacated office is not filled by such an election, the retiring director shall if offering himself or herself for re-election be deemed to have been re-elected unless at that meeting it is expressly resolved not to fill the vacated office or unless a resolution for his re-election of that director is put to the meeting and lost.

² EastPack Ltd AGM 29th April 2015 – It was moved THAT the company's constitution is amended by rewording clause 21.3 to include: (including shareholders of company/s that hold shares within EastPack)

³ Constitution Amendment 27th April 2009 - clauses 21.4 - 21.7 be replaced as above.

21.7 Election of Directors by Postal Ballot

- (a) The Board may hold a postal ballot for the election of directors in accordance with section G of Schedule 1 of this Constitution with such modifications as the Board may determine and the names of the directors who have been elected shall be announced at the conclusion of the relevant annual meeting.
- (b) Subject to the provisions of the preceding clauses, a postal ballot shall be conducted in such a manner as the Board shall determine.”

21.8 Casual Vacancies

- (a) Any casual vacancy occurring among the directors may be filled up by the Board, but any person so appointed shall hold office only for the remainder of the term for which the vacating director would have held office if no vacancy had occurred.
- (b) The remaining directors may continue to act notwithstanding any vacancy in their number; but if the number of directors falls below the minimum fixed by this Constitution the Board shall not, except for the purpose of filling vacancies, or calling a meeting of shareholders, act so long as the number is below the said minimum.

21.9 Appointed Directors

In addition to the shareholder directors, the Board may at any time and from time to time appoint not more than 2 persons, whether or not such persons are shareholders, to be directors of the Company for such period as the Board shall think fit and such directors are herein referred to as “Appointed Directors”. An Appointed Director shall not be taken into account in determining the number of directors who are to retire by rotation at any annual meeting and he or she shall cease to hold office as a director at the expiration of the period for which he or she was appointed.

21.10 Status of Appointed Director

All the provisions of this Constitution shall apply to Appointed Directors except:

- (a) Clause 21.4 relating to rotation of directors;
- (b) Clause 21.5(a) and (b) relating to eligibility for election as directors;
- (c) Clause 21.6 relating to election of directors;
- (d) Clause 21.7 relating to election of directors by postal ballot.

21.11 Remuneration of Directors

- (a) The Board may determine and authorise 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 if the Board is satisfied that to do so is fair to the Company.
- (b) The directors shall be entitled to be paid their reasonable travelling, accommodation and other expenses incurred in consequence of their attendance at Board meetings or otherwise in the execution of their duties as directors.

21.12 Retirement of Directors

A director may retire from his or her office at any time on giving notice in writing to the Company. His or her retirement shall take effect upon receipt by the Company of the notice or at a later time specified in the notice.

21.13 Disqualification of Directors

The office of a director shall be vacated:

- (a) If he or she ceases to be a shareholder, unless the shareholders have resolved otherwise;
- (b) If he or she becomes bankrupt; or
- (c) If he or she becomes a mentally disordered person as defined by the Mental Health (Assessment and Treatment) Act 1992 or a personal order relating to his or her property is made under the Protection of Personal and Property Rights Act 1988, or
- (d) If he or she resigns his or her office in accordance with the provisions of section 157(2) of the Act; or
- (e) If he or she becomes a person to whom section 151(2) of the Act applies; or
- (f) If he or she is absent from two consecutive meetings of the Board without special level of absence from the Board; or
- (g) If he or she fails to pay any call on shares held by him or her within 2 months of the due date.

21.14 Removal of Director

The shareholders may by ordinary resolution remove any director before the expiration of that director's period of office and elect another person in that director's place. The notice of meeting for the meeting must specify that one of the purposes for the meeting is to vote on such a resolution. In default of the election of a new director at the meeting, a vacancy may be filled as a casual vacancy under clause 21.8. A person so elected or appointed shall hold office only for the remainder of the term for which the director in whose place he or she is appointed had been appointed or elected.

21.15 Proceedings at Meetings

The proceedings of meetings of the Board shall be governed by the Second Schedule of this Constitution.

