

2. CORPORATE GOVERNANCE

2.1 APPOINTMENT AND ROTATION OF DIRECTORS

- 2.1.1 Number and Residence:** The minimum number of Directors of an NZAX Issuer (other than alternate Directors) shall be three. At least two Directors shall be ordinarily resident in New Zealand.
- 2.1.2 Nominations:** No person (other than a Director retiring at the meeting) shall be elected as a Director at an annual meeting of Security holders of an NZAX Issuer unless that person has been nominated by a Security holder entitled to attend and vote at the meeting. There shall be no restriction on the persons who may be nominated as Directors (other than the holding of qualification shares, if the Constitution so requires) nor shall there be any precondition to the nomination of a Director other than compliance with time limits in accordance with this NZAX Listing Rule B2.1.2. The opening date (if any) for nominations shall not be less than three months, and the closing date for nominations shall not be more than two months, before the date of the annual meeting at which the election is to take place. An NZAX Issuer shall make an announcement to the market no less than three months prior to the date of the proposed annual meeting of Security holders advising of the opening date for Director nominations and the closing date for Director nominations. Notice of every nomination received by the NZAX Issuer before the closing date for nominations shall be given by the NZAX Issuer to all persons entitled to attend the meeting together with, or as part of, the notice of the meeting.
(Amended 1/5/04)
- 2.1.3 Confirmation of Appointment by Directors:** Any person who is appointed as a Director by the Directors shall retire from office at the next annual meeting of the NZAX Issuer, but shall be eligible for election at that meeting.
(Amended 1/5/04)
- 2.1.4 Right of Security Holder to Appoint:** The Constitution may give a Security holder the right to appoint Directors, so long as:
- (1) the proportion which the number of such Directors bears to the total number of Directors expected to hold office immediately after such appointment does not exceed the proportion of the total Votes of the NZAX Issuer attaching to Securities held by the appointer; and

- (2) if the appointer exercises its rights to appoint Directors, then the appointer has no right to vote upon the election of other Directors.

The annual report must identify Directors appointed under this NZAX Listing Rule B2.1.4 - see NZAX Listing Rule B1.5.4. (Amended 1/5/04)

- 2.1.5 Term of Appointment:** No term of appointment of an executive Director of an NZAX Issuer or any of its Subsidiaries, shall exceed five years. This provision shall not preclude reappointment of an Executive Director upon expiry of a term of appointment, and shall not affect the terms of the engagement of that Executive Director as an employee. *(Amended 1/5/04)*
- 2.1.6 Rotation:** Subject to NZAX Listing Rule B2.1.7, at least one third of the Directors or, if their number is not a multiple of three, then the number nearest to one third, shall retire from office at the annual meeting each year, but shall be eligible for re-election at that meeting. Those to retire shall be those who have been longest in office since they were last elected or deemed elected.
- 2.1.7 Exceptions to Rotation:** The following Directors shall be exempt from the obligation to retire pursuant to NZAX Listing Rule B2.1.6:
- (a) Directors appointed pursuant to NZAX Listing Rule B2.1.4; and
 - (b) Directors appointed by the Directors, who are offered for re-election pursuant to NZAX Listing Rule B2.1.3 ; and
 - (c) one Executive Director (if the Constitution so provides).
- (Amended 1/5/04)*

The Directors referred to in (a) and (c) shall be included in the number of Directors upon which the calculation for the purposes of NZAX Listing Rule B2.1.8 is based. The Directors referred to in (b) shall be excluded from that number.

NZAX Listing Rule B2.1.9 deals with the obligation of the holder of a special office such as "Founder President" to retire by rotation.

- 2.1.8 Special Office:** An NZAX Issuer may, with the prior approval of NZX, provide in its Constitution for the appointment of a person to a special office such as "Founder President". If the person holding that office is a Director, then (subject to NZAX Listing Rule B2.1.9) all of the provisions of the NZAX Listing Rules as to Directors shall apply to that person.
- 2.1.9 Application of Rotation to Holder of Special Office:** A holder of a special office in terms of NZAX Listing Rule B2.1.8 who is also a Director shall not be subject to retirement by rotation under NZAX Listing Rule B2.1.6, provided that:
- (a) the holder of a special office shall retire every fifth year following appointment to the special office, as if NZAX Listing Rule B2.1.6 applied to him or her in that year; and
 - (b) the holder of the special office shall in each year be included in the number of Directors upon which the calculation for the purposes of NZAX Listing Rule B2.1.6 is based; and
 - (c) if an Executive Director holds office and is exempted from retirement by rotation under NZAX Listing Rule B2.1.7, this NZAX Listing Rule shall not apply, and the holder of the special office shall be subject to retirement by rotation under NZAX Listing Rule B2.1.6.

NZX has a complete discretion whether or not to approve the creation of a special office. NZX will not in any event approve the creation of a special office unless:

- (a) **it is created in respect of a specified individual who has had a special connection with the NZAX Issuer (eg: a foundation director) and who is regarded as having been a very significant and outstanding contributor to the NZAX Issuer or its associated companies over a period of not less than 15 years, and who has acquired a public reputation in that regard, deserving of special recognition; and**
- (b) **the proposal has the unanimous support of the Directors of the NZAX Issuer.**

2.2 PROCEEDINGS AND POWERS OF DIRECTORS

2.2.1 Vacancies and Reduction of Numbers: Directors may act notwithstanding any vacancy in their body but, if and for so long as their number is reduced below the number fixed by the Constitution as the minimum number of Directors, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of summoning an annual meeting of the NZAX Issuer, but for no other purpose.

