Constitution of Tressel Investor Nominee Limited

Under the Companies Act 1993

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Constitution of Tressel Investor Nominee Limited

1. Defined terms and interpretation

1.1 Defined terms

In this Constitution, unless the context otherwise requires, the following words and expressions have the meanings given to them in this clause:

Act means the Companies Act 1993.

Alternate Director means a Director appointed pursuant to clause 7.8.

Board means the board of directors of the Company from time to time.

Company means Tressel Investor Nominee Limited.

Constitution means this constitution of the Company and all amendments to it from time to time.

Director means a person appointed and continuing in office for the time being, in accordance with this Constitution, as a director of the Company.

1.2 Clause references

A reference to a clause is to that clause in this Constitution.

1.3 Headings

Headings are inserted for convenience only and shall be ignored in construing this Constitution.

1.4 Interpretation

In this Constitution unless the context otherwise requires:

(a) "**written**" and "**in writing**" includes any means of reproducing words, figures or symbols:

(i) in a tangible and visible form in any medium; or

(ii) in a visible form in any medium by electronic means that enables them to be stored in permanent form and be retrieved and read;

(b) "**signature**" includes, in relation to a document in electronic form, an electronic signature created by a method which identifies the signatory and indicates the signatory's approval of the information contained in the document; and

(c) a reference to a "**statute**", "**act**", "**ordinance**", "**code**" or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this Constitution).

1.5 Other definitions have meaning set out in the Act

Words or phrases defined in the Act have the same meaning in this Constitution unless the context otherwise requires.

1.6 Constitution subject to changes in the Act

If the Act changes in a way that would, but for this clause, cause section 31 of the Act to apply to any clause then that clause shall be deemed to be amended in the same manner as the change in the Act so that the Constitution does not contravene or become inconsistent with the Act.

1.7 Use of electronic means

Where a legal requirement under the Act is reproduced in this Constitution, that legal requirement may be met, for the purposes of this Constitution, by using electronic means in accordance with the Contract and Commercial Law Act 2017 in the same manner as is required by the Contract and Commercial Law Act 2017 to meet that legal requirement under the Act. In this clause, the term "legal requirement" has the meaning given to it by the Contract and Commercial Law Act 2017.

1.8 Receipt of electronic communications

For the purposes of section 214 of the Contract and Commercial Law Act 2017, a document under this Constitution which is sent in electronic form and via an electronic communication is taken to be received:

(a) if sent by the Company, on the working day it is sent or the next working day if sent outside normal business hours, provided that the electronic communication was correctly addressed to the address provided by the addressee for the receipt of electronic communications and no error message was received by the information systems used by the Company to send the electronic communication; and

(b) if sent to the Company, at the time the electronic communication comes to the attention of the addressee or such other time as the sender and the Company may agree.

To avoid doubt, any document so sent may be in any widely used electronic form.

2. Shares

2.1 Pre-emptive rights

Section 45 of the Act does not apply to the Company.

2.2 Board may issue additional shares

Subject to the Act, and the terms of issue of any existing shares, the Board may issue additional shares (and rights or options to acquire shares) of any class (including redeemable shares) at any time, to any person and in such numbers and on such terms as the Board thinks fit.

2.3 Amount owing on issue of shares

Where money or other consideration is due at a fixed time to the Company on shares in accordance with their terms of issue, that amount does not comprise a call and no notice is required to be given to the shareholder (or other person liable under the terms of issue) before the Company may enforce payment of the amount due.

2.4 Power to issue shares otherwise than to existing Shareholders

Unless the terms of issue of any class of shares specifically provide otherwise, the issue of further shares ranking equally with, or in priority to, existing shares, whether as to voting rights or distributions, is permissible for the purposes of section 117(3)(a) of the Act and is deemed not to be an action affecting the rights attached to the existing shares.

3. Purchase of own shares

3.1 Purchase by Company of its shares

The Company may purchase or otherwise acquire shares issued by it in accordance with, but subject to the Act.

3.2 Offer to one or more shareholders only

For the purposes of section 60(1)(b) of the Act, the Company may make such offer to one or more shareholders, without having to make such offer to all shareholders, in accordance with section 61 of the Act.

3.3 Holding by Company of its shares

The Company may acquire and hold shares issued by it in accordance with sections 67A to 67C of the Act.

4. Transfer of shares

4.1 Entry in share register

Subject to clause 4.3, shares may be transferred by entry of the name of the transferee in the share register.

4.2 Form of transfer

The form of transfer may be in the form set out in Schedule 18 of the Financial Markets Conduct Regulations 2014 or in any usual or common form, or any other form approved by the Board.