21.16 Managing and/or Executive Director

- (a) The Board may from time to time appoint one or more of its members, whether a shareholder, director or an Appointed Director, to be Managing and/or Executive Director or Managing and/or Executive Directors of the Company, either for a fixed term or without any limitation as to the period for which he, she or they is or are free to hold such office, and may from time to time remove or dismiss him, her or them from office and appoint another or others in his, her or their place or places.
- (b) The remuneration of a Managing and/or Executive Director shall from time to time be fixed by the Board and may be by way of salary, or commission or participation in profits or by any or all of those modes.
- (c) The Board may from time to time entrust to and confer upon a Managing Director and/or Executive Director for the time being such of the powers exercisable by the Board as it may think fit and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as it thinks expedient, and it may confer such powers, either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Board and may from time to time revoke, withdraw, alter or vary all or any of such powers. However, the Board shall not have power or authority to confer upon the Managing and/or Executive Director or Directors the power to make calls, forfeit shares, borrow money or issue debentures.
- (d) A Managing and/or Executive Director shall not while he or she continues to hold that office be subject to retirement by rotation and he or she shall not be taken into account in determining the rotation or retirement of directors, but shall be subject to the same provisions as to resignation and removal as the other directors of the Company, and if he or she ceases to hold the office of director from any cause, he or she shall, ipso facto, and immediately cease to be a Managing and/or Executive Director.

22. REBATES DIVIDENDS AND DISTRIBUTIONS

22.1 Deductions from Revenue

The Board shall at such time or times it deems best deduct retain or set aside from the revenue earned by the Company in any financial year of the Company either the whole or so much thereof as the Board may consider necessary or desirable for the following:

- (a) Firstly the costs, charges, expenses, payments and outgoings connected with or in anywise pertaining to or incidental to, the handling, storing, packing, rendering marketable and disposing of produce entrusted to the company for any such purpose.
- (b) Secondly, the costs, charges, expenses, payments and outgoings (which the company shall be liable for or has already made or incurred or requires or has been required to make provision for) in the construction, maintenance, upkeep, and running of any of the buildings, factories, works, machinery plant and other properties of the company or in any way connected with incidental or pertaining thereto or in carrying out any of the objects, powers, or authorities of the company or incidental thereto or in doing any act or thing done by the Board or by the company in and about its business including all payments for wages and salaries, interest, depreciations of the company's assets or any part thereof and all other payments and liabilities shown to have become due or to have been paid or for which provision has to be made by the company in its annual balance sheet.
- (c) Thirdly, such sum as the Board may consider necessary or desirable to deduct from time to time and set aside to be utilised for the purposes of a reserve fund or for meeting contingencies of any description or of payments for shares surrendered or for rebuilding or establishing, repairing, improving and maintaining any buildings, factories, works, machinery plant or any of the property and assets of the company or for such other purposes as the Board may think fit or for any one or more of the foregoing purposes or for carrying forward in whole or in part as a credit balance in the accounts of the ensuing year and the Board may also in turn use any of the moneys in any reserve account for all or any of the foregoing purposes.

22.2 Rebates and Dividends

If it is satisfied on reasonable grounds that the Company will immediately after the distribution, meet the solvency test, and after such deductions as aforesaid have been made, the Board may distribute the revenue (if any) remaining and also any surplus revenue from previous years:

- (a) by way of rebate among the Transactor Shareholders of the company in proportion to the trays supplied (or quantity of fruit other than kiwifruit supplied which attract packaging charges) by each Transactor Shareholder to the Company during that particular period. The maximum rebate payable to the Transactor Shareholders in any year shall be 30 cents per Tray supplied in respect of kiwifruit, and such equivalent amount in respect of other fruit supplied as determined by the Board.. If any shareholder is not holding his full quota of shares as may be determined by the Company under clause 5.14, any rebate otherwise due in such circumstances may, at the Board's discretion, be fully or partially credited against the amount outstanding in respect of those shares remaining to be purchased by that shareholder.