2.2.2 Restriction on Casting Vote of Chairperson: In cases where two Directors form a quorum, the chairperson of a meeting at which only two Directors are present shall not have a casting vote. *(Amended 1/5/04)*

2.2.3 Interested Directors: Subject to NZAX Listing Rule B2.2.4, a Director shall not vote on a Board resolution in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum for the purposes of consideration of that matter. For this purpose, the term "interested" bears the meaning assigned to that term in section 139 of the Companies Act 1993, on the basis that if an NZAX Issuer is not a company registered under that Act, the reference to the "company" in that section shall be read as a reference to the NZAX Issuer. *(Amended 1/5/04)*

2.2.4 Exception: Notwithstanding NZAX Listing Rule B2.2.3, a Director of an NZAX Issuer which is a company registered under the Companies Act 1993 may vote in respect of and be counted in the quorum for the Board for the purposes of a matter in which that Director is interested if that matter is one in respect of which, pursuant to an express provision of that Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the Companies Act 1993. *(Amended 1/5/04)*

2.3 DIRECTORS' REMUNERATION

2.3.1 Fixing Remuneration: No remuneration shall be paid to a Director in his or her capacity as a Director of the NZAX Issuer or any Subsidiary, other than a Subsidiary which is Listed (including any remuneration paid to that Director by a Subsidiary, other than a Subsidiary which is also Listed) unless that remuneration has been authorised by an Ordinary Resolution of the NZAX Issuer. Each such resolution shall express Directors' remuneration as either: *(Amended 1/5/04)*

- (a) a monetary sum per annum payable to all Directors of the NZAX Issuer taken together; or *(Amended 1/5/04)*
- (b) a monetary sum per annum payable to any person who from time to time holds office as a Director of the NZAX Issuer. *(Amended 1/5/04)*

If remuneration is expressed in accordance with (a), then in the event of an increase in the total number of Directors of the NZAX Issuer holding office, the Directors may, without the authorisation of an Ordinary Resolution of the NZAX Issuer, increase the total remuneration by such amount as is necessary to enable the NZAX Issuer to pay to the additional Director or Directors of the NZAX Issuer remuneration not exceeding the average amount then being paid to each of the other non-executive Directors (other than the chairperson) of the NZAX Issuer.

No resolution which increases the amount fixed pursuant to a previous resolution shall be approved at an annual meeting of the NZAX Issuer unless notice of the amount of increase has been given in the notice of meeting. Nothing in this NZAX Listing Rule B2.3.1 shall affect the remuneration of executive Directors in their capacity as executives.

Directors' remuneration for work not in the capacity of a Director of the NZAX Issuer or a Subsidiary may be approved by the Directors without Shareholder approval, subject to NZAX Listing Rule B4.1 (if applicable). *(Amended 1/5/04)*

1. **NZAX Listing Rule B2.3.1 is intended to enable a meeting of an NZAX Issuer to fix Director's remuneration either as an overall sum payable to all Directors of the NZAX Issuer (which may be divided up amongst the Directors of the NZAX Issuer in such manner as they see fit) or as an amount per Director.** *(Amended 1/5/04)*
2. **Note that full disclosure in the annual report of Directors' remuneration is required by virtue of s.211(1)(f) of the Companies Act 1993.** *(Amended 1/5/04)*

2.3.2 Payments Upon Cessation of Office: An NZAX Issuer may make a payment to a Director or former Director of that NZAX Issuer, or his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or

cessation of office of that Director, only if the amount of the payment, or the method of calculation of the amount of that payment is authorised by an Ordinary Resolution of the NZAX Issuer provided that an NZAX Issuer may make a payment to a Director or a former Director that was in office on or before 1 May 2004 and has continued to hold office since that date, or to his or her dependents, by way of a lump sum or pension, upon or in connection with the retirement or cessation of office of that Director, without an Ordinary Resolution of the NZAX Issuer provided that the total amount of that payment (or the base for the pension) does not exceed the total remuneration of that Director in his or her capacity as a Director in any three years chosen by the NZAX Issuer. *(Amended 1/5/04)*

Nothing in this NZAX Listing Rule B2.3.2 shall affect any amount paid to an executive Director upon or in connection with the termination of his or her employment with the NZAX Issuer, or the payment of any amount attributable to the contribution (or any normal subsidy related thereto) made by a Director to a superannuation scheme. *(Amended 1/5/04)*

1. **In the case of any resolution under NZAX Listing Rules B2.3.1 or B2.3.2, no vote in favour of any such resolution shall be cast by the Director intended to receive a payment or any Associated Person of such Director.** *(Amended 1/5/04)*
2. **Any resolution of Security holders that may effect the total amount payable to a Director or Directors as previously approved under NZAX Listing Rule B2.3.2 must disclose that fact, the total amount that would be payable to that Director or Directors if the resolution is approved and why the resolution will effect the total amount payable to that Director or Directors.** *(Inserted 1/5/04)*