

CONSTITUTION

of

BANK OF NEW ZEALAND

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The Companies Act 1993

**CONSTITUTION
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1. PRELIMINARY

Definitions

1.1 In this Constitution unless the contrary intention appears:

"Alternate Director" means a person appointed as alternate director under clause 14;

"Auditor" means the auditor for the time being of the Company;

"Chairperson" means the chairperson of the board of Directors of the Company and "Deputy Chairperson" means the deputy chairperson of the board;

"Charge" includes a mortgage;

"Committee" and "Committee of Directors" means any Director or Directors acting as a committee of Directors;

"Companies Act" means the Companies Act 1993;

"Company" means Bank of New Zealand;

"Constitution" means this constitution as altered or added to from time to time and a reference to a provision of this constitution is a reference to that provision as altered or added to from time to time;

"Director" means a director of the Company, and where appropriate includes an Alternate Director;

"Directors" means all or some of the Directors acting as a board;

"Executive Director" means a person appointed as executive director under clause 13;

"Managing Director" means a person appointed as managing director under clause 13, and where appropriate includes an assistant managing director or an acting managing director;

"Member" means a person for the time being entered in the Register as a member of the Company;

"Paid", in relation to Shares, includes credited as paid;

"Parent Company" means National Australia Bank Limited;

"Register" means the share register kept in accordance with the Companies Act;

"Registered Office" means the registered office for the time being of the Company;

"Related Company" and "Subsidiary" have the same meanings as in the Companies Act;

"Representative" means a representative appointed by a Member in accordance with clause 6.29;

"Share" means a share in the capital of the Company.

Interpretation

1.2 In this Constitution unless the contrary intention appears:

- (a) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to writing includes typewriting, printing, telegram, facsimile and other modes of representing or reproducing words in a visible form;
- (e) a reference to a section is a reference to a section of the Companies Act;
- (f) a reference to the Companies Act, or to a provision of the Companies Act, means the Companies Act or that provision as amended from time to time, or any statute or provision enacted in its place, and includes regulations and other instruments under it;
- (g) a reference to a clause is a reference to a clause in this Constitution; and
- (h) words and phrases which are defined in the Companies Act have the same meanings when used in this Constitution.

1.3 Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

1.4 Powers conferred on the Parent Company, the Company, the Directors, a Committee of Directors, a Director or a Member may be exercised at any time and from time to time.

Notice from Parent Company

1.5 The Parent Company shall exercise a power, make a request or requirement, issue an authorisation or give a consent, direction or approval for a purpose under this Constitution by notice in writing:

- (a) under its common seal; or
- (b) signed by:
 - (i) a managing director of the Parent Company, or
 - (ii) any other person authorised in that behalf either generally or in a particular case by notice in writing in accordance with paragraph (a) or subparagraph (b)(i) of clause 1.5,

served on the Company in accordance with section 388 of the Companies Act.

2. SHARES

Issues of Shares and grant of options

2.1 Subject to the Companies Act, this Constitution and any special rights conferred on the holders of any Shares or class of Shares:

- (a) all new Shares are under the control of the Directors;
- (b) subject to paragraph (e), the Directors may allot or otherwise dispose of them with such preferred, deferred or other rights and subject to such restrictions as to dividends, voting, return of capital, payment of calls or otherwise to such persons, on such terms and for such consideration as they think fit;
- (c) the Directors may on the issue of Shares differentiate between the holders as to the amount of calls to be paid and the times of payment;
- (d) subject to paragraph (e), the Directors may grant to any person an option over Shares at the price for the Shares fixed by them and may fix the period during which the option may be exercised and the consideration payable for such option; and
- (e) before allotting or disposing of any Shares, or granting any option over Shares, to any person who is not an existing holder of any Shares:
 - (i) the Directors must first offer (by notice in writing) the Shares or the option over Shares (as the case may be) to the Parent Company; and
 - (ii) the Parent Company shall have 30 days from receipt of the notice under paragraph (e)(i) to accept (by notice in writing to the Company) the offer on its own behalf or on behalf of any person nominated in writing by the Parent Company; and
 - (iii) if the Parent Company does not accept the offer in accordance with paragraph (e)(ii), the Directors may offer the Shares, or grant an option over Shares, to any person on terms and conditions and for a consideration that is not more favourable to the person to whom the offer is made than the terms and conditions and consideration on which the Shares or options over Shares were offered to the Parent Company.

Preference Shares and Redeemable Shares

- 2.2 Notwithstanding the provisions of clause 2.1 the Company may not issue any preference Shares or any Shares which are redeemable at the option of the Company or the holder of the Shares or on a specified date unless the Directors have complied with clause 2.1(e) and all the rights of the holders and the Company in relation to such Shares are set out in this Constitution.

3. TRANSFER OF SHARES

Registration

- 3.1 A transfer of Shares must not be registered unless there has been lodged with the Company a proper instrument of transfer executed by the transferor and by the transferee.
- 3.2 The transferor remains the Member in respect of Shares until the name of the transferee is entered in the Register.

Instruments of transfer

- 3.3 Subject to any applicable law an instrument of transfer must be in a usual or common form or in any other form acceptable to the Directors and must be delivered to the Company for registration accompanied by the certificate for the Shares to be transferred.

Restrictions on transfer

- 3.4 The Directors may not register a transfer of Shares except with the prior consent of the Parent Company and, provided the requirements of clauses 3.1 and 3.3 have been complied with, shall register a transfer of shares if required to do so by the Parent Company.

4. LIABILITY OF MEMBERS

Liability of Members for the obligations of the Company

- 4.1 A Member is not liable for an obligation of the Company by reason only of being a Member.

Liability of Members to the Company

- 4.2 Notwithstanding any other provision in this Constitution other than clause 4.3 the liability of a Member to the Company is limited to:

- (a) any amount unpaid on a Share held by the Member;
- (b) any liability under sections 131 to 137 of the Companies Act that arises by reason of section 126(2) of the Companies Act;
- (c) any liability to repay a distribution received by the Member to the extent that the distribution is recoverable under section 56 of the Companies Act; and
- (d) any liability under section 100 of the Companies Act.

Other liabilities unaffected

- 4.3 Nothing in clause 4.2 shall affect the liability of a Member to the Company under a contract, including a contract for the issue of Shares, or for any tort, or breach of a fiduciary duty, or other actionable wrong committed by the Member.

5. GENERAL MEETINGS

- 5.1 The Directors may convene a general meeting whenever they think fit and shall do so whenever requested by the Parent Company or required to do so by the Companies Act.

Notice of general meeting

- 5.2 Written notice of the time and place of a general meeting must be sent to every Member entitled to receive notice of the meeting and to every Director and the Auditor not less than 10 working days before the meeting.

- 5.3 The notice of meeting must state -

- (a) the nature of the business to be transacted at the meeting in sufficient detail to enable a Member to form a reasoned judgment in relation to it; and
- (b) the text of any special resolution to be submitted to the meeting.

- 5.4 An irregularity in a notice of a meeting is waived if all the Members entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity, or if all such Members agree to the waiver.

- 5.5 The accidental omission to give notice of a meeting to, or the failure to receive notice of a meeting by, a Member does not invalidate the proceedings at that meeting.

Auditor's and Directors' rights to attend general meetings

- 5.6 The Auditor or an agent authorised by the Auditor in writing for the purpose is entitled to attend any general meeting, to receive all notices of and other communications relating to any general meeting which a Member is entitled to receive and to be heard at any general meeting on any part of the business of the meeting which concerns the Auditor in that capacity, and is entitled to be heard notwithstanding that the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting.

- 5.7 A Director is entitled to attend any general meeting and any separate meeting of the holders of any class of Shares, to receive all notices of and other communications relating to any such meeting which a Member or the holder of any class of Shares is entitled to receive and to be heard at any such meeting on any part of the business of the meeting.

Cancellation or postponement of general meeting

- 5.8 Where a general meeting (excluding an annual general meeting and a meeting called on the written request of Members in accordance with the Companies Act) is convened by the Directors, they may, whenever they think fit and subject to the prior consent of the Parent Company, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.
- 5.9 Written notice of postponement of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company at least three days before the date for which the meeting is convened and must specify the reason for postponement.

6. PROCEEDINGS AT GENERAL MEETINGS

Quorum

- 6.1 One Member present in person or by proxy or Representative is a quorum at a general meeting.
- 6.2 An item of business may not be transacted at a general meeting unless a quorum is present.
- 6.3 If a quorum is not present within 30 minutes after the time appointed for the meeting:
- (a) in the case of a meeting called on the written request of Members, 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.
- 6.4 If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

Chairperson

- 6.5 The Chairperson is entitled to preside at meetings of Members, but if the Chairperson is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement): the Deputy Chairperson, a Director chosen by a majority of the Directors present, the only Director present, or a Member, proxy or Representative chosen by a majority of the Members, proxies and Representatives present.
- 6.6 If there is an equality of votes the Chairperson of the meeting has both on a show of hands and at a poll, a casting vote in addition to any votes to which the Chairperson is entitled as a Member or proxy or Representative of a Member. The Chairperson has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

Methods of holding meetings

- 6.7 A meeting of Members may be held either:
- (a) by a number of Members, 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 Members participating and constituting a quorum, can simultaneously hear each other throughout the meeting.