- (b) by way of dividend among the Investor Shareholders of the Company, provided that no dividend shall be paid or payable in any year unless and until a rebate of not less than 20 cents and not more than 30 cents per tray of kiwifruit supplied (and such equivalent amount in respect of other fruit supplied as determined by the Board) has been paid under clause 22.2(a) to the Transactor Shareholders in respect of that year.

22.3 Notice of Rebate or Dividend

Notice of any cash rebate or dividend that may be made shall be forthwith given to each shareholder entitled to the same and any such rebate or dividend shall be forthwith paid or credited to such shareholder. Notice shall also be given to each shareholder effected where rebates have been credited towards shares.

22.4 No Dividend

The Board must not authorise a dividend:

- (a) in respect of some but not all the shares in a class; or
- (b) that is of greater value per share in respect of some shares of a class than it is in respect of other share in that class,

Notwithstanding the above any shareholder may waive his or her entitlement to receive a dividend by notice in writing to the company signed by or on behalf of the shareholder.

22.5 No Entitlement

No shareholder shall be entitled as of right to any rebate or dividend and the company or the Board may decline to make any such rebate or dividend.

22.6 Joint Holders

If several persons are registered as joint holders of any share any one of them may give effectual receipts for any rebate or other moneys payable on or in respect of the share.

22.7 Payment

Any cash rebate or dividend may be paid by direct credit, cheque or warrant sent through the post to the registered address of the shareholder or person entitled thereto or in the case of joint holders of any share to any one of such joint holders at his or her registered address or to such person and such address as the shareholder or person entitled or such joint holders as the case may be direct. Every such direct credit, cheque or warrant shall be made payable to the order of the person to whom it is sent or to the order of such other person as the member or person entitled or such joint holders as the case may be direct.

22.8 Interest

No distribution dividend or rebate shall bear interest against the Company.

22.9 Unclaimed Distributions

All distribution dividends and rebates unclaimed for one year after having been declared may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. All distribution dividends and rebates unclaimed for five years after having been declared may be forfeited by the Board for the benefit of the Company provided always that the Board may at any time after such forfeiture annul the same and pay the distribution dividend or rebate so forfeited to any person producing evidence that he or she is entitled to the same and shall do so unless in the opinion of the Board such payment would embarrass the Company.

23. INDEMNITY AND INSURANCE

23.1 The Company may give such indemnities and effect such insurances as are referred to in section 162 of the Act to the fullest extent permitted by that section.

24. NOTICES

24.1 Notice to Joint Holders

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

24.2 Notice to Personal Representative or Assignee of Shareholder

A notice may be given by the Company to any person entitled to a share in consequence of the death or bankruptcy or other incapacity of a member by any method specified in section 391 of the Act addressed to him or her by name or by the title of representative of the deceased or assignee of the bankrupt or otherwise, as the case may require, at the address (if any) or to the telephone number (if any) within New Zealand supplied for the purpose by the person claiming to be so entitled, or (until such an address or telephone number has been so supplied) by giving notice in any manner in which the same might have been given if the death or bankruptcy or incapacity had not occurred.

24.3 Period of Notice

Where a given number of days' notice extending over any period is required to be given, the day of service shall not be, but the day upon which the notice will expire shall be, included in the number of days or other period.

24.4 Notice to Overseas Shareholders

Each shareholder whose place of address is not in New Zealand shall notify in writing to the Company a place in New Zealand which shall be deemed his or her registered place of address. In the absence of any such notification the registered office of the Company shall be deemed the registered address of the member for all purposes whatsoever, and all proceedings taken without other notice to any such member shall be as valid as if he or she had due notice thereof.

25. DEDUCTIONS

The Board may deduct from any money payable by the Company to any shareholder any sums of money presently payable by him or her to the Company on account of any or all of the following:

- (a) calls or instalments or otherwise or any debt, liability or engagement; and
- (b) debts, liabilities or obligations in respect of which the Company has a lien on the shares on which such money is payable; and
- (c) such amounts as the Company may be called upon to pay under any legislative enactment in respect of the shares of a deceased or other shareholder.