4.3 Board's right to refuse registration of transfer

The Board may, within 30 working days of the receipt of a transfer of shares, refuse or delay the registration of the transfer if the Board considers that it is not in the best interests of the Company to register the transfer.

4.4 Permitted Transfer

Notwithstanding any other provision of this constitution, a share in respect of which any person or entity has granted a mortgage, charge, security interest, lien, pledge, trust or power as, or in effect as, security for the payment of money or the performance of any other obligation (**Security Interest**) to any person, may be transferred to:

(a) a person entitled to the benefit of that Security Interest (**Secured Party**) or a person acting as agent, trustee or nominee for the Secured Party; or

(b) a person who purchases the share or shares from the existing shareholder or the Secured Party or a person acting as agent, trustee or nominee for the Secured Party as a result (in any such case) of the exercise of the Secured Party's rights under that Security Interest,

and the Board shall register such a transfer under this clause 4.4 as soon as possible after receiving a request to do so from the Secured Party.

4.5 Board resolutions refusing or delaying share transfers

A resolution of the Board to refuse or delay a transfer of shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five working days of the date of the resolution being passed.

5. Distributions

5.1 Distributions must satisfy solvency test

The Board may authorise a distribution by the Company to shareholders subject to compliance with the Act.

5.2 Shares in lieu of dividends

The Board may issue shares to any shareholders who have agreed to accept the issue of shares, wholly or partly, in lieu of a proposed dividend or proposed future dividend provided such issue is made in accordance with the requirements of section 54(a) to (e) (inclusive) of the Act.

6. Proceedings at meeting of shareholders

6.1 First schedule to Act applies

Meetings of shareholders shall be conducted in accordance with Schedule 1 of the Act.

7. Directors

7.1 Number of Directors

The Company must have at least one director.

7.2 Appointment and removal by notice

Subject to clauses 7.5 and 7.6, the Directors are the persons appointed from time to time as Directors by a notice in writing signed by the holders of the majority of the ordinary shares and who have not been removed or resigned or disqualified from office under this Constitution. A Director may be removed from office at any time by a notice in writing signed by the holders of the majority of the ordinary shares. The notice may comprise one or more similar documents separately signed by the shareholders giving the notice.

7.3 Time notice is effective

A notice given under clause 7.2 takes effect upon receipt of it at the registered office of the Company (including the receipt of a facsimile or electronic copy) unless the notice specifies a later time at which the notice will take effect.

7.4 Period of office

A Director holds office until his or her resignation, disqualification or removal in accordance with the Act and this Constitution.

7.5 Appointment and removal of directors by resolution

In addition to the appointment or removal of Directors under clause 7.2, a Director may be appointed or removed from office by an ordinary resolution. A resolution to appoint two or more Directors may be voted on as one resolution without each appointment being voted individually.

7.6 Notice of removal

A notice of meeting at which the removal of a Director will be considered must state that the purpose of the meeting is the removal of the Director.

7.7 Disqualification and removal

A person will be disqualified from holding the office of Director if he or she:

(a) is removed under clause 7.2 or 7.5; or

(b) resigns in writing and is not reappointed in accordance with this Constitution; or

(c) becomes disqualified from being a director pursuant to the Act.

7.8 Appointment and removal of Alternate Directors

Every Director may, by notice given in writing to the Company, appoint any person (including any other Director) to act as an Alternate Director in the Director's place, either generally, or in respect of a specified meeting or meetings during the Director's absence from a meeting. At the Director's discretion, by notice in writing to the Company, the appointing Director may remove the Director's Alternate Director.

7.9 Powers of Alternate Director

An Alternate Director may, while acting in the place of the appointing Director, represent, exercise and discharge all the powers, rights, duties and privileges (but not including the right of acting as chairperson) of the appointing Director. The Alternate Director is subject in all respects to the same terms and provisions as the appointing Director, except as regards remuneration and except as regards the power to appoint an Alternate Director under this Constitution.

7.10 Alternate Director counted in quorum

For the purpose of establishing a quorum of the Board, an Alternate Director is deemed to be the Director appointing him or her, and if the Alternate Director is a Director he or she can count separately in both capacities.

7.11 Address of Alternate Director required

The notice of appointment of an Alternate Director must include an address for service of notice of meetings of the Board. Failure to give an address will not invalidate the appointment, but notice of meetings of the Board need not be given to the Alternate Director until an address is provided to the Company.

7.12 Duties independent

An Alternate Director shall not be the agent of his or her appointer and shall exercise his or her duties as a Director independently of his or her appointer.