How questions decided

- 6.8 In the case of a meeting of Members held under clause 6.7(a), 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.
- 6.9 In the case of a meeting of Members held under clause 6.7(b), unless a poll is demanded, voting at the meeting shall be by the Members signifying individually their assent or dissent by voice.
- 6.10 A declaration by the Chairperson of the meeting that a resolution is carried by the requisite majority is conclusive evidence of that fact unless a poll is demanded in accordance with clause 6.11.
- 6.11 At a meeting of Members a poll may be demanded by:
 - (a) not less than 5 Members having the right to vote at the meeting; or
 - (b) a Member or Members representing not less than 10 percent of the total voting rights of all Members having the right to vote at the meeting; or
 - (c) by a Member or Members 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 10 percent of the total amount paid up on all Shares that confer that right; or
 - (d) the Chairperson of the meeting.
- 6.12 A poll may be demanded either before or after the vote is taken on a resolution.
- 6.13 If a poll is taken, votes must be counted according to the votes attached to the Shares of each Member present in person or by proxy or Representative and voting. On a show of hands, each Member present in person and each other person present as proxy or Representative has one vote.
- 6.14 The instrument appointing a proxy or Representative 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 or Representative for a Member has the same effect as a demand by the Member.

Adjournment

- 6.15 The Chairperson of a meeting may with the consent of the meeting adjourn the meeting from time to time and place to place, but the only business that may be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

Right to appoint proxy

- 6.16 A Member entitled to attend at a meeting of the Company or of any class of Members is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting and a proxy has the same right as the Member to speak and vote at the meeting.

Instrument of proxy

- 6.17 An instrument appointing a proxy must be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing and must also be in a form approved by the

directors and state whether the appointment is for a particular meeting or a specified term not exceeding twelve months.

- 6.18 An instrument appointing a proxy must be produced before the start of the meeting.

Resolutions in lieu of meeting

- 6.19 A Members' resolution in lieu of meeting authorised by section 122 may consist of several documents in like form, each signed by one or more Members. A facsimile of any such signed resolution shall be as valid and effectual as the original signed document with effect from completion of its transmission.

- 6.20 In the case of a Member which is a corporation the signature of any director or the secretary of that corporation or, in the case of a Share registered in the name of joint holders, the signature of any one or more of them, shall be deemed to be and shall be accepted as the signature of the Member concerned for all purposes including the signature of any form of proxy and the signature of any resolution in writing or other document signed or approved pursuant to clause 6.19.

No Postal Votes

- 6.21 Members may not exercise the right to vote at a meeting by casting a postal vote.

Shareholder proposals

- 6.22 A Member may give written notice to the Directors of a matter the Member proposes to raise for discussion or resolution at the next meeting of Members at which the Member is entitled to vote.

- 6.23 If the notice is received by the Directors not less than 20 working days before the last day on which notice of the relevant meeting of Members is required to be given by the Directors, the Directors must, at the expense of the Company, give notice of the Member proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.

- 6.24 If the notice is received by the Directors 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 Members is required to be given by the Directors, the Directors must, at the expense of the Member, give notice of the Member proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.

- 6.25 If the notice is received by the Directors less than 5 working days before the last day on which notice of the relevant meeting of Members is required to be given by the Directors, the Directors may, if practicable, and at the expense of the Member, give notice of the Member proposal and the text of any proposed resolution to all Members entitled to receive notice of the meeting.

- 6.26 If the Directors intend that Members may vote on the proposal by proxy, they must give the proposing Member the right to include in or with the notice given by the Directors a statement of not more than 1,000 words prepared by the proposing Member in support of the proposal, together with the name and address of the proposing Member.

- 6.27 The Directors are not required to include in or with the notice given by the Directors a statement prepared by a Member which the Directors consider to be defamatory, frivolous, or vexatious.

- 6.28 Where the costs of giving notice of the Member proposal and the text of any proposed resolution are required to be met by the proposing Member, the proposing Member must, on giving notice to the Directors, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

Corporations may act by representatives

- 6.29 A body corporate which is a Member may appoint a representative to attend a meeting of Members on its behalf in the same manner as that in which it could appoint a proxy.

Votes of joint holders

- 6.30 Where 2 or more persons are registered as the holder of a Share, the vote of the person named first in the Register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

Meeting may regulate its own procedure

- 6.31 Except as provided in the Companies Act and in this Constitution, a meeting of Members may regulate its own procedure.

7. DIRECTORS

Number of Directors

- 7.1 The number of Directors must not be less than two.

No share qualification

- 7.2 A Director does not require a share qualification.

Appointment

- 7.3 The Parent Company may by notice to the Company appoint a person as a Director either to fill a casual vacancy or as an additional Director. Subject to clauses 7.6 and 10.1 a person appointed a Director under this clause 7.3 or clause 7.5 who is not a full-time employee of the Parent Company or of a Subsidiary of the Parent Company holds that office for the term of three years from the date of appointment, but is eligible for re-appointment under this Constitution from the expiration of that term.
- 7.4 Each person holding office as a Director at the date on which the Company is reregistered under the Companies Act is to be deemed appointed by the Parent Company under clause 7.3.
- 7.5 The Directors may with the approval of the Parent Company appoint a person as a Director to fill a casual vacancy.

Removal

- 7.6 The Parent Company may by notice to the Company remove any Director from office.

8. REMUNERATION AND EXPENSES OF DIRECTORS

- 8.1 A Director, including a Managing Director and any other Executive Director, is entitled to be paid out of the funds of the Company as remuneration for services as a Director such sum accruing from day to day as the Parent Company determines.
- 8.2 If a Director, at the request of the Directors or of the Parent Company, performs additional or special duties for the Company, the Company may remunerate that Director by payment of a fixed sum or salary to be determined by the Parent Company and that remuneration may be either in addition to or in substitution for that Director's remuneration under clause 8.1.
- 8.3 A Director is also entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or

from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

- 8.4 Notwithstanding clause 8.1 or 8.2, unless otherwise determined by the Parent Company, no remuneration is to be paid by the Company to a Director who is a director of the Parent Company.

9. RETIREMENT BENEFITS FOR DIRECTORS

- 9.1 Subject to the provisions of the Companies Act, a Director may with the prior consent of the Parent Company be paid a retirement benefit, as determined by the Directors and approved by the Members in general meeting.
- 9.2 A retirement benefit includes any benefit paid in consequence of or in connection with the death of the Director or loss by the Director of, or resignation by the Director from, the office of Director, or the termination of the Director's employment by the Company or any Related Company of the Company.
- 9.3 Where a retirement benefit is payable in consequence of the death of a Director the payment may be made to or for the benefit of the Director's legal personal representatives, widow, widower or children or other person or persons who, in the opinion of the Directors, is or are at the time of the Director's death wholly or partly dependent on the Director, or to such of them and in such shares as the Directors determine.
- 9.4 Where a sum becomes payable under clause 9.3 to or for the benefit of an infant:
- (a) the Company may pay that sum for the benefit of the infant to a person appearing to the Company to be a parent or guardian or other person having lawful custody or control of the infant or with whom the infant is residing;
 - (b) the receipt of a person to whom a sum is paid under clause 9.4(a) is a good discharge; and
 - (c) the Company is not bound to see to or inquire about the application of the sum.
- 9.5 The Company and a Director may enter into a contract for the purpose of providing for or giving effect to the payment of a retirement benefit in accordance with clause 9.

10. VACATION OF OFFICE AND CONFLICT OF INTEREST

10.1 Vacation of office

The office of a Director is automatically vacated:

- (a) in the case of a Director who is not a full-time employee of the Parent Company or of a Subsidiary of the Parent Company, on the expiration of three years from the date of the Director's appointment unless:
 - (i) the office of that Director has been vacated beforehand by the operation of clause 10.1(b), or
 - (ii) on or before the expiration of that period that Director has been reappointed under clause 7.3 or 7.5; or
- (b) if the Director:
 - (i) ceases to be a Director by virtue of, or becomes prohibited from being a Director because of an order made under, the Companies Act,

- (ii) without the prior written consent of the Parent Company accepts or holds office in a corporation which carries on banking or a related business and is not the Parent Company or a Related Company of the Parent Company, or
- (iii) is removed from office by the Parent Company in accordance with clause 7.6.

Director's Interests

- 10.2 A Director who is interested (as defined in section 139) in a transaction to which the Company is a party may attend a meeting of Directors at which a matter relating to the transaction arises and be included among the Directors present at the meeting for the purpose of a quorum but shall not vote on the matter nor be present while the matter is being considered at the meeting.
- 10.3 Notwithstanding clause 10.2 a Director shall be entitled to vote if the Director's interest is:
 - (a) as a Director of the Company or of a Related Company of the Parent Company; or
 - (b) as a Member in common with the other Members.
- 10.4 The Parent Company may relax or suspend the operation of clause 10.2 to any extent and either generally or in respect of any particular matter or class of matters.
- 10.5 An interested Director may, as a Director, sign any contract or other document which is executed by the Company as a deed.
- 10.6 For the purposes of section 140(1), a general notice entered in the interests register or disclosed to the directors to the effect that a Director is a shareholder, director, officer or trustee of another named company or another person and is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that company or person, is a sufficient disclosure of interest in relation to that transaction.
- 10.7 In clause 10.5, where the context admits, "contract" includes an arrangement and a proposed contract or arrangement.

11. POWERS OF DIRECTORS

- 11.1 Subject to the provisions of the Companies Act and this Constitution the business and affairs of the Company must be managed by, or under the direction or supervision of, the Directors and the Directors have all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the Company.
- 11.2 The Directors may not sell or dispose of the Company's main undertaking without the prior written consent of the Parent Company.
- 11.3 Subject to the provisions of clause 11.5, in the exercise of their powers and the discharge of their duties the Directors shall have regard to and are responsible for the implementation by the Company of:
 - (a) policies in the areas of accounting, human resources, information technology, treasury operations and the functions and operations of credit bureaux; and
 - (b) strategic plans and operations plans,prescribed by the Parent Company from time to time by notice in writing under clause 1.5.
- 11.4 A person dealing with the Company is not to be concerned to see or enquire as to whether the powers of the Directors have been in any way restricted hereunder or as to whether any requisite consent of the Parent Company has been obtained and no obligation incurred or security given or transaction effected by the Company to or with any third party is invalid or ineffectual unless the third party had at the time express notice that the incurring of such

obligation or the giving of such security or the effecting of such transaction was in excess of the powers of the Directors.

- 11.5 A Director may not, when exercising powers or performing duties as a director, act other than in what he/she believes is the best interests of the Company.

12. PROCEEDINGS OF DIRECTORS

Meetings

- 12.1 The Directors may meet for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.

Quorum

- 12.2 Until otherwise determined by the Directors two Directors present in person or by proxy are a quorum.

Effect of vacancy

- 12.3 The continuing Directors may act notwithstanding a vacancy in their number but, if and so long as their number is reduced below the minimum fixed by clause 7.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies in accordance with clause 7.5 to the extent necessary to bring their number up to that minimum or of summoning a general meeting.

Convening meetings

- 12.4 A Director may convene a meeting of the Directors.

Appointment of proxy

- 12.5 A Director may attend and vote by proxy at a meeting of the Directors if the proxy is a Director and has been appointed by writing under the hand of the appointor or by telegram, facsimile transmission or other form of visible communication from the appointor. Such an appointment may be general or for any particular meeting or meetings.

Chairperson and Deputy Chairperson

- 12.6 The Directors shall elect a Chairperson and may elect a Deputy Chairperson and may determine the period during which each is to hold office.
- 12.7 The Chairperson or Deputy Chairperson may be removed from that office by a resolution of the Directors of which not less than 14 days' notice has been given to all the Directors for the time being in New Zealand.
- 12.8 The Chairperson is entitled to preside at meetings of the Directors but, if the Chairperson is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement): the Deputy Chairperson, a Director chosen by a majority of the Directors present.

How questions decided

- 12.9 Questions arising at a meeting of the Directors are to be decided by a majority of votes and in the event of an equality of votes the Chairperson of the meeting has a casting vote.
- 12.10 Whenever exercising a casting vote, the Chairperson shall have regard to any policies and plans referred to in clause 11.3 which are in operation at the time.

Committees

- 12.11 Subject to the provisions of the Companies Act, the Directors may delegate any of their powers to Committees consisting of such Director or Directors as they think fit and may revoke that delegation.
- 12.12 A Committee in the exercise of the powers so delegated is to conform to any regulations imposed by the Directors.
- 12.13 Subject to clause 12.12, the meetings and proceedings of a Committee consisting of two or more Directors are governed by the provisions of this Constitution as to the meetings and proceedings of the Directors so far as they are applicable.

Delegation of powers

- 12.14 Subject to the provisions of the Companies Act, the Directors may with the prior approval of the Parent Company, which approval shall not be unreasonably withheld or delayed or given by the Parent Company subject to any condition that is inconsistent with the duty of a Director under clause 11.5 not to act other than in what the Director believes is in the best interests of the Company, confer on any person or persons such of the powers conferred on the Directors by this Constitution, for such time, to be exercised for such purposes, on such terms and with such restrictions as they think fit and all or any of those powers may be conferred collaterally with but not to the exclusion of the powers of the Directors and may with the like approval be revoked or varied by the Directors. Subject to any general or specific directions given or conditions imposed by the Directors, a Managing Director may from time to time delegate to any employee of the Company any of his or her powers, including any powers delegated to him or her by the Directors.

Written resolution

- 12.15 A resolution in writing signed or approved by letter or facsimile transmission by all the Directors or all the members of a Committee, in either case being at least a quorum, is as valid and effectual as if it had been passed at a meeting of the Directors or of that Committee duly called and constituted at the time the resolution was last signed or approved by one or more of the Directors or members of that Committee.

Telephone meeting

- 12.16 For the purposes of this Constitution the contemporaneous linking together by telephone or other means of instantaneous communication ("telephone") of a number of the Directors, being at least a quorum, is to be deemed to constitute a meeting of the Directors or, as the case may be, of a Committee of Directors and all the provisions of this Constitution as to meetings of the Directors apply to such a meeting if the following conditions are met:
- (a) all the Directors entitled to notice of a meeting of the Directors or, as the case may be, of a Committee of Directors received notice of the meeting and for this purpose notice of the meeting may be given on the telephone;
 - (b) all the Directors wanting to take part in the meeting are linked by telephone for the purposes of the meeting; and
 - (c) at the commencement of the meeting each Director taking part acknowledges the respective Director's presence for the purposes of the meeting to all other Directors taking part and acknowledges that the Director is able to hear each of the other Directors taking part.
- 12.17 A Director may not leave a telephone meeting by disconnecting the telephone without the consent of the Chairperson of the meeting and a Director is to be deemed to be present and form part of the quorum throughout the meeting unless the Director has obtained the consent of the Chairperson of the meeting to leave the meeting.

- 12.18 A minute of the proceedings at a telephone meeting is sufficient evidence of the proceedings and the observance of all necessary formalities if it is certified as a correct minute by the Chairperson of the meeting or of the next following meeting.

Validity of acts of Directors

- 12.19 All acts of the Directors, a Committee or a person acting as a Director or Committee or member of a Committee are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

13. MANAGING AND EXECUTIVE DIRECTORS

Appointment and removal

- 13.1 The Directors may, on the recommendation of the Parent Company, appoint one or more of their number to the office of Managing Director or Executive Director either for a fixed term or without limitation as to period of appointment but not for life, and may with the approval remove a person so appointed and appoint another instead. Nothing in this clause shall require a Director to act on a recommendation of the Parent Company if the Director believes that acting on the recommendation would be inconsistent with the duty of the Director under clause 11.5 not to act other than in what the Director believes is in the best interests of the Company.
- 13.2 A Managing Director or Executive Director, subject to the provisions of any contract with the Company, is subject to the same provisions as to resignation and removal as the other Directors and automatically ceases to be a Managing Director or Executive Director on ceasing to be a Director.

14. ALTERNATE DIRECTORS

- 14.1 A Director ("appointor") may by writing under the appointor's hand or by telegram, facsimile or other form of visible communication, appoint a person approved by the Parent Company to act as an Alternate Director in the appointor's place whether for a stated period or periods or until the happening of a specified event or from time to time.
- 14.2 An Alternate Director:
- (a) may be removed or suspended from office by the Parent Company by notice in writing given under its common seal or signed as provided by clause 1.5(b);
 - (b) subject to this Constitution is entitled to receive notice of meetings of the Directors and to attend and vote if the appointor is not present and, if also a Director in the Alternate Director's own right or Alternate Director for another Director as well, to have a separate vote on behalf of the appointor in addition to the Alternate Director's own or that other Director's vote;
 - (c) may exercise all the powers and perform all the duties of the appointor (other than the power to appoint an Alternate Director and any additional powers and duties specifically vested in or delegated to a Managing Director or Executive Director in his capacity as such) insofar as the appointor has not exercised or performed them;
 - (d) automatically ceases to be an Alternate Director if the appointor ceases to be a Director;
 - (e) whilst acting as a Director is responsible to the Company for the Alternate Director's own acts and defaults and the appointor is not responsible for them;

- (f) may not receive any remuneration from the Company as a Director except for any special services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director; and
- (g) may not be taken into account separately from the appointor in determining the number of Directors.

15. POWERS OF ATTORNEY

- 15.1 The Directors may by revocable or irrevocable power of attorney appoint a person to be the attorney of the Company for such purposes and with such powers (not exceeding those conferred on the Directors by this Constitution and the Companies Act) and for such period and subject to such conditions as the Directors think fit.
- 15.2 Any such appointment may be made in favour of a body corporate or of the members, directors, nominees or managers of a body corporate or firm or in favour of a fluctuating body of persons whether nominated directly or indirectly by the Directors and any such power of attorney may contain such provisions for the protection or convenience of persons dealing with the attorney as the Directors think fit.
- 15.3 Any such attorney may be authorised to sub-delegate all or any of the powers vested in that person.

16. NEGOTIABLE INSTRUMENTS

- 16.1 Cheques, bills of exchange, promissory notes and other negotiable instruments may be signed, accepted, drawn, made or indorsed on behalf of the Company in such manner and by such persons (whether Directors or officers of the Company or not) as the Directors determine but not otherwise.

17. RESERVES

- 17.1 The Directors may with the prior approval of the Parent Company before authorising or paying a dividend set aside out of the profits of the Company such sums as they think proper as reserves to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may properly be applied.
- 17.2 The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends, without transferring those profits to a reserve.

18. DIVIDENDS

Calculation and apportionment

- 18.1 Subject to this Constitution and the provisions of the Companies Act, the Directors, with the prior approval of the Parent Company, may make such distributions by way of dividend to the Members as they think fit.
- 18.2 Except in the case of Shares issued on terms providing to the contrary, all dividends are to be apportioned and paid proportionately to the amounts Paid on the Shares during any portion or portions of the period in respect of which the dividend is authorised.

Directors' powers

- 18.3 The power to authorise dividends, pay interim dividends and fix the time for their payment is, subject to clause 18.1, vested in the Directors.

- 18.4 A dividend does not bear interest against the Company.

Effect of transfer

- 18.5 A transfer of Shares does not pass the right to a dividend or other distribution authorised or made on them after the transfer and before its registration.

Distribution of specific assets

- 18.6 The Directors, when authorising a dividend or paying an interim dividend, may with the prior approval of the Parent Company resolve that the dividend be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend, including Paid shares in or debentures of any other body corporate, and may direct that the dividend payable in respect of any particular Shares be satisfied wholly or partly by such a distribution and that the dividend payable in respect of other Shares be paid in cash.
- 18.7 If a difficulty arises in regard to such a distribution, the Directors may with the prior approval of the Parent Company settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any Members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.

19. CAPITALIZATION OF PROFITS

- 19.1 The Directors may with the prior approval of the Parent Company resolve that any moneys, investments or other assets:

- (a) forming part of the undivided profits of the Company;
- (b) standing to the credit of a reserve; or
- (c) in the hands of the Company and available for dividend,

be capitalized and applied, in any of the ways mentioned in clause 19.2, for the benefit of such of the Members as would have been entitled to receive them if distributed by way of dividend and in the proportions to which those Members would have been entitled in such a distribution.

- 19.2 The ways in which moneys, investments or other assets referred to in clause 19.1 may be applied for the benefit of Members under that clause are:

- (a) in paying any amounts unpaid on Shares held by Members;
- (b) in paying up in full Shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in clause 19.2(a) and partly as mentioned in clause 19.2(b).

20. INSPECTION OF BOOKS

- 20.1 In addition to those persons entitled pursuant to the provisions of the Companies Act, any person authorised by the Parent Company may at any time inspect the books and documents of the Company or any of them.

21. MINUTES

- 21.1 The Directors shall cause minutes to be made in books kept for the purpose:

- (a) of all appointments of officers made by the Directors; and

- (b) of all proceedings at meetings of the Company, of the holders of any class of shares in the Company, and of the Directors, and of Committees of Directors, including the names of the Directors present at each such meeting.

22. LIQUIDATION

22.1 Distribution of surplus assets

Subject to the terms of issue of any Shares and to clause 22.2, upon the liquidation of the Company the assets, if any, remaining after payment of the debts and liabilities of the Company and the costs of the liquidation shall be distributed among the Members in proportion to their shareholding provided, however, that the holder of Shares not fully Paid 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 Member to the Company in respect of the Shares pursuant to the terms of issue of the Shares.

22.2 Distribution in specie

Upon a liquidation of the Company, the liquidator, with the sanction of an ordinary resolution of Members and any other sanction required by law, may divide amongst the Members 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 the liquidator deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the Members or different classes of Members. 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 Members as the liquidator thinks fit, but so that no Member shall be compelled to accept any shares or other securities whereon there is any liability.

23. INDEMNITY AND INSURANCE

- 23.1 Subject to the provisions of the Companies Act, the Company may give such indemnities and effect such insurances as the Directors deem appropriate including the indemnities referred to in sections 162(3) and (4) and the insurance referred to in section 162(5) of the Companies Act.

24. ACQUISITION OF COMPANY'S OWN SHARES

Authority to acquire own shares

- 24.1 The Company is permitted to purchase or otherwise acquire Shares.

Acquisition other than pro-rata

- 24.2 The Directors may make an offer to one or more Members to acquire Shares.

Treasury Stock

- 24.3 The Company may hold Shares. The transfer by the Company of Shares shall be subject to the provisions of this Constitution relating to the issue of Shares.

25. PREFERENCE SHARES

Definitions

25.1 In clauses 25.1 to 25.18 of this Constitution, unless the contrary intention appears:

“Benchmark Rate” is the rate per annum (expressed on a percentage yield basis rounded, if necessary, to the nearest two decimal places with five being rounded up) which is determined by the Company by reference to the mid market swap rate for a 5 year term, being the mean of the bid and offered swap rates as displayed on Reuters page “FISSWAP” at or about 11am on the Rate Set Date (adjusted as necessary to a quarterly rate), commencing on the Issue Date or, if a rate is unable to be determined in that manner, by reference to the mean (rounded if necessary to the nearest two decimal places with five being rounded up) of the bid and offered swap rates (adjusted as necessary to a quarterly rate) quoted by four registered banks in New Zealand which usually quote rates on the relevant screen page (as selected by the Company) at or about 11am on the Rate Set Date for a 5 year interest rate swap commencing on the Issue Date;

“BNZIS” means BNZ Income Securities Limited;

“BNZIS Constitution” means the current constitution of BNZIS;

“BNZIS Share” means a perpetual non-cumulative share issued by BNZIS;

“Business Day” means any day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland and Wellington;

“Call” means the call option in respect of the BNZIS Shares being exercised by NAB at any time pursuant to clause 6.9 of the BNZIS Constitution and the BNZIS Shares being transferred in accordance with clause 6.11 of the BNZIS Constitution;

“Distribution” has the meaning in section 2(1) of the Companies Act;

“Dividend” means any dividend on the Preference Shares payable pursuant to clause 25.2;

“Dividend Amount” in respect of a Dividend Period means a sum in respect of each Preference Share calculated (to two (2) decimal places) in accordance with the following formula:

$$\frac{\text{Issue Price} \times \text{Dividend Rate} \times (1-t)}{4}$$

where:

Dividend Rate is:

- (a) in respect of the period from (and including) the Issue Date (where the Issue Date is before the first Rate Start Date) to (but excluding) the first Rate Start Date, the aggregate of the Benchmark Rate and the Margin; and
- (b) for each subsequent five yearly period from (and including) each Rate Start Date (or where the Issue Date is on or after the first Rate Start Date, the Issue Date) to (but excluding) the next Rate Start Date, the aggregate of the Reset Benchmark Rate applying on that first mentioned date and the Margin.

“t” is the weighted average basic rate of New Zealand income tax applicable to the Company under Schedule 1 of the Tax Act during the period ending on the relevant Dividend Payment Date;

“Dividend Payment Condition” has the meaning given to that term in clause 25.5;

“Dividend Payment Date” means, in respect of the first Dividend Payment Date, the date that is 3 months after the Issue Date and, thereafter, each date that is 3 months after the immediately preceding Dividend Payment Date, provided that if such date is not a Business Day, the reference shall be deemed to be to the next day which is a Business Day, unless such Business Day falls in the following calendar month, in which event it shall be the immediately preceding Business Day;

“Dividend Period” means each period commencing on (and including) a Dividend Payment Date and ending on (but excluding) the next Dividend Payment Date, or in respect of the first Dividend Period, the period commencing on (and including) the Issue Date and ending on (but excluding) the first Dividend Payment Date;

“Fully Credited” means in relation to a Dividend, that Imputation Credits are validly attached to the Dividend, so that the imputation ratio of the Dividend is the maximum imputation ratio permitted by law;

“Holder” means the person who is entered in the share register of the Company as the holder for the time being of a Preference Share;

“Imputation Credit” means an imputation credit as defined in section OB 1 of the Tax Act;

“Issue Date” means, in respect of a Preference Share, the date on which that Preference Share is issued;

“Issue Price” means \$1.00 in respect of each Preference Share;

“Margin” means the margin, expressed as a percentage rate per annum, determined by the Company prior to the first Issue Date;

“NAB Group” means the Parent Company and each of its Related Companies;

“Ordinary Shares” means the ordinary shares from time to time of the Company;

“Preference Share” means a perpetual non-cumulative preference share issued by the Company;

“Rate Reset Date” means the Business Day falling two Business Days before the Rate Start Date;

“Rate Set Date” means the Business Day falling two Business Days before the first Issue Date;

“Rate Start Date” means the fifth anniversary of the first Issue Date and each five yearly date falling after that date which corresponds with the Issue Date or if that date is not a Business Day, the next Business Day unless such Business Day falls in the following calendar month, in which event it shall be the immediately preceding Business Day;

“RBNZ” means Reserve Bank of New Zealand;

“Record Date” means, in respect of a Dividend Payment Date, the date which is 10 days prior to such Dividend Payment Date, or if that date is not a Business Day, the preceding Business Day;

“Reset Benchmark Rate” means the rate per annum (expressed on a percentage yield basis rounded, if necessary, to the nearest two decimal places with five being rounded up) which is determined by the Company by reference to the mid market swap rate for a 5 year term, being the mean of the bid and offered swap rates as displayed on Reuters page “FISSWAP” or its successor page at or about 11am on the applicable Rate Reset Date (adjusted as necessary

to a quarterly rate), commencing on the applicable Rate Start Date, or, if a rate is unable to be determined in that manner, by reference to the mean (rounded if necessary to the nearest two decimal places with five being rounded up) of the bid and offered swap rates (adjusted as necessary to a quarterly rate) quoted by four registered banks in New Zealand which usually quote rates on the relevant screen page (as selected by the Company) at or about 11am on that Rate Reset Date for a 5 year interest rate swap commencing on that Rate Start Date;

“Special Resolution” means a resolution approved by a majority of seventy-five per cent (75%) of the votes of those Holders entitled to vote and voting on the issue;

“Tax Act” means the Income Tax Act 2004.

A reference to the Tax Act, or to a provision of the Tax Act, means the Tax Act or that provision as amended from time to time, or any statute or provision enacted in its place, and includes regulations or other instruments under it.

Calculation of Accrued Dividend

In determining the amount of any Dividends accrued during part of a Dividend Period, such amount shall be determined as follows:

$$A = I \times DR \times (1 - t) \times \frac{X}{365}$$

Where

A = the amount of the accrued Dividend;

X = the number of days from (and including) the last Dividend Payment Date (or, in the case of the first Dividend Period, the Issue Date) to (but excluding) the date of determination;

I = the Issue Price;

DR = the applicable Dividend Rate;

t = the weighted average basic rate of New Zealand income tax applicable to the Company under Schedule 1 of the Tax Act during the period from the last Dividend Payment Date, or the Issue Date (as the case may be) to the date of determination.

Dividend

25.2 Subject to clause 25.5, the Preference Shares carry the right to a dividend, payable in priority to Distributions in respect of Ordinary Shares, in respect of each Dividend Period equal to the Dividend Amount for that Dividend Period.

25.3 If a Dividend is paid in respect of any Dividend Period, it shall be paid on the Dividend Payment Date on which that Dividend Period ends to each Holder on the Record Date immediately preceding that Dividend Payment Date.

25.4 Dividends shall rank for payment:

(a) in priority to the rights of holders of Ordinary Shares with respect to dividends or other Distributions;

(b) equally with the rights of holders of any other Shares that, by their terms, are expressed to rank equally with the Preference Shares, with respect to dividends or other Distributions;

- (c) after the rights of holders of all classes of Shares from time to time other than Ordinary Shares and Shares referred to in clause 25.4(b) with respect to dividends or other Distributions; and
- (d) after all rights of creditors of the Company.

Dividend Payment Condition

25.5 Dividends on the Preference Shares will not be paid if any of the following conditions (each a "Dividend Payment Condition") applies:

- (a) the Directors in their sole discretion do not resolve to pay the Dividend on the relevant Dividend Payment Date;
- (b) such payment would result in any of the Company's capital ratios ceasing to comply with RBNZ's then current capital adequacy requirements;
- (c) without limiting section 52(1) of the Companies Act, the Directors are not satisfied on reasonable grounds that the Company will satisfy the solvency test (as defined in section 4 of the Companies Act) immediately after the payment of the Dividend; or
- (d) (unless APRA otherwise agrees) either of the conditions set out in paragraphs (c) and (d) of the Dividend Payment Conditions (as defined in the BNZIS Constitution) in respect of the BNZIS Shares would apply when determining whether a dividend would be payable on the BNZIS Shares on the dividend payment date for those BNZIS Shares corresponding to the Dividend Payment Date (or, if the BNZIS Shares are no longer on issue, a condition equivalent to either of those conditions would apply).

No Dividends accrue due to Holders if any of the above Dividend Payment Conditions applies.

25.6 If and to the extent that all or any part of a Dividend is not paid because a Dividend Payment Condition applies, then the Company shall have no liability to pay that Dividend, and the right of Holders to receive that Dividend shall be cancelled absolutely. No interest accrues on any unpaid Dividends and Holders have no claim or entitlement in respect of interest on any unpaid Dividends. Dividends on the Preference Shares are not cumulative. The terms of the Preference Shares contain no events of default. Accordingly, the non-payment of any Dividend will not constitute an event of default in respect of the Preference Shares. A Holder shall have no right to apply for the Company to be placed in liquidation, or be placed in voluntary administration, or to cause a receiver, or a receiver and manager, to be appointed to the Company merely on the grounds that the Company does not pay a Dividend in accordance with the terms of the Preference Shares.

25.7 A Holder:

- (a) may not exercise any right of set-off against the Company in respect of any claim by the Company against that Holder; and
- (b) shall have no right of set off and no off setting rights or claims against the Company if the Company does not pay a Dividend in accordance with the terms of the Preference Shares.

25.8 In the event that a Dividend is not paid by the Company on the Preference Shares on a Dividend Payment Date (for whatever reason), the Company must not declare or make any Distributions or payments on or with respect to any Ordinary Shares or any other Shares that rank equally with or junior to the Preference Shares (other than pro rata payments or distributions on Shares that rank equally with the Preference Shares) unless and until:

- (a) the Company has paid Dividends in full on the Preference Shares on two consecutive Dividend Payment Dates immediately following that Dividend Payment Date; or

- (b) the Call is exercised and the BNZIS Shares have been transferred pursuant to the Call.

Capital

25.9 Each Holder shall have the right in a liquidation of the Company to payment of the Issue Price of the Preference Shares held by that Holder and an amount equal to any Dividend accrued from (and including) the last Dividend Payment Date to (but excluding) the date of the commencement of liquidation (to the extent unpaid). That right to payment shall rank:

- (a) in priority to all rights of holders of Ordinary Shares;
- (b) equally with the rights of holders of any other Shares that, by their terms, are expressed to rank equally with the Preference Shares;
- (c) after the rights of holders of all classes of Shares from time to time other than Ordinary Shares and Shares referred to in clause 25.9(b); and
- (d) after all rights of creditors of the Company.

Voting

25.10 Holders shall have no right to receive notice of, attend, or vote at meetings of shareholders of the Company, other than meetings called under clause 25.14.

Transfer

25.11 Notwithstanding clause 3.3, a Holder may transfer any Preference Share under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company.

25.12 The provisions of clause 3.4 shall not apply to any transfer of Preference Shares.

25.13 The Company shall not be liable for any stamp duty or other taxes payable in connection with the transfer of any Preference Share.

Amendment

25.14 Subject to clause 25.15, the rights, privileges, limitations and conditions attaching to the Preference Shares may be amended (with the prior written consent of APRA (if required)) and with the approval of:

- (a) the Directors;
- (b) all holders of Ordinary Shares; and
- (c) a Special Resolution of Holders.

25.15 No amendment of the nature referred to in clause 25.14 shall be made if that amendment would affect the capital treatment of the Preference Shares by RBNZ.

Conduct of Meetings

25.16 A meeting of Holders to consider a resolution of the nature referred to in clause 25.14 shall be convened and held in accordance with the First Schedule to the Companies Act. At any such meeting:

- (a) where voting is by show of hands or by voice every Holder present in person or by representative has one vote; and

- (b) on a poll every Holder present in person or by representation has one vote in respect of each Preference Share held by that Holder.

Issue of further Shares

- 25.17 Subject to clause 2, the Company may issue further Shares which rank equally with, junior to or in priority to the Preference Shares (and whether entitled to cumulative or non-cumulative dividends) and such an issue is deemed not to be an action affecting the rights attaching to the Preference Shares and shall give no rights to the Holders to participate in the issue of any such further Shares.

Deductions

- 25.18 The Company may make any deduction or withholding on account of tax or on any other account from Dividend payments which the Company is required by law to make. The Company is not required to make any additional payment to Holders as a consequence of making any deduction or withholding on account of tax or on any other account from Dividend payments.

26. 2009 PREFERENCE SHARES

Definitions

- 26.1 In clauses 26.1 to 26.18 of this Constitution, unless the contrary intention appears:

“Benchmark Rate” is the rate per annum (expressed on a percentage yield basis rounded, if necessary, to the nearest two decimal places with five being rounded up) which is determined by the Company by reference to the mid market swap rate for a five-year term, being the mean of the bid and offered swap rates as displayed on Reuters page “FISSWAP” or its successor page at or about 11am on the Rate Set Date (adjusted as necessary to a quarterly rate), or, if a rate is unable to be determined in that manner, by reference to the mean (rounded if necessary to the nearest two decimal places with five being rounded up) of the bid and offered swap rates (adjusted as necessary to a quarterly rate) quoted by four registered banks in New Zealand which usually quote rates on the relevant screen page (as selected by the Company) at or about 11am on the Rate Set Date for a five-year interest rate swap;

“BNZIS 2” means BNZ Income Securities 2 Limited;

“BNZIS 2 Constitution” means the current constitution of BNZIS 2;

“BNZIS 2 Share” means a perpetual non-cumulative share issued by BNZIS 2;

“Business Day” means any day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland and Wellington;

“Call” means the call option in respect of the BNZIS 2 Shares being exercised by the Parent Company at any time pursuant to clause 6.9 of the BNZIS 2 Constitution and the BNZIS 2 Shares being transferred in accordance with clause 6.11 of the BNZIS 2 Constitution;

“Distribution” has the meaning in section 2(1) of the Companies Act;

“Dividend” means any dividend on the Preference Shares payable pursuant to clause 26.2;

“Dividend Amount” means a sum in respect of each Preference Share calculated (to two (2) decimal places) in accordance with the following formulae:

- (i) in respect of the first Dividend Period:

$$\text{Issue Price} \times \text{Dividend Rate} \times \frac{X}{365} \times (1-t)$$

- (ii) in respect of a Dividend Period other than the first Dividend Period:

$$\frac{\text{Issue Price} \times \text{Dividend Rate} \times (1-t)}{4}$$

Where:

Dividend Rate is (in each case):

- (a) in respect of the period from (and including) the Issue Date (where the Issue Date is before the first Rate Start Date) to (but excluding) the first Rate Start Date, the aggregate of the Benchmark Rate and the Margin; and
- (b) for each subsequent five-yearly period from (and including) each Rate Start Date (or where the Issue Date is on or after the first Rate Start Date, the Issue Date) to (but excluding) the next Rate Start Date, the aggregate of the Reset Benchmark Rate applying on that first mentioned date and the Margin;

“t” is (in each case) the weighted average basic rate of New Zealand income tax applicable to the Company under Schedule 1 of the Tax Act during the period ending on the relevant Dividend Payment Date; and

“X” is the number of days from (and including) the first Issue Date to (but excluding) 28 September 2009;

“Dividend Payment Condition” has the meaning given to that term in clause 26.5;

“Dividend Payment Date” means 28 March, 28 June, 28 September and 28 December of each calendar year (provided that if such date is not a Business Day, the reference shall be deemed to be to the next day which is a Business Day, unless such Business Day falls in the following calendar month, in which event it shall be the immediately preceding Business Day), with the first Dividend Payment Date being 28 September 2009;

“Dividend Period” means each period commencing on (and including) a Dividend Payment Date and ending on (but excluding) the next Dividend Payment Date, or in respect of the first Dividend Period, the period commencing on (and including) the Issue Date and ending on (but excluding) the first Dividend Payment Date;

“Fully-Credited” means in relation to a Dividend, that Imputation Credits are validly attached to the Dividend, so that the imputation ratio of the Dividend is the maximum imputation ratio permitted by law;

“Holder” means the person who is entered in the share register of the Company as the holder for the time being of a Preference Share;

“Imputation Credit” means an imputation credit as defined in section YA 1 of the Tax Act;

“Issue Date” means, in respect of a Preference Share, the date on which that Preference Share is issued;

“Issue Price” means \$1.00 in respect of each Preference Share;

“Margin” means the margin, expressed as a percentage rate per annum, determined by the Company prior to the first Issue Date;

“Ordinary Shares” means the ordinary shares from time to time of the Company;

“Preference Share” means a perpetual non-cumulative preference share issued by the Company pursuant to this clause 26, and for the avoidance of doubt, does not include the 2008 Preference Shares or any other perpetual non-cumulative preference shares issued by the Company pursuant to clause 25;

“Rate Reset Date” means the Business Day falling two Business Days before the Rate Start Date;

“Rate Set Date” means 26 May 2009 or such other date, being a Business Day prior to the Issue Date, as the Company may select;

“Rate Start Date” means 28 June 2014 and each five-yearly date falling after that date, or if that date is not a Business Day, the next Business Day unless such Business Day falls in the following calendar month, in which event it shall be the immediately preceding Business Day;

“RBNZ” means Reserve Bank of New Zealand;

“Record Date” means, in respect of a Dividend Payment Date, the date which is 10 days prior to such Dividend Payment Date, or if that date is not a Business Day, the preceding Business Day;

“Reset Benchmark Rate” means the rate per annum (expressed on a percentage yield basis rounded, if necessary, to the nearest two decimal places with five being rounded up) which is determined by the Company by reference to the mid market swap rate for a five-year term, being the mean of the bid and offered swap rates as displayed on Reuters page “FISSWAP” or its successor page at or about 11am on the applicable Rate Reset Date (adjusted as necessary to a quarterly rate), or, if a rate is unable to be determined in that manner, by reference to the mean (rounded if necessary to the nearest two decimal places with five being rounded up) of the bid and offered swap rates (adjusted as necessary to a quarterly rate) quoted by four registered banks in New Zealand which usually quote rates on the relevant screen page (as selected by the Company) at or about 11am on that Rate Reset Date for a five-year interest rate swap;

“Special Resolution” means a resolution approved by a majority of 75% of the votes of those Holders entitled to vote and voting on the issue;

“Tax Act” means the Income Tax Act 2007.

“2008 Preference Shares” means the 449,730,000 perpetual non-cumulative preference shares issued by the Company pursuant to clause 25 to BNZIM on 28 March 2008.

A reference to the Tax Act, or to a provision of the Tax Act, means the Tax Act or that provision as amended from time to time, or any statute or provision enacted in its place, and includes regulations or other instruments under it.

Calculation of Accrued Dividend

In determining the amount of any Dividends accrued during part of a Dividend Period, such amount shall be determined as follows:

$$A = I \times DR \times (1 - t) \times \frac{X}{365}$$

Where:

A = the amount of the accrued Dividend;

X = the number of days from (and including) the last Dividend Payment Date (or, in the case of the first Dividend Period, the Issue Date) to (but excluding) the date of determination;

I = the Issue Price;

DR = the applicable Dividend Rate;

t = the weighted average basic rate of New Zealand income tax applicable to the Company under Schedule 1 of the Tax Act during the period from the last Dividend Payment Date, or the Issue Date (as the case may be) to the date of determination.

Dividend

26.2 Subject to clause 26.5, the Preference Shares carry the right to a dividend, payable in priority to Distributions in respect of Ordinary Shares, in respect of each Dividend Period equal to the Dividend Amount for that Dividend Period.

26.3 If a Dividend is paid in respect of any Dividend Period, it shall be paid on the Dividend Payment Date on which that Dividend Period ends to each Holder on the Record Date immediately preceding that Dividend Payment Date.

26.4 Dividends shall rank for payment:

- (a) in priority to the rights of holders of Ordinary Shares with respect to dividends or other Distributions;
- (b) equally with the rights of holders of any other Shares that, by their terms, are expressed to rank equally with the Preference Shares, with respect to dividends or other Distributions;
- (c) after the rights of holders of all classes of Shares from time to time other than Ordinary Shares and Shares referred to in clause 26.4(b) with respect to dividends or other Distributions; and
- (d) after all rights of creditors of the Company.

For the purposes of clause 25.4(b), the Preference Shares shall rank equally with the 2008 Preference Shares and any other perpetual non-cumulative preference shares issued by the Company pursuant to clause 25 with respect to dividends or other Distributions, to the effect that any dividends or other Distributions on the Preference Shares shall be made on a pari passu basis with the dividends and other Distributions to be made on the 2008 Preference Shares and such other perpetual non-cumulative preference shares issued by the Company pursuant to clause 25.

Dividend Payment Condition

26.5 Dividends on the Preference Shares will not be paid if any of the following conditions (each a "Dividend Payment Condition") applies:

- (a) the Directors in their sole discretion do not resolve to pay the Dividend on the relevant Dividend Payment Date;
- (b) such payment would result in any of the Company's capital ratios ceasing to comply with RBNZ's then current capital adequacy requirements;
- (c) without limiting section 52(1) of the Companies Act, the Directors are not satisfied on reasonable grounds that the Company will satisfy the solvency test (as defined in section 4 of the Companies Act) immediately after the payment of the Dividend; or
- (d) (unless APRA otherwise agrees) either of the conditions set out in paragraphs (c) and (d) of the Dividend Payment Conditions (as defined in the BNZIS 2 Constitution) in respect of the BNZIS 2 Shares would apply when determining whether a dividend would be payable on the BNZIS 2 Shares on the dividend payment date for those BNZIS 2 Shares corresponding to the Dividend Payment Date (or, if the BNZIS 2 Shares are no longer on issue, a condition equivalent to either of those conditions would apply).

No Dividends accrue due to Holders if any of the above Dividend Payment Conditions applies.

- 26.6 If and to the extent that all or any part of a Dividend is not paid because a Dividend Payment Condition applies, then the Company shall have no liability to pay that Dividend, and the right of Holders to receive that Dividend shall be cancelled absolutely. No interest accrues on any unpaid Dividends and Holders have no claim or entitlement in respect of interest on any unpaid Dividends. Dividends on the Preference Shares are not cumulative. The terms of the Preference Shares contain no events of default. Accordingly, the non-payment of any Dividend will not constitute an event of default in respect of the Preference Shares. A Holder shall have no right to apply for the Company to be placed in liquidation, or be placed in voluntary administration, or to cause a receiver, or a receiver and manager, to be appointed to the Company merely on the grounds that the Company does not pay a Dividend in accordance with the terms of the Preference Shares.
- 26.7 A Holder:
- (a) may not exercise any right of set-off against the Company in respect of any claim by the Company against that Holder; and
 - (b) shall have no right of set off and no off setting rights or claims against the Company if the Company does not pay a Dividend in accordance with the terms of the Preference Shares.
- 26.8 In the event that a Dividend is not paid by the Company on the Preference Shares on a Dividend Payment Date (for whatever reason), the Company must not declare or make any Distributions or payments on or with respect to any Ordinary Shares or any other Shares that rank equally with or junior to the Preference Shares (other than pro-rata payments or distributions on Shares that rank equally with the Preference Shares, which, for the avoidance of doubt, includes the 2008 Preference Shares and any other perpetual non-cumulative preference shares issued by the Company pursuant to clause 25) unless and until:
- (a) the Company has paid Dividends in full on the Preference Shares on two consecutive Dividend Payment Dates immediately following that Dividend Payment Date; or
 - (b) the Call is exercised and the BNZIS 2 Shares have been transferred pursuant to the Call.

Capital

- 26.9 Each Holder shall have the right in a liquidation of the Company to payment of the Issue Price of the Preference Shares held by that Holder and an amount equal to any Dividend accrued from (and including) the last Dividend Payment Date to (but excluding) the date of the commencement of liquidation (to the extent unpaid). That right to payment shall rank:
- (a) in priority to all rights of holders of Ordinary Shares;
 - (b) equally with the rights of holders of any other Shares that, by their terms, are expressed to rank equally with the Preference Shares;
 - (c) after the rights of holders of all classes of Shares from time to time other than Ordinary Shares and Shares referred to in clause 26.9(b); and
 - (d) after all rights of creditors of the Company.

For the purpose of clause 25.9(b), the Preference Shares shall rank equally with the 2008 Preference Shares and any other perpetual non-cumulative shares issued by the Company pursuant to clause 25 with respect to the right of a Holder in a liquidation of the Company to payment of the Issue Price of the Preference Shares held by that Holder and an amount equal to any Dividend accrued from (and including) the last Dividend Payment Date to (but excluding) the date of the commencement of the liquidation (to the extent unpaid), to the effect that any such payment made in respect to the Preference Shares shall be made on a pari passu basis with the corresponding payment made under clause 25.9 on a liquidation of the

Company to holders of the 2008 Preference Shares or such other perpetual non-cumulative preference shares issued by the Company pursuant to clause 25.

Voting

- 26.10 Holders shall have no right to receive notice of, attend, or vote at meetings of shareholders of the Company, other than meetings called under clause 26.14.

Transfer

- 26.11 Notwithstanding clause 3.3, a Holder may transfer any Preference Share under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company.
- 26.12 The provisions of clause 3.4 shall not apply to any transfer of Preference Shares.
- 26.13 The Company shall not be liable for any stamp duty or other taxes payable in connection with the transfer of any Preference Share.

Amendment

- 26.14 Subject to clause 26.15, the rights, privileges, limitations and conditions attaching to the Preference Shares may be amended (with the prior written consent of APRA (if required)) and with the approval of:
- (a) the Directors;
 - (b) all holders of Ordinary Shares; and
 - (c) a Special Resolution of Holders.
- 26.15 No amendment of the nature referred to in clause 26.14 shall be made if that amendment would affect the capital treatment of the Preference Shares by RBNZ.

Conduct of Meetings

- 26.16 A meeting of Holders to consider a resolution of the nature referred to in clause 26.14 shall be convened and held in accordance with the First Schedule to the Companies Act. At any such meeting:
- (a) where voting is by show of hands or by voice every Holder present in person or by representative has one vote; and
 - (b) on a poll every Holder present in person or by representation has one vote in respect of each Preference Share held by that Holder.

Issue of further Shares

- 26.17 Subject to clause 2, the Company may issue further Shares which rank equally with, junior to or in priority to the Preference Shares (and whether entitled to cumulative or non-cumulative dividends) and such an issue is deemed not to be an action affecting the rights attaching to the Preference Shares and shall give no rights to the Holders to participate in the issue of any such further Shares.

Deductions

- 26.18 The Company may make any deduction or withholding on account of tax or on any other account from Dividend payments which the Company is required by law to make. The Company is not required to make any additional payment to Holders as a consequence of making any deduction or withholding on account of tax or on any other account from Dividend payments.

27. 2009A PREFERENCE SHARES

Definitions

27.1 In clauses 27.1 to 27.18 of this Constitution, unless the contrary intention appears:

“Benchmark Rate” is the rate per annum (expressed on a percentage yield basis rounded, if necessary, to the nearest two decimal places with five being rounded up) which is determined by the Company by reference to the mid market swap rate for a seven-year term, being the mean of the bid and offered swap rates as displayed on Reuters page “FISSWAP” or its successor page at or about 11am on the Rate Set Date (adjusted as necessary to a quarterly rate), or, if a rate is unable to be determined in that manner, by reference to the mean (rounded if necessary to the nearest two decimal places with five being rounded up) of the bid and offered swap rates (adjusted as necessary to a quarterly rate) quoted by four registered banks in New Zealand which usually quote rates on the relevant screen page (as selected by the Company) at or about 11am on the Rate Set Date for a seven-year interest rate swap;

“BNZIM” means BNZ Income Management Limited;

“Business Day” means any day (other than a Saturday or Sunday) on which registered banks are open for general banking business in Auckland, Wellington and New York City;

“Distribution” has the meaning in section 2(1) of the Companies Act;

“Dividend” means any dividend on the Preference Shares payable pursuant to clause 27.2;

“Dividend Amount” means a sum in respect of each Preference Share calculated (to two (2) decimal places) in accordance with the following formulae:

- (i) in respect of the first Dividend Period:

$$\text{Issue Price} \times \text{Dividend Rate} \times \frac{X}{365} \times (1-t)$$

- (ii) in respect of a Dividend Period other than the first Dividend Period:

$$\frac{\text{Issue Price} \times \text{Dividend Rate} \times (1-t)}{4}$$

where:

“Dividend Rate” is (in each case):

- (a) in respect of the period from (and including) the Issue Date (where the Issue Date is before the first Rate Start Date) to (but excluding) the first Rate Start Date, the aggregate of the Benchmark Rate and the Margin; and
- (b) for each subsequent seven-yearly period from (and including) each Rate Start Date (or where the Issue Date is on or after the first Rate Start Date, the Issue Date) to (but excluding) the next Rate Start Date, the aggregate of the Reset Benchmark Rate applying on that first mentioned date and the Margin;

“t” is (in each case) the weighted average basic rate of New Zealand income tax applicable to the Company under Schedule 1 of the Tax Act during the period ending on the relevant Dividend Payment Date; and

“X” is the number of days from (and including) the first Issue Date to (but excluding) 28 March 2010;

“Dividend Payment Condition” has the meaning given to that term in clause 27.5;

“Dividend Payment Date” means 28 March, 28 June, 28 September and 28 December of each calendar year (provided that if such date is not a Business Day, the reference shall be deemed to be to the next day which is a Business Day, unless such Business Day falls in the following calendar month, in which event it shall be the immediately preceding Business Day), with the first Dividend Payment Date being 28 March 2010;

“Dividend Period” means each period commencing on (and including) a Dividend Payment Date and ending on (but excluding) the next Dividend Payment Date, or in respect of the first Dividend Period, the period commencing on (and including) the Issue Date and ending on (but excluding) the first Dividend Payment Date;

“Holder” means the person who is entered in the share register of the Company as the holder for the time being of a Preference Share;

“Issue Date” means, in respect of a Preference Share, the date on which that Preference Share is issued;

“Issue Price” means \$1.00 in respect of each Preference Share;

“Margin” means 3.5%;

“Ordinary Shares” means the ordinary shares from time to time of the Company;

“Preference Share” means a perpetual non-cumulative preference share issued by the Company pursuant to this clause 27, and for the avoidance of doubt, does not include the 2008 Preference Shares, the 2009 Preference Shares or any other perpetual non-cumulative preference shares issued by the Company pursuant to clauses 25 or 26;

“Rate Reset Date” means the Business Day falling two Business Days before the Rate Start Date;

“Rate Set Date” means 21 December 2009 or such other date, being a Business Day prior to the Issue Date, as the Company may select;

“Rate Start Date” means 28 December 2016 and each seven-yearly date falling after that date, or if that date is not a Business Day, the next Business Day unless such Business Day falls in the following calendar month, in which event it shall be the immediately preceding Business Day;

“RBNZ” means Reserve Bank of New Zealand;

“Reset Benchmark Rate” means the rate per annum (expressed on a percentage yield basis rounded, if necessary, to the nearest two decimal places with five being rounded up) which is determined by the Company by reference to the mid market swap rate for a seven-year term, being the mean of the bid and offered swap rates as displayed on Reuters page “FISSWAP” or its successor page at or about 11am on the applicable Rate Reset Date (adjusted as necessary to a quarterly rate), or, if a rate is unable to be determined in that manner, by reference to the mean (rounded if necessary to the nearest two decimal places with five being rounded up) of the bid and offered swap rates (adjusted as necessary to a quarterly rate) quoted by four registered banks in New Zealand which usually quote rates on the relevant screen page (as selected by the Company) at or about 11am on that Rate Reset Date for a seven-year interest rate swap;

“Special Resolution” means a resolution approved by a majority of 75% of the votes of those Holders entitled to vote and voting on the issue;

“Tax Act” means the Income Tax Act 2007;

“2008 Preference Shares” means the 449,730,000 perpetual non-cumulative preference shares issued by the Company pursuant to clause 25 to BNZIM on 28 March 2008;

“2009 Preference Shares” means the 260,000,000 perpetual non-cumulative preference shares issued by the Company pursuant to clause 26 to BNZIM on 26 June 2009.

A reference to the Tax Act, or to a provision of the Tax Act, means the Tax Act or that provision as amended from time to time, or any statute or provision enacted in its place, and includes regulations or other instruments under it.

Calculation of Accrued Dividend

In determining the amount of any Dividends accrued during part of a Dividend Period, such amount shall be determined as follows:

$$A = I \times DR \times (1 - t) \times \frac{X}{365}$$

where:

A = the amount of the accrued Dividend;

X = the number of days from (and including) the last Dividend Payment Date (or, in the case of the first Dividend Period, the Issue Date) to (but excluding) the date of determination;

I = the Issue Price;

DR = the applicable Dividend Rate;

t = the weighted average basic rate of New Zealand income tax applicable to the Company under Schedule 1 of the Tax Act during the period from the last Dividend Payment Date, or the Issue Date (as the case may be) to the date of determination.

Dividend

- 27.2 Subject to clause 27.5, the Preference Shares carry the right to a dividend, payable in priority to Distributions in respect of Ordinary Shares, in respect of each Dividend Period equal to the Dividend Amount for that Dividend Period.
- 27.3 If a Dividend is paid in respect of any Dividend Period, it shall be paid on the Dividend Payment Date on which that Dividend Period ends to each Holder who is a Holder on the Business Day immediately preceding that Dividend Payment Date.
- 27.4 Dividends shall rank for payment:
- (a) in priority to the rights of holders of Ordinary Shares with respect to dividends or other Distributions;
 - (b) equally with the rights of holders of any other Shares that, by their terms, are expressed to rank equally with the Preference Shares, with respect to dividends or other Distributions;
 - (c) after the rights of holders of all classes of Shares from time to time (including, for the avoidance of doubt, the 2008 Preference Shares and the 2009 Preference Shares), other than Ordinary Shares and Shares referred to in clause 27.4(b), with respect to dividends or other Distributions; and

- (d) after all rights of creditors of the Company.

Dividend Payment Condition

27.5 Dividends on the Preference Shares will not be paid if any of the following conditions (each a "Dividend Payment Condition") applies:

- (a) the Directors in their sole discretion do not resolve to pay the Dividend on the relevant Dividend Payment Date;
- (b) such payment would result in the Company's Tier One capital ratio ceasing to comply with RBNZ's then current capital adequacy requirements; or
- (c) without limiting section 52(1) of the Companies Act, the Directors are not satisfied on reasonable grounds that the Company will satisfy the solvency test (as defined in section 4 of the Companies Act) immediately after the payment of the Dividend.

No Dividends accrue due to Holders if any of the above Dividend Payment Conditions applies.

27.6 If and to the extent that all or any part of a Dividend is not paid because a Dividend Payment Condition applies, then the Company shall have no liability to pay that Dividend, and the right of Holders to receive that Dividend shall be cancelled absolutely. No interest accrues on any unpaid Dividends and Holders have no claim or entitlement in respect of interest on any unpaid Dividends. Dividends on the Preference Shares are not cumulative. The terms of the Preference Shares contain no events of default. Accordingly, the non-payment of any Dividend will not constitute an event of default in respect of the Preference Shares. A Holder shall have no right to apply for the Company to be placed in liquidation, or be placed in voluntary administration, or to cause a receiver, or a receiver and manager, to be appointed to the Company merely on the grounds that the Company does not pay a Dividend in accordance with the terms of the Preference Shares.

27.7 A Holder:

- (a) may not exercise any right of set-off against the Company in respect of any claim by the Company against that Holder; and
- (b) shall have no right of set off and no off setting rights or claims against the Company if the Company does not pay a Dividend in accordance with the terms of the Preference Shares.

27.8 In the event that a Dividend is not paid by the Company on the Preference Shares on a Dividend Payment Date (for whatever reason), the Company must not declare or make any Distributions or payments on or with respect to any Ordinary Shares or any other Shares that rank equally with or junior to the Preference Shares (other than pro-rata payments or distributions on Shares that rank equally with the Preference Shares) unless and until the Company has paid Dividends in full on the Preference Shares on two consecutive Dividend Payment Dates immediately following that Dividend Payment Date.

Capital

27.9 Each Holder shall have the right in a liquidation of the Company to payment of the Issue Price of the Preference Shares held by that Holder and an amount equal to any Dividend accrued from (and including) the last Dividend Payment Date to (but excluding) the date of the commencement of liquidation (to the extent unpaid). That right to payment shall rank:

- (a) in priority to all rights of holders of Ordinary Shares;

- (b) equally with the rights of holders of any other Shares that, by their terms, are expressed to rank equally with the Preference Shares;
- (c) after the rights of holders of all classes of Shares from time to time (including, for the avoidance of doubt, the 2008 Preference Shares and the 2009 Preference Shares), other than Ordinary Shares and Shares referred to in clause 27.9(b); and
- (d) after all rights of creditors of the Company.

Voting

- 27.10 Holders shall have no right to receive notice of, attend, or vote at meetings of shareholders of the Company, other than meetings called under clause 27.14.

Transfer

- 27.11 Notwithstanding clause 3.3, a Holder may transfer the Preference Shares in whole under a system of transfer approved under section 7 of the Securities Transfer Act 1991 which is applicable to the Company.
- 27.12 The provisions of clause 3.4 shall not apply to any transfer of Preference Shares.
- 27.13 The Company shall not be liable for any stamp duty or other taxes payable in connection with the transfer of any Preference Share.

Amendment

- 27.14 Subject to clause 27.15, the rights, privileges, limitations and conditions attaching to the Preference Shares may be amended with the approval of:
- (a) the Directors;
 - (b) all holders of Ordinary Shares; and
 - (c) a Special Resolution of Holders.
- 27.15 No amendment of the nature referred to in clause 27.14 shall be made if that amendment would affect the capital treatment of the Preference Shares by RBNZ.

Conduct of Meetings

- 27.16 A meeting of Holders to consider a resolution of the nature referred to in clause 27.14 shall be convened and held in accordance with the First Schedule to the Companies Act. At any such meeting:
- (a) where voting is by show of hands or by voice every Holder present in person or by representative has one vote; and
 - (b) on a poll every Holder present in person or by representation has one vote in respect of each Preference Share held by that Holder.

Issue of further Shares

- 27.17 Subject to clause 2, the Company may issue further Shares which rank equally with, junior to or in priority to the Preference Shares (and whether entitled to cumulative or non-cumulative dividends) and such an issue is deemed not to be an action affecting the rights attaching to the Preference Shares and shall give no rights to the Holders to participate in the issue of any such further Shares.

Deductions

- 27.18 The Company may make any deduction or withholding on account of tax or on any other account from Dividend payments which the Company is required by law to make. The Company is not required to make any additional payment to Holders as a consequence of making any deduction or withholding on account of tax or on any other account from Dividend payments.