26. LIQUIDATION

- (a) If the Company is put into liquidation and the assets available for distribution among the shareholders is insufficient to repay the whole of the amounts paid up on shares, such assets shall be distributed so that, as nearly as may be, the amount available for distribution to shareholders shall be distributed to shareholders in proportion to the amounts paid up at the commencement of the liquidation on the shares held by them respectively.
- (b) If in a liquidation the assets available for distribution among the shareholders shall be more than sufficient to repay the whole of the amount paid up on shares at the commencement of the liquidation, the excess shall be distributed:
 - (i) first to the Transactor Shareholders at the rate of \$1.00 for each Transactor Share held;
 - (ii) thereafter to the Investor Shareholders in proportion to the amount at the commencement of the liquidation paid up on the shares by them respectively.
- (c) This clause is without prejudice to the rights of the holders of shares issued upon special terms and conditions.
- (d) If the Company is put into liquidation, the liquidator may with the sanction of a special resolution of the Company and any other sanction required by the Act divide amongst the shareholders in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as he or she deems fair upon any property to be divided and may determine how the division shall be carried out as between the shareholders or different classes of shareholders. The liquidator may with the like sanction vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator with the like sanction thinks fit but so that no shareholder shall be compelled to accept any shares or other securities whereon there is any liability.

SCHEDULE 1

PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

A. CHAIRPERSON

The Chairperson of the Board shall take the chair at every general meeting, or if there be no such Chairperson, or if at any meeting he or she shall not be present within 15 minutes after the time appointed for holding the meeting, the Deputy Chairperson of the Board shall take the chair, or if there be no such Deputy Chairperson or if at any meeting he or she shall not be present as hereinbefore provided, the Transacting Shareholders present shall choose another director as Chairperson of the meeting; and if no director be present, or if all directors present decline to take the chair, then the Transacting Shareholders present shall choose one of their number to be Chairperson of that meeting.

B. NOTICE OF MEETING

- B.1 Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to receive notice of the meeting and to every director and an auditor of the company not more than 30 working days and not less than 10 working days before the meeting.
- B.2 The notice must state:
- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
 - (b) the text of any special resolution to be submitted to the meeting.
- B.3 An irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such shareholders agree to the waiver.
- B.4 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a shareholder does not invalidate the proceedings at that meeting.
- B.5 The Chairperson of any meeting at which a quorum is present may, with the consent of the meeting (and shall if so directed by the meeting), adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of the original meeting. When a meeting is adjourned for less than 30 days, notice of the time and place of the adjourned meeting may be given by announcement at the meeting which is adjourned.

C. METHODS OF HOLDING MEETINGS

A meeting of shareholders may be held either:

- (a) by a number of shareholders, who constitute a quorum, being assembled together at the place, date, and time appointed for the meeting; or

- (b) by means of audio, or audio and visual, communication by which all shareholders participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

D. QUORUM

- D.1 Subject to clause D.3 no business may be transacted at any general meeting if a quorum is not present.
- D.2 A quorum for a meeting of shareholders is present if not less than 7 shareholders or their proxies are present, and who between them represent not less than 25 percent of the shares held by all shareholders of the Company, except in the case of the appointment of a chairperson or the adjournment of the meeting in which cases the quorum is 3 shareholders.
- D.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
 - (a) In the case of a meeting covered under section 121(b) of the Act, the meeting is dissolved;
 - (b) In the case of any other meeting the meeting is adjourned to the same day in the following week at the same time and place, or to such other date, time and place as the directors may appoint and for which notice has been given in accordance with clause B.5. If, at the adjourned meeting, a quorum is not present within 30 minutes of the time appointed for the meeting, the shareholders or their proxies present are a quorum.

