

Constitution of MFB Group Limited

I certify that this document is a complete, true and correct copy of the current constitution of MFB Group Limited

Signed



Director of MFB Group Limited

Chris Marshall

Name of Director

16th December 2020

Date



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CONSTITUTION OF MFB GROUP LIMITED

1 Interpretation

In this constitution:

1.1 The following expressions have the following meanings:

the Act means the Companies Act 1993;

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

the Company means MFB Group Limited;

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

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

Share means a share in the Company;

Shareholder means a person whose name is entered in the share register as the holder for the time being of one or more Shares issued by the Company from time to time;

Shareholders' Agreement means the shareholders' agreement relating to the Company between the Company and the other parties thereto dated on or about 22 November 2016; and

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

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

1.3 Headings appear as a matter of convenience and do not affect the interpretation of this constitution.

1.4 The singular includes the plural and vice versa, and words importing one gender include the other genders.

1.5 A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations.

1.6 The Schedules form part of this constitution.

2 Companies Act

The Company, the Board, each Director and each Shareholder have the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution.

3 Shareholders' Agreement

If any provision of this constitution is inconsistent with a provision of the Shareholders' Agreement, the provision of the Shareholders' Agreement will prevail and, to the extent permitted by law, the relevant provision of this constitution shall be read down to the extent necessary to ensure that the Shareholders' Agreement prevails. The Shareholders' Agreement is deemed incorporated in this constitution to the extent necessary to give effect to this clause.

4 Board to issue Shares

Subject to the Shareholders' Agreement, the Board may issue Shares at any time, to any person, and in any number it thinks fit.

5 Board may refuse or delay a Share transfer in certain cases

The Board may in its absolute discretion refuse or delay the registration of any transfer of Shares if:

- 5.1 the holder of the Shares has failed to pay the Company an amount due in respect of those Shares, whether by way of consideration for the issue of the Shares or in respect of sums payable by the holder of the Shares in accordance with this constitution;
- 5.2 permitted to do so by the Act;
- 5.3 the transfer is not accompanied by such evidence as the Board may reasonably require to establish the right of the transferor to make the transfer; or
- 5.4 registration would impose a liability to the Company on the transferee and the transferee has not signed the transfer form.

6 Board must refuse a Share transfer in certain cases

The Board must refuse the registration of any transfer of Shares if:

- 6.1 it is required to do so by law; or
- 6.2 the transferor has not complied with the provisions of the Shareholders' Agreement.

7 Board may make calls

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

- 7.2 The Board may, at its discretion, deduct from any dividend payable to any Shareholder any amount owed by the Shareholder to the Company on account of any call.
- 7.3 If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the Board and calculated from the time specified for payment until the day of actual payment. The Board may waive some or all of the payment of that interest.

8 Company may acquire and hold Shares

- 8.1 The Company may purchase or otherwise acquire Shares and may hold those Shares in accordance with the Act. If the Company intends to transfer any Shares which it has acquired and held, such transfer will be treated as a new issue of Shares and the Board must first comply with the requirements of this constitution and the Shareholders' Agreement for issues of Shares.
- 8.2 With prior Shareholder approval by special resolution but subject to the provisions of the Shareholders' Agreement, the Board may purchase or otherwise acquire Shares issued by the Company from such Shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act.

9 Company may issue and redeem redeemable Shares

The Company may:

- 9.1 subject to compliance with applicable provisions of this constitution, and the Shareholders' Agreement, issue redeemable Shares; and
- 9.2 redeem redeemable Shares in accordance with the Act and the Shareholders' Agreement and the terms of issue of the redeemable Shares; and
- 9.3 exercise an option to redeem redeemable Shares issued by the Company in relation to one or more holders of redeemable Shares, in accordance with the Act and the Shareholders' Agreement and the terms of issue of the redeemable Shares.

10 Proceedings at meetings of Shareholders

Subject to the Shareholders' Agreement, the First Schedule to the Act (in this clause, *the Schedule*) governs the proceedings at meetings of Shareholders, but with the following modifications:

- 10.1 The right to choose a chairperson of the meeting set out in clause 1(2) of the Schedule is vested initially in the Directors present and may only be exercised by the Shareholders present if no Director is willing to act as chairperson or if no Director is present within 15 minutes of the time appointed for the commencement of the meeting.
- 10.2 A quorum for a meeting of Shareholders is present if the requirements of the Shareholders' Agreement are met.

10.3 No proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.

10.4 Where:

- (a) the Shareholder has died or become incapacitated; or
- (b) the proxy, or the authority under which the proxy was executed, has been revoked; or
- (c) the Share in respect of which the notice of proxy is given has been transferred,

and before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

10.5 The representative of a corporate Shareholder is entitled to attend and be heard at a meeting of Shareholders as if the representative were the Shareholder.

10.6 A Shareholder may not exercise the right to vote at a meeting by casting a postal vote.

10.7 Except as provided in the Schedule, in this clause and in any Shareholders Agreement, a meeting of Shareholders may regulate its own procedure through the chairperson.

11 Written Shareholders' resolution instead of holding a meeting

A Shareholders' resolution in writing, which complies with the requirements of the Shareholders' Agreement, is as valid as if it had been passed at a meeting of Shareholders.