7.13 Notice of Directors Meeting

Notice of a meeting of the Board must be given to every director (whether or not that director is in New Zealand). If a Director has appointed an Alternate Director under the provisions of this Constitution, notice must (subject to clause 7.11) also be given to the Alternate Director.

8. Indemnity and Insurance

8.1 Types of proceedings that may be indemnified against

The Board shall cause the Company to indemnify a Director or employee of the Company or a related company for costs incurred by him or her in any proceeding:

(a) that relates to liability for any act or omission in his or her capacity as a Director or employee; and

(b) in which judgment is given in his or her favour or in which he or she is acquitted, or which is discontinued.

8.2 Types of liability that may be indemnified against

The Board shall cause the Company to indemnify a Director or an employee of the Company or a related company in respect of:

(a) liability to any person other than the Company or a related company for any act or omission in his or her capacity as a Director or employee; or

(b) costs incurred by the Director or employee in defending or settling any claim or proceeding relating to any liability under paragraph (a) above;

not being:

(c) criminal liability; or

(d) in the case of a director, liability in respect of a breach of section 131 of the Act (which relates to the duty to act in good faith and in the best interests of the Company); or

(e) in the case of an employee, liability for breach of any fiduciary duty owed to the Company or a related company.

8.3 Insurance of directors and employees

The Board may cause the Company to effect insurance for Directors or employees of the Company or a related company in respect of:

(a) liability, not being criminal liability, for any act or omission in his or her capacity as a Director or employee; or

(b) costs incurred by such Directors or employees in defending or settling any claim or proceeding relating to any such liability; or

(c) costs incurred by a Director or employee in defending any criminal proceedings that have been brought against the Director or employee in relation to any act or omission in his or her capacity as a Director or employee and in which he or she is acquitted.

8.4 Directors to sign certificate

The Directors who vote in favour of authorising the effecting of insurance under clause 8.3 must sign a certificate stating that, in their opinion, the cost of effecting the insurance is fair to the Company.

8.5 Entry in the interests register

The Board must ensure that particulars of any indemnity given to, or insurance effected for, any Director or employee of the Company or a related company are forthwith entered in the interests register.

8.6 Definitions

For the purpose of this clause 8, “Director” includes a former Director and “employee” includes a former employee.

9. Powers and duties of the Board

9.1 Management by Board

Subject to any restrictions in the Act or this Constitution, the business and affairs of the Company must be managed by or under the direction or supervision of the Board.

9.2 Power of Board

Subject to any restrictions in the Act or this Constitution, the Board has, and may exercise, all the powers necessary for managing, directing and supervising the management of the business and affairs of the Company.

9.3 Director may act in best interests of holding company

If the Company is a wholly-owned subsidiary, a Director may (when exercising powers or performing duties as a Director), 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.

9.4 Delegation by Board

The Board may delegate to a committee of Directors, a Director, or an employee of the Company or any other person any one or more of its powers, other than the powers referred to in the Schedule 2 of the Act.

10. Proceedings of the Board

10.1 Third schedule to Act applies

Subject to clause 7.13, the proceedings of the Board shall be conducted in accordance with Schedule 3 of the Act.

11. Interested Directors

11.1 Transactions with Company

A Director, who is interested in a transaction entered into, or to be entered into by the Company, may:

(a) vote on a matter relating to the transaction;

(b) attend a meeting of the Directors at which the matter relating to the transaction arises and be included among the Directors present at the meeting for the purpose of a quorum;

(c) sign a document relating to the transaction on behalf of the Company; and

(d) do any other thing in his or her capacity as a Director in relation to the transaction,

as if the Director was not interested in the transaction.

12. Authority to bind

For the purposes of section 180(1)(a)(iii) of the Act, an obligation which, if entered into by a natural person would be required to be by deed, may (in addition to any other method of contracting permitted under the Companies Act) be entered into on behalf of the Company by a director or other person or class of persons authorised by the Board, whose signature(s) must be witnessed.

13. Liquidation

13.1 Distribution of surplus assets on liquidation

Subject to the terms of issue of any shares, upon the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed among the holders of ordinary shares in proportion to their shareholding; provided however, that the holders of shares not fully paid up shall receive only a proportionate share of his or her entitlement being an amount which is in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder to the Company in respect of the shares.

13.2 Distribution in specie

Upon the liquidation of the Company, the liquidator may, with the sanction of an ordinary resolution and any other sanction required by law, 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). The liquidator may for that purpose set such value as the liquidator deems fair upon any assets to be divided as aforesaid and may determine how the division shall be carried out as between the shareholders holding different classes of shares. 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 shareholders as the liquidator thinks fit (but so that no shareholders shall be compelled to accept any shares or other securities whereon there is any liability).