E. VOTING

- E.1 In the case of a meeting of shareholders held under clause C(a) of this Schedule, unless a poll is demanded, voting at the meeting shall be by whichever of the following methods is determined by the Chairperson of the meeting:
 - (a) Voting by voice; or
 - (b) Voting by show of hands.
- E.2 In the case of a meeting of shareholders held under clause C(b) of this Schedule, unless a poll is demanded, voting at the meeting shall be by the shareholders signifying individually their assent or dissent by voice.
- E.3 A declaration by the Chairperson of the meeting that a resolution is carried by the requisite majority and having taken into account the voting rights allocated to Transactor and Investor Shares is conclusive evidence of that fact unless a poll is demanded in accordance with clause E.4.
- E.4 At a meeting of shareholders a poll may be demanded by:
 - (a) not less than 3 shareholders having the right to vote at the meeting;
 - (b) a shareholder or shareholders representing not less than 5 percent of the total voting rights of all shareholders having the right to vote at the meeting; or

(c) by a shareholder or shareholders holding shares in the Company that confer a right to vote at the meeting and on which the aggregate amount paid up is not less than 5 percent of the total amount paid up on all shares that confer that right.

- E.5 A poll may be demanded either before or after the vote is taken on a resolution.
- E.6 If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present in person or by proxy and voting.
- E.7 The Chairperson of a shareholders' meeting is entitled to a casting vote.
- E.8 For the purposes of this clause, the instrument appointing a proxy to vote at a meeting of the Company confers authority to demand or join in demanding a poll and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.
- E.9 Subject to clause E.10 if a poll is demanded it shall be taken in such manner and at such time and place as the Chairperson of the meeting may direct and either at once or after an interval of adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.
- E.10 Any poll duly demanded on the election of a Chairperson of a meeting or on any question of adjournment shall be taken at the meeting and without adjournment.
- E.11 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

F. PROXIES

- F.1 A shareholder may exercise the right to vote either by being present in person or by proxy.
- F.2 A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
- F.3 A proxy must be appointed by notice in writing signed by the shareholder and the notice must state whether the appointment is for a particular meeting or a specified term not exceeding 12 months. The shareholder's signature must be witnessed.
- F.4 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced before the start of the meeting.
- F.5 A proxy is not effective unless it and the power of attorney (if any) under which it is signed, or a certified copy, is produced at least 48 hours before the start of the meeting.
- F.6 The notice appointing a proxy shall be in the following form or any other form which the Board approve:

EASTPACK LIMITED

INSTRUMENT APPOINTING A PROXY

I/WE

Of

being a shareholder of Eastpack Limited hereby appoint

[name of proxy] of or failing him/her of

as my/our proxy to vote for me/us on my/our behalf at [the [annual] [special] meeting of the Company to be held at on commencing at] [all meetings of the company held within 12 months after the date hereof] and at any adjournment of any such meeting.

Signed this day of

Usual signature(s)

The Company shall not issue any proxy form with a proxy named therein either by name or by reference to an office which he or she may hold, but the Company may indicate in a footnote that certain persons are willing to act as a proxy if shareholders desire to appoint any of them and the Company may set out on any proxy form issued by the Company the names of the directors for the time being of the Company. An instrument of proxy in favour of the chairperson of the meeting (howsoever expressed) shall be valid and effectual as though it were in favour of a named person and shall constitute the person who chairs the meeting or meetings for which the proxy is used (whether an adjournment or not) the lawful proxy or proxies of the appointor.

F.7 Where it is desired to enable shareholders to direct their proxies to vote for or against a resolution the instrument appointing a proxy shall be in the following form or in a form appointed by the Board:

EASTPACK LIMITED

INSTRUMENT APPOINTING A PROXY

I/WE

of

being a shareholder of Eastpack Limited hereby appoint

[name of proxy] of or failing him/her of as my/our proxy to vote for me/us on my/our behalf at the [annual] [special] meeting of the Company to be held at on commencing at am and at any adjournment thereof.