12 Number of Directors

The minimum number of Directors shall be 2 and the maximum number of Directors shall be 9.

13 Shareholders may appoint, remove and replace Directors

The Shareholders will have the right to appoint, remove and replace Directors in accordance with the provisions of the Shareholders' Agreement.

- 14 **Board may appoint Directors**
Subject to the Shareholders' Agreement, the Board may appoint any person to be a Director to fill a casual vacancy or as an additional Director, but subject to the maximum number of Directors provided for under this constitution.
- 15 **Election of chairperson of the Board**
The Directors may elect one of their number as chairperson of the Board.
- 16 **Chairperson to hold office on certain terms**
The chairperson of the Board holds that office until he or she vacates office or the Directors elect a chairperson in his or her place.
- 17 **Meetings of the Board**
Subject to the Shareholders' Agreement, the First Schedule of this constitution governs the proceedings at meetings of the Board, except where otherwise agreed by all Directors in relation to a particular meeting or meetings. The Third Schedule to the Act does not apply to proceedings of the Board.
- 18 **Directors may act in interests of holding company**
If at any time the Company is a wholly-owned subsidiary of a body corporate then, when exercising powers or performing duties as a Director, any Director may act in a manner which he or she believes is in the best interests of the Company's holding company even though it may not be in the best interests of the Company.
- 19 **Board delegates to comply with regulations**
In exercising the Board's delegated powers, any committee of Directors, Director, employee or employees of the Company or any other person must comply with any regulations that the Board may impose.
- 20 **Committee proceedings**
The provisions of this constitution relating to proceedings of the Board also apply to proceedings of any committee of Directors, except to the extent the Board determines otherwise.
- 21 **Interested Director may vote**
Under section 144 of the Act, a Director of the Company who is interested in a transaction entered into, or to be entered into, by the Company may vote on a matter relating to the transaction and otherwise act in his or her capacity as a Director in relation to the transaction as if he or she were not interested in the transaction unless prohibited by the Shareholders' Agreement.
- 22 **Board's power to authorise remuneration and other benefits is limited**
Subject to the Shareholders' Agreement, the Board may authorise:
- 22.1 the payment of remuneration or the provision of other benefits by the Company to a Director for services as a Director or in any other capacity;
 - 22.2 the payment by the Company to a Director of compensation for loss of office;
 - 22.3 the making of loans by the Company to a Director;

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

22.5 the entering into of a contract to do any of the things set out in this clause,

only if the relevant payment or action has been approved by an ordinary resolution or with the prior written agreement or concurrence of all entitled persons. This clause does not apply to the payment of remuneration or the provision of other benefits to an executive Director in his or her capacity as an executive or to any other Director in respect of any professional services provided by that Director to the Company.

23 Directors may appoint and remove alternate Directors

Every Director may:

23.1 appoint any person who is not disqualified by the Act from being a Director to act as an alternate Director in his or her place; and

23.2 remove that person from that office,

by giving written notice to that effect to the Company.

24 Alternate Director

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

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

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

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

25 Company may indemnify directors and employees for certain liabilities

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

26 Company may effect insurance for directors and employees

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

The Board may determine the amounts and the terms and conditions of any such insurance.

27 Manner of execution of deeds

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

27.1 two or more Directors; or

27.2 if there is only one Director, that Director, whose signature must be witnessed; or

27.3 a Director, or any other person authorised by the Board, whose signature must be witnessed; or

27.4 one or more attorneys appointed by the Company in accordance with the Act.

28 Distribution of surplus assets in kind

If the Company is liquidated the liquidator shall, at the direction of Shareholders by special resolution, but subject to any other sanction required by the Act:

28.1 divide among the Shareholders in kind the whole or any part of the surplus assets of the Company and for that purpose the liquidator may:

(a) fix such values for surplus assets as the liquidator considers to be appropriate, and

(b) determine how the division will be carried out as between Shareholders or different classes of Shareholder; and

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

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

**FIRST SCHEDULE
PROCEEDINGS OF THE BOARD**

1 Director's power to convene meetings

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

2 Notice to be sent to Director's address

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

3 Notice to contain certain details

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

4 Period of notice required to be given to Directors

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

5 Absent directors

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

6 Directors may waive irregularities in notice

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

7 Methods of holding meetings

A meeting of the Board may be held either:

- 7.1 By a number of Directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
- 7.2 By means of audio, or audio and visual, communication by which a quorum of Directors participating can simultaneously hear each other throughout the meeting.

8 Quorum for Board meeting

The quorum necessary for the transaction of business at a meeting of the Board is the quorum set out in the Shareholders' Agreement. No business may be transacted at a meeting of the Board unless a quorum is present.

9 Meeting adjourned if no quorum

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

10 Chairperson to chair meetings

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

11 Voting on resolutions

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

12 Chairperson does not have casting vote

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

13 Board must keep minutes of proceedings

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

14 **Written resolutions of Board permitted**

- 14.1 A Board Resolution in writing, which complies with the requirements of the Shareholders' Agreement, is valid and effective as if it had been passed at a meeting of the Board duly convened and held.

15 **Board may regulate other proceedings**

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