I/WE direct my/our proxy to vote in the following manner (unless otherwise instructed, the proxy will vote or abstain from voting as he or she thinks fit)

Vote with a Tick

Resolutions For Against

Signed this day of

Usual signature(s)

F.8 A vote given in accordance with the terms of a notice of appointment of proxy shall be valid notwithstanding the previous death or insanity of the appointor or revocation of the proxy or of the authority under which the proxy was executed, or the transfer of any share in respect of which the proxy is given, if no intimation in writing of such death, insanity, revocation or transfer has been received by the Company before the start of the meeting or adjourned meeting.

F.9 Any notice appointing a proxy given by a shareholder shall be deemed to be revoked on receipt from the shareholder of a notice in writing to that effect at the registered office of the Company not less than one hour before the time fixed for the holding of the meeting or of the adjourned meeting for which the proxy is given.

G. POSTAL VOTES

G.1 The Board may decide in respect of a particular meeting on a particular resolution or resolutions at a meeting that the shareholders may exercise the right to vote at a meeting by casting a postal vote in accordance with the provisions of this clause.

G.2 The notice of a meeting at which shareholders are entitled to cast a postal vote must state the name of the person authorised by the Board to receive and count postal votes at that meeting.

- G.3 If no person has been authorised to receive and count postal votes at a meeting, or if no person is named as being so authorised in the notice of the meeting, every director is deemed to be so authorised.
- G.4 A shareholder may cast a postal vote on all or any of the matters to be voted on at the meeting by sending a notice of the manner in which his or her shares are to be voted to a person authorised to receive and count postal votes at that meeting. The notice must reach that person not less than 48 hours before the start of the meeting.
- G.5 It is the duty of a person authorised to receive and count postal votes at a meeting:
- (a) To collect together all postal votes received by him or her or by the Company; and
 - (b) In relation to each resolution to be voted on at the meeting, to count:
 - (i) the number of shareholders voting in favour of the resolution and the number of votes cast by each shareholder in favour of the resolution; and
 - (ii) the number of shareholders voting against the resolution, and the number of votes cast by each shareholder against the resolution;
 - (c) To sign a certificate that he or she has carried out the duties set out in paragraphs (a) and (b) of this subclause and which sets out the results of the counts required by paragraph (b) of this subclause; and
 - (d) To ensure that the certificate required by paragraph (c) of this subclause is presented to the Chairperson of the meeting.
- G.6 If a vote is taken at a meeting on a resolution on which postal votes have been cast, the Chairperson of the meeting must:
- (a) On a vote by show of hands, count each shareholder who has submitted a postal vote for or against the resolution; and
 - (b) On a poll, count the votes cast by each shareholder who has submitted a postal vote for or against the resolution.
- G.7 The Chairperson of a meeting must call for a poll on a resolution on which he or she holds sufficient postal votes that he or she believes that if a poll is taken the result may differ from that obtained on a show of hands.
- G.8 The Chairperson of a meeting must ensure that a certificate of postal votes held by him or her is annexed to the minutes of the meeting.

H. MINUTES

- H.1 The Board must ensure that minutes are kept of all proceedings at meetings of shareholders and are tabled at the subsequent meeting.
- H.2 Minutes which have been signed correct by the Chairperson of the meeting are prima facie evidence of the proceedings.

I. SHAREHOLDER PROPOSALS

- I.1 A shareholder may give written notice to the Board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.
- I.2 If the notice is received by the Board not less than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must, at the expense of the Company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- I.3 If the notice is received by the Board not less than 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- I.4 If the notice is received by the Board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the Board, the Board may, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- I.5 If the Board intends that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the Board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- I.6 The Board is not required to include in or with the notice given by the Board a statement prepared by a shareholder which the directors consider to be defamatory, frivolous, or vexatious.
- I.7 Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the Board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

J. CORPORATIONS MAY ACT BY REPRESENTATIVES

- J.1 A body corporate which is a shareholder may appoint a representative to attend a meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy.

K. VOTES OF JOINT HOLDERS

- K.1 Where two or more persons are registered as the holders of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of other joint holders.

L. LOSS OF VOTING RIGHTS IF CALLS UNPAID

- L.1 If a sum due to the company in respect of a share has not been paid, that share may not be voted at a shareholder's meeting other than a meeting of an interest group.

M. PRIVATE MEETINGS

- M.1 The meetings of the Company shall be regarded as private meetings. Except as provided in clause M.2 persons other than shareholders or persons holding proxies for members may be present there only during the pleasure of the Chairperson of the meeting.
- M.2 A director who is not a shareholder of the Company is entitled to attend and speak at meetings of shareholders.

N. VOTING BY ADMINISTRATOR ETC

- N.1 If any person otherwise entitled by this Constitution to a vote is a minor, a mentally disordered person within the meaning of the Mental Health (Compulsory Assessment & Treatment) Act 1992, or a person subject to a property order under the Protection of Personal and Property Rights Act 1988 he or she may vote by his or her guardian or committee or manager or administrator or attorney under an enduring power of attorney, as the case may be.

O. OTHER PROCEEDINGS

- O.1 Except as provided in this Schedule, and subject to the constitution of the Company, a meeting of shareholders may regulate its own procedure.

SCHEDULE 2

PROCEEDINGS OF MEETINGS OF THE BOARD

A. PROCEEDINGS OF DIRECTORS

- A.1 The Board may meet together for the dispatch of business, adjourn, and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the Chairperson shall have a second or casting vote. A director may and the Company on the requisition of a director shall at any time summon a meeting of the Board.
- A.2 No business shall be transacted at any meeting of the Board unless at least four shareholder directors are personally present at the commencement of the business.
- A.3 The Board may elect a Chairperson and determine the period for which he or she is to hold office, but if no such Chairperson is elected or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be Chairperson of the meeting.
- A.4 The Board may delegate any of its powers to committees consisting of such director or directors as it thinks fit. Any committee so formed shall in the exercise of the powers so delegated conform to any requirements that may be imposed on it by the Board.
- A.5 A committee may elect a Chairperson of its meetings. If no such Chairperson is elected, or if at any meeting the Chairperson is not present within five minutes after the time appointed for holding the meeting, the committee members present may choose one of their number to be Chairperson of the meeting.
- A.6 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the Chairperson shall have a second or casting vote.
- A.7 All acts done by any meeting of the Board or of a Committee of the Board, or by any person acting as a director, shall, notwithstanding that it is later discovered that there was some defect in the appointment of that director or person, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

B. MINUTES

- B.1 The Board shall cause minutes to be duly entered in books provided for the purpose:
- (a) Of all appointments of officers made by the Board;
 - (b) Of the names of the directors present at each meeting of the Board and of any committee of the Board;

(c) Of all resolutions and proceedings of the meetings of the Board and committees;

and any such minutes of any meeting of the Board or of any committee, if purporting to be signed by the Chairperson of the meeting, or by the Chairperson of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in the minutes.

C. UNANIMOUS RESOLUTION

C.1 A resolution in writing signed or assented to by all directors then entitled to receive notice of a Board meeting by means of facsimile or otherwise is valid and effective as if it had been passed at a meeting of the Board duly convened and held.

C.2 Any such resolution may consist of several documents (including facsimile or other means of communication) in like form each signed or assented to by one or more directors.

C.3 A copy of any such resolution must be entered in the minute book of Board proceedings.

D. TELECOMMUNICATIONS

D.1 The contemporaneous linking together by audio, or audio and visual, communication of a number of directors not less than a quorum, whether or not any one or more of the directors is out of New Zealand, shall be deemed to constitute a meeting of the Board and all the provisions in this Constitution as to meetings of the Board shall apply to such meetings so long as the following conditions are met:

(a) All the directors shall be entitled to notice of such a meeting and to be linked for the purposes of such meeting;

(b) Each of the directors taking part in the meeting must, throughout the meeting, be able to hear each of the other directors taking part;

(c) At the commencement of the meeting each director must acknowledge his or her presence, for the purpose of a meeting of the Board of the Company, to all the other directors taking part.

D.2 A director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by audio communication unless he or she has advised the Chairperson of the meeting that he or she is leaving the meeting.

D.3 A minute of the proceedings at such meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson.