

**ARTICLES OF ASSOCIATION**  
**- of -**  
**DENARAU CORPORATION LIMITED**

## INDEX

1.	Table A Not to Apply	1
INTERPRETATION		
2.1	Interpretation	1
REGISTERED OFFICE		
3.	Registered Office	9
CAPITAL		
4.	Capital	9
SHARES		
5.	General	9
6.	General rights attaching to the A Share	10
7.	Redemption or Call for A Share	10
8.	Qualifications to hold A Share	11
9.	General rights of B-F Shares	11
10.	Qualifications to hold B-F Shares	12
11.	Holding of B-F Shares on trust	12
12.	Allotment of B-F Shares	12
13.	Further Participation in Ownership of B Shares	13
14	Initial allocation of C-F Shares to particular land	13
14A	Holdings by Qualified Entities	13
OTHER MATTERS RELATING TO SHARES		
15.	Financial Assistance	14
16.	Commission	14
17.	Surrender of Shares	14
18.	Joint Holders	14
19.	Non-recognition of Equitable Interests, etc	15
SHARES AS INCIDENTAL TO LAND ON THE ISLAND		
20	Transfer of land and shares contemporaneously	15
COST DETERMINATION,		

ALLOCATION,  
RECOVERY

21.	Sub-lessees and other occupiers bound	16
22.	Developer's right to convert C and E Shares	18
23.	Conversation implementation	18
24.	Developer as Proxy, etc	19
25.	Outgoings Categories	19
26.1	Budgets	21
26.2	First Year Budget	21
27.	Audit	21
28	Funding of Outgoings	22
29.	Base Contributions	22
30.	Special Levies	22
31.	Base Contributions: when payable	22
32.	Special levies: when payable	23
33.	Liability to pay Contributions	23
34.	Members: Specific Costs	25
35.	Members – Other Costs	25
36.	Cost Allocation to Precincts	25
37.1	Allocation amongst Members in Precinct	25
37.2	Actual Cost Contribution by Each Member	26
37.3	Units Defined	26
38.	Contributions Methods – Categories of Common Costs	27
39.	Change on Conversions of C or E Shares	28
39A	No Contributions by Qualified Entities	29
40.	Application of Contributions	29
41.	Sinking Fund Account	29
42.	Taxes as Outgoings	29
43.	Surplus of Contributions	29

DEVELOPMENT  
CONTROL AND  
RELATED MATTERS

44.	The Board	30
45.	By-laws	31
46.	Initial By-laws	31
47.	Subsequent variations	31
48.	By-laws: Nature and content	31
49.	Sanctions for non-compliance	33
50.	By-laws have effect as Articles	34
51.	Registers of Structure Plan, etc	34
52.	Owners' rights of inspection	34

53.	Disclosure to prospective Owners	34
54.	Disclosures: How and when	34
55.	Acknowledgement of disclosure	35
ASSOCIATIONS		
56.	Types of associations	35
57.	Notice of formation	35
58.	Referral of questions	35
59.	Owner's referral right not affected	35
FACILITIES AND SERVICES		
60.	Utilities services	35
61.	Agreements for services	36
62.	Sub-contracting services	36
63.	Owner responsible for damage	36
64.	Insurance against natural disasters	36
BRINGING OF THE ISLAND UNDER LEGISLATION		
65.	When application to be made	36
66.	Parties to co-operate	37
ACCESS RIGHTS FOR ADJOINING LAND		
68.	Access rights for adjoining land	37
ADDITIONAL CONTROLS		
69.		37
CERTIFICATES FOR SHARES		
72.	Certificates	38
CALLS		
73.	Power to Make Calls	38
74.	Obligation for Calls	38
75.	When a Call is Made	39
76.	Interest on the Late Payment of Calls	39
77.	Instalments	39
78.	Payment in Advance of Calls	39

79.	Non-receipt of Notice of Call	39
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#### FORFEITURE AND LIEN

80.	Notice Requiring Payment of Sums Payable	40
81.	Time and Place for Payment	40
82.	Forfeiture	40
83.	Notice of Forfeiture	41
84.	Disposal of Forfeited Shares	41
85.	Annulment of Forfeiture	41
86.	Liability Notwithstanding Forfeiture	41
87.	Company's Lien	41
88.	Sale of Shares to Enforce Lien	41
89.1	Title of Shares Forfeited or Sold to Enforce Lien	42

#### PAYMENTS BY THE COMPANY

90.	Payments by the Company	42
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#### TRANSFER AND TRANSMISSION OF SHARES

91.	Instrument of Transfer	44
92.	Registration Procedure	44
93.		
94.	Closing Register	45
95.1	Right to refuse registration	45
96.	Transmission by Death	46
97.	Transmission by Operation of Act	46

#### ALTERATION Of CAPITAL

98.	Power to Alter Share Capital	46
99.	Board may Give Effect to Alteration of Share Capital	46
100.	Power to Reduce Capital	46

#### GENERAL MEETINGS

101.	General Meetings	47
102	Notice of General Meeting	47

#### PROCEEDINGS OF MEETINGS

103.	Business of General Meetings	48
104.	Quorum	48
105.	Adjournment in Absence of Quorum	48
106.1	Chairman	49
107.	Acting Chairman	49
108.	General Conduct of Meeting	50
109.	Adjournment	50
110.	Voting	50
111.	Declaration of Vote on a Show of Hands; When Poll Demanded	50
112.	Taking a Poll	51
113.	Continuation of Business	51
114.	Special Meetings	51
VOTES OF SHAREHOLDERS		
115.	Voting Rights	51
116.	Voting Rights of Personal Representatives, etc.	52
117.	Appointment of Proxies	52
118.	Voting by Corporation	52
119.	Validity of Vote	53
120.	Form and Execution of Instrument of Proxy	53
121.	Board to Issue Forms of Proxy	53
122.	Attorneys of Shareholders	53
123.	Rights of Shareholder Indebted to Company in Respect of Other Shares	54
DIRECTORS		
124.	Appointment by holder Groups	54
125.	Substitute appointment by holder of A Shares	55
126.	Number and Appointment of Directors	55
127.	Power to Appoint Directors	55
128.	Remuneration of Directors	55
129.	Remuneration of Directors for Extra Services	55
130.	Travelling and Other Expenses	56
131.	Retirement Benefits	56
132.	Directors may contract with Company	56
133.	Director May Hold Other Office	57
135.	Exercise of Voting Power in Other Corporations	57
136.	Directors May Lend to the Company	57

ALTERNATE DIRECTORS		
137.	Director May Appoint Alternate Director	57
VACATION OF OFFICE OF DIRECTOR		
138.	Vacation of Office by Director	58
139.	Directors Who are Employees of the Company	59
MANAGING DIRECTOR		
140.	Appointment of Managing Director	59
141.	Managing Director Not to be Subject to Retirement by Rotation	60
PROCEEDINGS OF DIRECTORS		
142.	Procedures, Quorum and Notice	60
143.	Meetings by Telephone or Other Means of Communication	60
144.	Votes at Meetings	60
145.	Convening of Meetings	60
146.	Chairman	60
147.	Powers of Meetings	61
148.	Delegation of Powers to Committees	61
149.	Proceedings of Committees	61
150.	Validity of Acts	61
151.	Resolution in Writing	62
POWERS OF THE BOARD		
152.	General Powers of the Board	62
153.	Power to Borrow and Guarantee	62
154.	Power to Give Security	62
155.	Power to Authorise Debenture Holders, etc. to Make Calls	63
156.	Power to Issue at a Discount or Premium	63
157.	Personal Liability of Officer	63
158.	Disposal of Main Undertaking or Assumption of Liability for Large Amounts	63
BRANCH REGISTER		
159.	Branch Register	64
THE SEAL		
160.	Execution of Cheques, Bills, etc.	64

161.	Affixing the Seal	64
MINUTES		
162.	Minutes	64
DIVIDENDS		
163.	Declaration of Dividend	65
164.	Interim Dividends	65
165.	Dividends Out of Profits	65
166.	Reserves	65
167.	Distribution Otherwise Than in Cash	66
168.	Power to Capitalise Profits	66
169.	Appropriation and Application of Amounts to be Capitalised	66
170.	Transfer of Shares	67
171.	Retention of Dividends	67
172.	How Dividends are Payable	67
173.	Unclaimed Dividends	67
NOTICES		
174.	Service of Notices	68
175.	When Notice Deemed to be Served	68
176.	Shareholder Not Known at Registered Address	68
177.	Signature to Notice	68
178.	Reckoning of Period of Notice	68
179.	Notice to Transferor Binds Transferee	69
180.	Service on Deceased Shareholders	69
WINDING UP		
181.1	Distribution In Specie	69
181.2	Variation of Rights of Contributors	69
181.3	Liability to Calls	69
INDEMNITY		
182.1	Indemnity	70
182.3	Insurance	71
DISPUTE RESOLUTION		
183.	Procedure	71

**ARTICLES OF ASSOCIATION**

**-of-**

**DENARAU CORPORATION LIMITED**

**Table A Not to Apply**

1. The regulations contained in Table A in the Second Schedule to the Companies Act do not apply to the Company except to the extent they are repeated or contained in these articles.

**INTERPRETATION**

- 2.1 In these articles, unless the context otherwise requires -

**Act** means the Companies Act.

**Articles** means these articles of association as altered or added to from time to time.

**Associate** means any company or other entity in which Tabua or its Subsidiaries holds 20% or more of the voting share capital and which is required to be equity accounted under generally accepted accounting practice in Fiji.

**B Shares Joint Owners** means, at any time, the persons recorded in the register of Members as owners of the B Shares which persons, at the date of adoption of these Articles, are Dubbo Limited, Barton Limited, and Richmond Limited.

**Board** means the Directors for the time being of the Company.

**Business day** means a day other than a Saturday, Sunday or public holiday, on which banks are open for business in Fiji.

**By-laws** means the rules and regulations provided for in Articles 45 to 50.

**Call** includes any instalment of a call and any amount due on allotment of any share.

**Chairman** includes an acting chairman.

**Charter** means the document so entitled annexed to these articles, as altered from time to time.

**Committee** means a committee to which powers have been delegated by the Board pursuant to these Articles.

**Commitment Deed** means a deed in the form of the pro forma deed (so entitled) which is annexed, varied as the Board reasonably approves to suit the proposals notified to it concerning the relevant Land.

**Company** means the above company.

**Community Land** means the parts of the land known as Denarau Island, Fiji which -

- (a) at 24 July 1996 comprised or were intended to comprise roads and other accessways, reserves and common land as indicated on the plan attached and at a later date are, or are proposed to be used for any of the Community Purposes; or
- (b) at a later date are transferred to the Company with the intention that they be used for roads and other accessways, reserves or common land, or for a Community Purpose or Community Improvement.

**Community Purposes** means any of the following purposes:

- (a) purposes of the kind referred to in paragraph (a) of the definition of Community Land; or
- (b) purposes which do or reasonably may provide a benefit or service to all or a majority of the owners and lessees of the remainder of Denarau Island; or
- (c) accommodating a person or thing who or which does or is intended to provide a benefit or service of the kind referred to in paragraph (b); or
- (d) administrative offices for officers and employees of the Company.

**Community Improvements** means:

- (a) buildings and other fixed improvements;

- (b) pipes and conduits of all kinds for water, electricity and other utilities services (either above or below ground);
- (c) open drains and drainage pipes;
- (d) flora of all kinds,
- (e) all other items and facilities;

for or incidental to a Community Purpose or Service Purpose and includes all things of those kinds which exist at 24 July 1996, commensurate with maintaining of Denarau Island as an international standard tourist destination based on excellence in standard of-

- (i) facilities;
- (ii) maintenance;
- (iii) services;
- (iv) the built and natural environment,

**Community Plant** is any item of plant or equipment or any chattels used or to be used for a Community Purpose or Service Purpose.

**Community Services** means services by which a Community Purpose is undertaken or satisfied.

**Contributions** means any amounts payable as contributions by Members, Occupiers and any other persons under these Articles.

**Developer** means Tabua Investments Limited (a company incorporated in Fiji) and includes, where the context permits, its Subsidiaries and Associates which are Owners.

**Development Consent** means a consent issued by DCL to a proposed development that satisfies the development by-laws

**Development Review Committee** has the meaning ascribed to it by Article 44.1(a).

**Director** means a person appointed or elected from time to time to the office of director of the Company in accordance with these articles and includes any alternate director duly acting as a director.

**Dividend** has the meaning it has at law, and includes a bonus.

**First year** means the broken period from 24 July 1996 to 31 December 1996.

**Island** means Denarau Island, Fiji, as shown on the Structure Plan.

**Land** means freehold land or land held under lease or licence from the State or the NLTB and which is part of the Island (and includes any area of water or waterway within or adjoining the Island leased or held under licence from the State or the NLTB).

**Member** means a person or persons entered in the register as a member and in Articles 25, 28 (b) and 29 to 38 (inclusive) includes:

- (a) each B Shares Joint Owner individually; and
- (b) any Owner which is not a Member.

**Members present** means the Members present at a general meeting of the Company in person or by duly appointed representative, proxy or attorney.

**Memorandum** means the Company's memorandum of association as altered from time to time.

**month** means calendar month.

**Neighbourhood** means any part, so designated on a Subsidiary Plan, of a Residential Precinct.

**NLTB** means Native Land Trust Board, constituted under the laws of Fiji.

**Office** means the registered office for the time being of the Company.

**Owner** means as the case requires -

- (a) an owner of Land; or
- (b) a lessee of Land from the State or NLTB,

and, where the context permits, includes the Owner's respective successors in title.

**permitted use** means a use determined by reference to the Charter and any relevant by-laws under these articles.

**person** means a natural person, firm, unincorporated body of persons, body corporate of any kind, any government and any governmental body, authority or agency.

**Precinct** means an area so shown on the Structure Plan or a Subsidiary Plan and designated by one of the Precinct names specified in the Charter.

**Qualified Company** means a company whose articles of association contain Qualifying Provisions and do not contain provisions that may override the Qualifying Provisions.

**Qualified Entity** means:

- (a) a Qualified Company; or
- (b) a company or person who has entered into a deed with the Company (in a form reasonably required by the Board) by which it covenants with the Company to the same effect as if it were a company whose articles of association contain Qualifying Provisions.

**Qualifying Provisions** include:

- (a) a definition of Commitment Deed that relevantly (in the Board's reasonable opinion) matches the definition of that term in these Articles;
- (b) a definition of Contributions that relevantly matches the definition of that term in these Articles;
- (c) a pro forma deed (annexed to the Qualified Company's articles of association) that relevantly (in the Board's reasonable opinion) matches the pro forma deed referred to in the definition of Commitment Deed in these Articles;
- (d) definitions as follows -

**DCL** means Denarau Corporation Limited, a company incorporated in Fiji;

**DCL Shares** means shares in DCL held by the Company and issued in respect of land at Denarau Island, Fiji;

**Enrolled Owner** means a person entered on the Owner's Roll at a relevant time for a Particular Lot;

**New Owner** means each person to whom an Enrolled Owner intends to dispose of a Particular Lot or an ownership interest in it;

**Owner's Roll** means a roll of the owners of Particular Lots;

**Particular Lot** means any lot which is one of the lots in respect of which all or some of the DCL Shares have been issued; and

**Transfer Certificate** means a certificate from the Qualified Entity to the Enrolled Owner and New Owner that the Qualified Entity:

- (a) holds a Commitment Deed executed by the New Owner; and
- (b) on receipt of notice from the Enrolled Owner of Completion of the New Owner's acquisition of the Particular Lot or ownership interest in a Particular Lot, will enter the New Owner on the Owner's Roll in respect of the Particular Lot."
- (e) clauses as follows or substantially to that effect:

The Qualified Company must:

- (a) establish and maintain a roll for recording the full name and address of each person who owns, or holds on ownership interest in, any land at Denarau Island, Fiji in connection with which the Qualified Company is holder of DCL Shares; and
- (b) when it receives written notice from an Enrolled Owner and New Owner that the Particular Lot or ownership interest in it has been disposed of to the New Owner, and if the Company has issued a Transfer Certificate for that disposition, enter the New Owner as an owner of that lot, on the Owner's Roll.

The Qualified Company must deal promptly with each application by an Enrolled Owner for issue of a Transfer Certificate, but must not issue the certificate unless the Enrolled Owner has delivered to it a Commitment Deed relating to the Particular Lot, executed by the New Owner.

Whenever the Qualified Company receives notice, by virtue of its holding of DCL Shares, of a general meeting of members of DCL or a meeting of members holding a class of shares in DCL the same as any of the DCL Shares, it must promptly:

- (a) notify such of the Enrolled Owners as are on the Owner's Roll in respect of a Particular Lot to which the relevant DCL Shares relate; and
- (b) seek their respective views about whether the Qualified Company should vote for or against the resolutions to be put to the meeting.

The Company must vote, in person or by proxy or representative, at such a meeting in a way consistent with the majority views of such of the relevant Enrolled Owners as have responded to the Company's questionnaire.

The Company will at DCL's request and cost forthwith deliver to DCL:

- (a) a transfer of the DCL shares or such of them that DCL has nominated to another Qualified Entity nominated by DCL (together with any certificates for such shares);
- (b) each Commitment Deed for a Particular Lot to which those shares relates; and
- (b) the Owner's Roll so far as it relates to those Particular Lots.

**Qualified Shares** means shares in the DCL held by a Qualified Entity in accordance with these Articles.

**Register** means the register of Members of the Company and includes a branch register of Members.

**Registered address** means the address of a Member specified on a transfer or any other address of which the Member notifies the Company as a place at which the Member will accept service of notices.

**Restricted Matter** means a proposal concerning or a proposed resolution to -

- (a) amend the Articles;

- (b) alter By-laws;
- (c) amend the Charter; or
- (d) amend the Memorandum.

**Retiring Director** means as the case requires a director who is required to retire and a director who ceases to hold office under these articles.

**Seal** means the common seal from time to time of the Company.

**Secretary** means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary.

**Securities** includes shares, rights to shares, options to acquire or be issued shares and other securities with rights of conversion to equity.

**Security holder** means a holder of securities of the Company in accordance with the Act.

**Service Purposes** means any of the following purposes:

- (a) purposes which relates to the provision, for a fee, of management and maintenance services to Owners and Occupiers of land on Denarau Island;
- (b) purposes which relate to any similar services to the kind referred to in paragraph (a).

**Shareholding account** means an entry made in the Register in respect of a Member for the purpose of providing a separate identification of some or all of the shares registered from time to time in the name of the Member.

**Structure Plan** means the plan so entitled attached to these articles.

**Tabua** means Tabua Investments Limited.

**Total Build Out** means for any Precinct, the number of units then reasonably projected by the Developer to be built within a Precinct when development in that Precinct is completed.

**transfer** includes to create or dispose of a beneficial ownership interest which differs from the legal ownership of the property.

**written** includes printed, typewritten or hand-written and any other mode of representing or reproducing words in a visible form.

**year** means a calendar year beginning on 1 January.

2.2 Expressions defined in the Charter and in the Act at the date when these Articles become binding on the Company and have those meanings.

2.3 In the interpretation of these Articles -

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include each other gender;
- (c) reference to a statute, code, ordinance or other law includes -
  - (i) regulations and other instruments made under it; and
  - (ii) except in article 2.2, consolidations, amendments, re-enactments and replacements of it and of such regulations and other instruments.
- (d) derivatives of words defined in these articles (including by virtue of article 2.2) have corresponding meanings.

### **REGISTERED OFFICE**

3. The Registered Office shall be at such place in Fiji as the Directors from time to time determine.

### **CAPITAL**

#### **Capital**

4. The capital of the Company shall be \$100,001, divided into 100,001 shares of \$1.00 each in the following numbers and classes -

- (a) 1 A Share
- (b) 45,000 B Shares
- (c) 30,000 C Shares

- (d) 5,000 D Shares
- (e) 15,000 E Shares
- (f) 5,000 F Shares

## **SHARES**

### **General**

5. Subject to the provisions of the Act and without prejudice to any special rights conferred on the holders of any shares, the shares are under the control of the Directors who, subject to these articles, may allot or otherwise dispose of them to such persons and on such terms and conditions as they think fit -
- (a) as ordinary or deferred shares; or
  - (b) at a discount or premium; or
  - (c) as redeemable shares; or
  - (d) with any preference, guarantee, privilege or other advantage or right; or
  - (e) subject to any limitation or with limited or qualified rights; or
  - (f) fully or partly paid up.

### **General rights attaching to the A Share**

6. The A Share confers on the holder the rights -
- (a) to receive notice of and to attend all meetings of Members (or of the holders of any other class of shares) but subject to any other article, not to vote at any such meetings;
  - (b) to receive at least ten Business Days' notice of any meeting of the Board at which a proposal concerning a Restricted Matter is to be considered;
  - (c) to veto any proposal to alter or add to anything constituting a Restricted Matter ("the Veto Power");
  - (d) in a winding up or reduction of capital to a repayment of capital in priority to all other shares but not to participate in any distribution of any surplus.

## **Redemption or Call for A Share**

7.1 When either of the following events occur:

- (a) the holder of the A share ceases to hold at least one-fifth of
  - (i) the issued C Shares; or
  - (ii) the issued E Shares;
- (b) on 30 June 2016, if the A Share has not by then been redeemed or called for;

then Sheraton International Incorporated (SII) and Air Pacific Limited (APL) may at their option (“option”):

- (c) call for the A Share to be transferred to them jointly; or
- (d) call for the A Share to be redeemed.

7.2 The option shall be exercisable by notice in writing by SII and APL to the holder of the A Share and must be exercised:

- (a) in the case of the occurrence of the events described in Article 7.1(a) within 30 days of SII or APL receiving notice of such event;
- (b) in the case of the occurrence of the event described in Article 7.1(b) within 30 days of 30 June 2016.

7.3 If any of the events in Article 7.1 occurs and the option is not exercised in accordance with Article 7.2 the A Share shall be automatically redeemed.

## **Qualifications to hold A Share**

8. Subject to Article 7, the A Share may only be held by -

- (a) Tabua, or
- (b) a transferee, determined by the Board to have passed probity to whom the transferor contemporaneously is transferring at least 51% of the C Shares, D Shares, E Shares and F Shares then held by the transferor;

- (c) pursuant to the provisions of Article 7, Sheraton International Incorporated and Air Pacific Limited jointly;

provided that for the purposes of this clause any change in the effective control of the holder of the A Share shall be deemed to be a transfer and may only be effected with the prior approval of the Board as to probity of the person or persons obtaining such effective control. For the purposes of this clause “probity” means such tests as to probity as are required to be effected under any United States gaming legislation.

**General rights of B - F Shares**

- 9. Shares of each class other than the A Share confer on the holders the rights -
  - (a) to receive notice of and to attend general meetings of the Company (as well as meetings of the holders of the class of shares);
  - (b) to vote at all such meetings on the basis of one vote for each \$1 share held;
  - (c) in a winding up or reduction of capital to -
    - (i) repayment of the capital paid up on the share; and
    - (ii) participate in a distribution of surplus assets (if any) equally with all other shares;

**Qualifications to hold B-F Shares**

- 10. Subject to any following Article, shares of the following classes may only be allotted to and held by the following qualified persons -

- B Shares The B Shares Joint Owners.
  - C Shares Owners of Land in the Residential Precinct
  - D Shares Owners of Land in the Golf & Racquet Club Precinct
  - E Shares Owners of Land in the Commercial Precinct
  - F Shares Owners of Land in the Marina Precinct,
- and respectively attach to the land in those Precincts.

**Holding of B-F Shares on trust**

11. All or some of the shares other than the A Share may be held by a Member or Members who have granted rights to Occupiers but only the Member or Members shall be recognised as having any rights in respect of the relevant shares. This Article does not restrict the relevant Member or Members and Occupiers regulating the exercise of any rights in respect of the relevant shares as between themselves.

**Allotment of B-F Shares**

12. No shares may be allotted and issued unless, as a result of contemporaneous allotments, all the shares are allotted and issued so that they are first held by the following persons in the following numbers -

Tabua Investments Ltd	1	A Share
B Shares Joint Owners	45,000	B Shares
Tabua Investments Ltd	30,000	C Shares
Denarau Golf & Racquet Club Ltd	5,000	D Shares
Tabua Investments Ltd	15,000	E Shares
Tabua Investments Ltd	5,000	F Shares

**Further Participation in Ownership of B Shares**

13. When a parcel of Land allocated in the Hotel Precinct is transferred, the Owner of that parcel of Land must become registered as a joint owner of the B Shares.

**Initial allocation of C-F Shares to particular land**

- 14.1 In respect of C - F shares not already allocated to a particular parcel, the Developer must allocate a particular number to the particular parcel of land concerned by written notice to the Company at the earlier of:

- (a) entry into the first contract to transfer a parcel of land; or
- (b) a grant of the first development consent in respect of the parcel;

and where the first development consent is obtained by the Developer or one of its subsidiaries such allocation must include the transfer of the relevant shares to the Owner of the particular parcel of land.

- 14.2 The number of Shares to be allocated in Article 14.1 will be determined by reference to the proposed number referred to in Article 36 as a percentage of the design number referred to in the same Article for the relevant Precinct.
- 14.3 For the purpose of Article 14, an allocation on a reasonable approximation in comparison with a design total is sufficient, and the Developer's determination is final.

### **Holdings by Qualified Entities**

- 14A Despite any other Article:
- (a) any shares in the Company may be held by a Qualified Entity;
  - (b) a Qualified Entity may transfer any Qualified Shares only to a person qualified under Article 20 or another Qualified Entity;
  - (c) a person may become the Owner of Land to which Qualified Shares relate without being required to hold any of the Qualified Shares.

### **OTHER MATTERS RELATING TO SHARES**

#### **Financial Assistance**

15. Except as permitted by the Act, the Company shall not -
- (a) give, directly or indirectly, any financial assistance for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the Company; or
  - (b) make a loan for any purpose on the security of its shares.

#### **Commission**

16. The Company may not pay commission to any person for subscribing or agreeing to subscribe for or underwriting subscription for shares in the Company.

### **Surrender of Shares**

17. In its discretion, the Board may accept a surrender of shares by way of compromise of any question as to whether or not those shares have been validly issued or in any other case where the surrender is within the powers of the Company and lawful under the Act. Any shares surrendered may be sold or re-issued in the same manner as forfeited shares.

### **Joint Holders**

18. Where two or more persons are registered as the holders of any shares, they are deemed subject to evidence to the contrary to hold the shares as joint tenants with benefits of survivorship subject to the following provisions (provided that this article shall not apply in any way whatsoever to the B Shares Joint Owners):

#### **Number of Holders**

- (a) the Company is not bound to register more than three persons as the holders of the shares (except in the case of trustees, executors or administrators of a deceased Member);

#### **Liability for Payments**

- (b) the joint holders of the shares are liable severally as well as jointly in respect of all payments which ought to be made in respect of the shares;

#### **Death of Joint Holder**

- (c) on the death of any one of the joint holders, the survivor is the only person recognised by the Company as having any title to the shares but the Board may require evidence of death;

#### **Power to Give Receipt**

- (d) any one of the joint holders may give a receipt for any dividend, bonus or return of capital payable to the joint holders;

#### **Notices and Certificates**

- (e) only the person whose name stands first in the Register as one of the joint holders of the shares is entitled, if the Company is required by the Act or these articles to issue certificates for shares, to delivery of a certificate

relating to the shares or to receive notices from the Company and any notice given to that person is deemed notice to all the joint holders;

**Votes of Joint Holders**

- (f) any one of the joint holders may vote at any meeting of the Company either personally or by duly authorised representative, proxy or attorney, in respect of the shares as if that joint holder was solely entitled to the shares. If more than one of the joint holders are present at any meeting personally or by duly authorised representative, proxy or attorney, the joint holder who is present whose name stands first in the Register in respect of the shares is entitled alone to vote in respect of the shares.

**Non-recognition of Equitable Interests, etc.**

- 19. Except as otherwise provided in these Articles, the Company is entitled to treat the registered holder of any share as the absolute owner of the share and is not, except as ordered by a court or as required by statute, bound to recognise (even when having notice) any equitable or other claim to or interest in the share or the part of any other person.

**SHARES AS INCIDENTAL TO LAND ON THE ISLAND**

**Transfer of land and shares contemporaneously**

20.1 Subject to Article 20.2 an Owner of Land -

- (a) may not transfer any shares or interest in shares attached to that Land except to a person who contemporaneously becomes the transferee or lessee of the Land;
- (b) must transfer the shares or interest in shares attached to that Land to such transferee or lessee contemporaneously with effecting the transfer or lease of the Land.

20.2 Subject to Article 20.3, an Owner of Land in the Hotel Precinct -

- (a) may not transfer joint ownership of the B Shares except to a person who contemporaneously becomes the transferee of Land in the Hotel Precinct; and
- (b) must transfer joint ownership of the B Shares to such transferee contemporaneously with the transfer of the Land.

- 20.3 Articles 20.1 and 20.2 shall not apply to a transfer of shares by a B Shares Joint Holder to a substitute or additional holder where the Board is satisfied that Land has not or will not be transferred in relation to or in connection with the substitution of the B Share Joint Owner or addition of a B Share Joint Owner.
- 20.4 Article 20.1 does not apply in relation to shares attached to Land acquired by the Company for Community Land.
- 20.5 Article 20.1(a) does not apply to a transfer of Qualified Shares by a Qualified Entity to a person who already is Owner of the Land or another Qualified Entity;
- 20.6 Article 20.1(b) does not apply to a transfer or lease if the shares concerned are Qualified Shares.

## **COST DETERMINATION, ALLOCATION, RECOVERY**

### **Sub-lessees and other occupiers bound**

- 21.1 No Owner may grant any sub-lease or other right of occupation to any person ("**Occupier**") in respect of any Land (other than a licence granted for the purpose of a secondary activity in any relevant Precinct) unless contemporaneously thereto the Owner procures that the Occupier becomes bound to the provisions of these Articles as if they were a Member by the execution of such documents as the Company shall require and the name of such Occupier is entered in the Contribution Roll.
- 21.2 Each Occupier must comply with the provisions of Article 21.1 as if it was an Owner and every transfer of any sub-lease or other right of occupation was a grant of such rights.
- 21.3 A grant or transfer or interest under Articles 21.1 or 21.2 can be examined by the Board as if it were a transfer of shares in accordance with Article 95 to the intent that no such grant or transfer may occur except with the approval of the Board and if not so approved is voidable at the option of the Company on the decision of the Board; such approval shall not be unreasonably withheld.
- 21.4 Each Occupier whose name is entered on the Contribution Roll shall in the circumstances specified in Article 33.2 be liable for payment of:
- (a) **Occupier Specific Costs:** Those Member Specific Costs identifiable as:

- (i) only for the benefit of, or only in relation to, Land occupied by; that Occupier or
- (ii) only for the benefit of, in relation to, or incurred due to the actions of that Occupier.

(b) **Other Costs:** All other costs payable by the Member (or its successor) who is the grantor to the Occupier provided that where the Occupier is liable together with other Occupiers for the same Member's costs, each Occupier's several obligation shall be calculated as follows:

$$OA = K/S \times MA$$

Where:

OA = means the Occupier's allocation towards other costs

K = means in respect of each Occupier the number of completed units together with the number of uncompleted units in respect of which a current approval from the Company for construction of exists which that Occupier has rights in respect of

S = means S as calculated under Article 37.1

MA = means MA as calculated under Article 37.1 in respect of that Member

21.5 The Company shall establish and maintain a roll ("Contribution Roll") which records the following details in respect of Occupiers:

- (a) name and address;
- (b) the current calculation of K (for the purposes of Article 21.4(b)) in respect of that Occupier;
- (c) the date on which the Occupier was entered in, and removed from, the Roll; and
- (d) any other details considered necessary by the Board.

21.6 The liability of an Occupier under these Articles continues until its name is removed from the Contribution Roll and the name of its transferee is entered in the

Contribution Roll. A transferee shall be liable under this Article 21 whether or not such liability relates to any period prior to its name being entered on the roll.

- 21.7 An Occupier is entitled to treat payment of Occupier Specific Costs and Other Costs to the Company as discharge and satisfaction of the Occupier's obligation to pay that amount to the Member who is the grantor of that Occupier's occupation rights. The Company's receipt for that amount to the Occupier is a receipt for that amount as between the Occupier and the relevant Member.

### **Developer's right to convert C and E Shares**

- 22.1 At any time while the Developer is the holder of any C Shares and any E Shares, the Developer may by written notice to the Company ('Conversion Notice') designate a number of shares of one of those classes ('Designated Shares') held by the Developer to be converted to the number of shares (determined by the Developer) of the other class ('Converted Class').
- 22.2 Subject to approval by any resolution required under Article 23, the Designated Shares will be converted and become Converted Shares on 1 January that follows the date of receipt by the Company of the Conversion Notice.

### **Conversion implementation**

23. If the Developer gives a Conversion Notice -
- (a) if the Act then permits without the approval of any other person, the Designated Shares will be converted and become Converted Shares on 1 January that follows the date of receipt by the Company of the Conversion Notice;
  - (b) if the Act then requires that the conversion may occur only with the approval of a resolution of Members, or of holders of the C Shares or of the E Shares -
    - (i) the Board must convene the relevant meeting or meetings (and if more than one, to be held successively on the same day) to be held on a date not later than 14 days after receipt by the Company of the Conversion Notice;
    - (ii) if the notice (or notices) of such meeting (or each such meeting) have not been dispatched to the Members entitled within 14 days after receipt by the Company of the Conversion Notice, the Developer may convene the meeting or meetings for a date determined by the

Developer and dispatch notice or notices of meeting accordingly (and each meeting so convened and each such notice shall be as valid and effectual as if done and given by the Board).

**Developer as Proxy, etc.**

24. Each other Member appoints and authorises the Developer to exercise all the voting rights attached to such Member's shares at any meeting convened under Article 23, but the right conferred by this Article 24 may only be exercised if the other Member (personally or by attorney, proxy or representative) does not vote in favour or purports to vote against approval of the conversion of the Designated Shares, and the provisions of these Articles relating to appointment of proxies or other persons to vote generally or at a particular meeting of all or a class of Members are to be read subject to this Article.

**Outgoings Categories**

25. For the purpose of subsequent Articles "outgoings" are costs or expenditure incurred or projected to be incurred by the Company and are to be determined as being in a particular category as follows:
- (a) **Member Specific Costs:** those identifiable as:
    - (i) only for the benefit of or only in relation to a particular parcel of land or particular parcels of land; or
    - (ii) only for the benefit of, in relation to or incurred due to the actions of any particular owner or owners or occupier or occupiers.
  - (b) **Precinct Specific Costs:** those identifiable as specifically for, or only for the benefit of or only in relation to a particular Precinct or more than one.
  - (c) **Future Community Improvement Costs:** those costs of a capital nature which are incurred in upgrading or adding to any infrastructure facilities which are or will form part of Community Improvements or Community Plant which it has become necessary to incur because of actual or proposed development of the Island in addition to that existing at the date of adoption of these articles and to the extent to which such costs would not otherwise be incurred provided that this clause will cease to apply to a type of infrastructure facility when the Board

reasonably determines that such facility is sufficient to meet the expected demands of users at Total Build Out of all Precincts

- (d) **Common Costs:** those which are:
- (i) identifiable as specifically for or only for the benefit of or in relation to Community Land and Community Improvements, Community Plant or Community Services including depreciation but excluding any costs determined as being within Article 25(c);
  - (ii) costs payable to the DRC for consideration and determination of development consent for a thing to be done by the Company (for which development consent would be required if it were not the Owner) and of obtaining any planning consent;
  - (iii) not identifiable as being within another category of outgoings;

and which fall into one of the following categories as determined by the Board:

- (iv) ordinary expenditure - that which is necessary for the general maintenance and upkeep of the Island, the benefits of which relate to a single 12-month period;
- (v) ordinary capital expenditure - that which is necessary for the general maintenance and upkeep of the Island, the benefits of which relate to a period longer than a single 12 month period;
- (vi) voluntary capital expenditure - that which is not essential but may be desirable for the general maintenance and upkeep or improvement of the facilities of the Island, the benefits of which relate to a period longer than a single 12 month period;
- (vii) extraordinary capital expenditure - that which is necessary for the general maintenance and upkeep or improvement in the facilities of the Island and which is a result of the occurrence of an extraordinary or unforeseen event.

- (viii) replacement costs - the cost of replacement of Community Improvements and Community Plant to the extent the replacement is not met by insurance proceeds or from the sinking fund amounts provided for in Article 25(f).
  - (ix) sinking fund provision: an amount determined by the Board as reasonable from time to time (having regard to prudent business practice) to be put aside to provide for replacement at the end of its useful life of each item of Community Improvements and Community Plant.
- (f) **Service Costs:** those identifiable as the cost of undertaking or satisfying Service Purposes.

### **Budgets**

- 26.1 The Board must by 30 September each year consider and adopt a budget for the next year, which must include by category the amount of estimated outgoings for the year to which it relates and the Board's estimates of -
- 1. fees to be charged to and recovered from persons for whom Service Costs will be incurred; and
  - 2. any income that might be received from any source (identifying the source) and be used to defray Common Costs.

### **First Year Budget**

- 26.2 The budget for the First Year is determined and has effect from the date of adoption of these Articles.

### **Audit**

27. The auditor appointed under Article 103 shall audit all actual expenditure of the Company against budget and allocation to cost categories.

### **Funding of Outgoings**

- 28 (a) The Board is to set fees for services for a Service Purpose to at least recoup Service Costs, and any surplus of such fees over such costs is to be used to defray Common Costs.

- 28 (b) Except to the extent Service Costs are met by the person to whom the relevant service was or is provided, the Outgoings of the Company shall be paid by the Members other than the holder of the A Share in accordance with the provisions of Articles 28 to 39.

**Base Contributions**

29. The basic amount required to be paid each year is the amount determined by the Board annually under the budget and, having regard to Article 36, quarterly on review as being sufficient to provide each Member's Contribution, as calculated in Articles 37 and 38, to

- (a) outgoings for the year determined by the Board by reference to the budget;
- (b) any deficiency that arose in a previous period,

and in making those determinations the Board may take into account interest derived or projected to be derived from an investment pursuant to Article 41.

**Special Levies**

30. Notwithstanding Article 29, if circumstances occur during a year which make it necessary or prudent (in the Board's view) that further funds be obtained in addition to amounts already determined as required, the Board may determine amounts required to be paid as each Member's Contribution (as calculated in Articles 37 and 38) of the further funds.

**Base Contributions: when payable**

31. Member's Contributions determined under Article 29 for -
- (a) the first year, are payable by 5 monthly instalments on the first day of August to December 1996;
  - (b) each subsequent year, are payable by quarterly instalments in advance on 24 December, 24 March, 23 June and 23 September (i.e. one week before the beginning of the relevant quarter).

**Special levies: when payable**

32. A Member's Contribution determined under Article 30 is payable by the date (determined by the Board as reasonable) specified in the relevant notice as the due date for payment.

**Liability to pay Contributions**

- 33.1 Notwithstanding the preceding Articles, the liability to pay a Contribution arises when a Member receives a written notice from the Company signed by any Director or Secretary or another person authorised by the Board for that purpose ('Contribution Notice') which specifies -

- (a) the total amount of the Member's Contribution of which payment is required;
- (b) if that total amount consists of amounts under more than one category of outgoings, the amount under each category.
- (c) the due date for payment ('Payment Date');

and if a specified Payment Date is not a Business Day, the Payment Date will be deemed to be the next day that is a Business Day.

- 33.2 If a Member fails to make a payment within 10 business days of the payment date, the Company shall be entitled to

- (a) add a penalty of 5% to the amount outstanding and further amounts of 5% at each 90 day anniversary of the original failure to pay on Payment Date while all or part of the amount remains outstanding;
- (b) seek payment from an Occupier in accordance with clause 21.4;
- (c) commence any legal action it deems necessary against the defaulting Member to recover Payments outstanding and to recover the costs of such action from the defaulting Member;
- (d) exercise any rights, or enforce any sanctions-
  - (i) of the kind referred to in Articles 49 or 71; or
  - (ii) provided for in the By-laws

in the case of breach of a By-law as if the failure to pay was a breach of a By-Law;

33.3 Notwithstanding the preceding Articles, the liability to pay Occupier Specific Costs or Other Costs under clause 21.4 arises when an Occupier receives a written notice from the Company signed by any Director or Secretary or another person authorised by the Board for that purpose ("**Occupier Notice**") which specifies -

- (a) the total amount of the Occupier's Occupier Specific Costs or Other Costs under clause 21.4 of which payment is required;
- (b) if that total amount consists of amounts under more than one category of outgoings, the amount under each category;
- (c) the Payment Date;

and if a specified Payment Date is not a Business Day, the Payment Date will be deemed to be the next day that is a Business Day.

33.4 If an Occupier fails to make a payment within 10 business days of the Payment Date, the Company shall in addition to and without prejudice to any of its other rights under these Articles be entitled to:

- (a) add a penalty of 5% to the amount outstanding and further amounts of 5% at each 90 day anniversary of the original failure to pay on payment date while all or part of the amount remains outstanding;
- (b) commence any legal action it deems necessary against the defaulting Occupier to recover Occupier Specific Costs or Other Costs outstanding and to recover the costs of such action from the defaulting Occupier;
- (c) exercise any rights, or enforce any sanctions-

- (i) of the kind referred to in Articles 49; or

- (ii) provided for in the By-laws;

in the case of breach of a By-law as if the failure to pay were a breach of a By-Law.

33.5 Any right or remedy which may be exercised by the Company under these Articles in relation to or in respect of Tabua Investments Limited as a Member may also be exercised against any of its subsidiaries including, for the avoidance of

doubt, Aotea Limited, Matatua Limited, Tainui Limited, Te Arawa Limited and Tokomaru Limited.

**Members: Specific Costs**

34. Members will be charged with the Specific Costs in accordance with Article 25. (a) and (b).

**Members - Other Costs**

35. All Members are to be levied for all other outgoings of the Company (other than Future Community Improvement Costs and voluntary capital expenditure) in the proportions as calculated in Articles 36 and 37.

**Cost Allocation to Precincts**

- 36.1 Each year DCL will calculate a precinct allocation to the Common Costs for each Precinct in accordance with the following formula:

$$PA = E / B \times P$$

where:

- (i) **PA** means the precinct allocation as a proportion of common costs to be calculated for each Precinct
  - (ii) **E** means, in respect of each Precinct, the number of completed units together with the number of uncompleted or proposed units in respect of which there is a current development consent from DCL
  - (iii) **B** means the Total Build Out in respect of the Members's Precinct as provided by the Developer to DCL (such number being a reasonable number) no later than 31 December of the previous year for each precinct and no later than 31 July 1996 for the First Year
  - (iv) **P** means the precinct percentage in accordance with the shareholding as set out in Article 12 excluding the A Share.
- 36.2 The Developer may change the Total Build Out from year to year provided that such change does not cause a decrease in the PA for the precinct in which Total Build Out has been changed.

**Allocation amongst Members in Precinct**

37.1 Each Member within a Precinct will be allocated a contribution of the Common Costs in accordance with the following formula:

$$\mathbf{MA} = \mathbf{S} / \mathbf{E} \times \mathbf{PA}$$

where:

- (i) **MA** means the Member allocation towards common costs
- (ii) **S** means, in respect of each Member in each Precinct, the number of completed units which that Member owns together with the number of uncompleted or proposed units in respect of which there is a current development consent from DCL
- (iii) **E** means, in respect of each Precinct, the number of completed units together with the number of uncompleted or proposed units in respect of which there is a current development consent from DCL
- (iv) **PA** means the precinct allocation as a proportion of common costs as calculated in Article 36.

#### **Actual Cost Contribution by Each Member**

37.2 Each Member within a Precinct will pay a percentage of the overall common cost calculated as follows:

$$\mathbf{ACC} = \mathbf{MA} / \mathbf{TPA} \times \mathbf{100}$$

- (i) **ACC** means the percentage of the of the overall common cost that the Member will be liable for
- (ii) **MA** means the Member allocation towards common costs
- (iii) **TPA** means the aggregate of Precinct Allocation (PA) for all the Precincts as calculated in Article 36.2
- (iv) **PA** means the precinct allocation as a proportion of common costs as calculated in Article 36.

#### **Units Defined**

37.3 For the purposes of Articles 36. and 37. the term ‘units’ will have the following definitions for each precinct:

- (i) **Hotel Precinct:** units will be guest rooms
- (ii) **Residential Precinct:** units will be individual residences that are separately owned
- (iii) **Commercial Precinct:** units will be square metres of floor space
- (iv) **Golf & Racquet Club Precinct:** unit will be one.
- (v) **Marina Precinct:** Units will be linear metres of berthage, provided that E/B in Article 36.1 shall never be less than 0.5.

#### **Contribution Methods - Categories of Common Costs**

38.1 The following contribution methods shall apply for the different categories of Common Cost set forth in Article 25 (d) (iv)-(vii);

- (a) for ordinary expenditure - on the basis set out in Articles 36 and 37;
- (b) for ordinary capital expenditure:
  - (i) each Member shall be required to contribute to the budgeted amount on the basis of its respective shareholding, which contribution shall stand in the Company’s books of account as a loan bearing interest at 10% per annum or such other interest rate as the Board may agree; and
  - (ii) the Board shall determine the amount of ordinary expenditure for each 12-month period (‘OE’) which should relate to each capital item for which the capital expenditure relates. This shall be determined by reference to the following formula:

$$\mathbf{OE = (CC / UL) + I}$$

where:

**OE** is Ordinary Expenditure

**CC** is Capital Item Cost

**UL** is Useful Life (which shall be determined by the Board); and

I is Interest Amount payable on the portion of borrowing relating to capital Item for that calendar year.

- (iii) The Company shall repay the lending referred to in Article 38 (b) (i) by amortising the OE amount to each lender on the basis set out in Articles 36 and 37; and
  - (c) for voluntary capital expenditure - in such amounts and in such proportions as the Members of each class shall agree by special resolution of that class;
  - (d) for extraordinary capital expenditure - in the same manner as ordinary capital expenditure under Article 38.1(b).
- 38.2 (a) Contributions to Future Community Improvement Costs under Article 25(c) shall be in such amounts and in such proportions as the Board shall reasonably determine having taken into account the direct or indirect benefit received or to be received by relevant Members or B Shares Joint Owners (whether individually or jointly) or Owner (whether or not an Owner is currently a Member) from such costs. In making such determination, the Board must take due account of all relevant factors, including:
- (i) whether, and if so, when, the existing facilities used by a Member would have been required to be upgraded or replaced even if such additional development did not occur;
  - (ii) the estimated use of the new facility during its economic life for the benefit of land which is then undeveloped;
  - (iii) the value of any increased security of supply to a Member relative to its own ability to deal with loss of supply;
  - (iv) any reduction in maintenance or use costs relative to the costs of the existing facility.
- (b) If the Board is unable to reach a decision on the contribution to Future Community Improvement Costs under (a) or, if any Member holding solely or jointly at least 10% of any class of shares objects to a determination of the Board under (a), then the determination shall be referred to an appropriately qualified independent expert where necessary, internationally recognised, for determination.

The expert in making the determination shall be required to take into account all relevant factors including the factors listed in (a). The costs of the expert shall be treated as a Common Cost.

### **Change on Conversions of C or E Shares**

39. If the Developer as a holder of C Shares or E Shares exercises its right (conferred by these Articles) to convert some shares of one of those classes to some shares of the other, then the amount of difference in PA which results as between the holders of C Shares and the holders of the E Shares after the change, the calculation under Article 37, will be adjusted to take account of the conversion.

### **No Contributions by Qualified Entities**

39A Despite any other Article:

- (a) none of the obligations of Members to make Contributions will apply to a Qualified Entity; and
- (b) where a Qualified Entity is a Member, all Contributions assessed on Land in respect of which shares are held by that Qualified Entity will be paid by the respective Owners of that Land as if they held the shares allocated in respect of their Land instead of the Qualified Entity.

### **Application of Contributions**

40. Except in the case of an emergency (as determined by the Board) money paid -
- (a) for Sinking Fund Provision in Article 25 (g) may only be applied in the kind of payments for which those provisions are accumulated;
  - (b) otherwise for outgoings, may only be applied in payment of the kind of outgoings for which they were paid to the Company.

### **Sinking Fund Account**

- 41.1 The money paid as Contributions for Sinking Fund Provision must be paid into and kept in an account, separate from any other bank or investment account of the Company, to be styled 'Denarau Corporation Ltd Sinking Fund Account' and which, unless the Directors specifically resolve to the contrary, is to be an interest bearing account.

- 41.2 Interest accrued on such an investment shall accumulate in the Sinking Fund Account.

### **Taxes as Outgoings**

42. For the removal of doubt, income and other taxes relating to the operations of the Company or on its income are to be treated as Common Costs to the extent that, because of insufficiency of funds, they are not met out of income.

### **Surplus of Contributions**

43. Except for money paid for Sinking Fund Provision, any surplus of Contributions in a year is to be carried forward and treated as a credit in the determination of Contributions for the next year.

## **DEVELOPMENT CONTROL AND RELATED MATTERS**

- 44.1 The Board -

- (a) must establish a Development Review Committee in accordance with Article 44.2 and ensure that committee's continued operation.
- (b) must set fees for the processing of applications for development consent by the Development Review Committee calculated to recover the cost of review and determination of each application and which may vary from application to application.
- (c) must ensure the Company operates to provide and maintain facilities for the distribution of water (potable), electricity, and sewerage, and telecommunications conduits, stormwater drainage, removal of hazardous goods and street lighting on the best terms available to the Company for the common benefit of owners throughout the Island;

- 44.2
- (a) Every application for development consent must be referred to the Development Review Committee for its opinion, provided that if the application relates to development which the Board, in its absolute discretion, considers is de minimis, the Board may determine that the application not be so referred;
  - (b) In considering whether or not to grant the development consent, the Board must take into account the opinion of the Development Review Committee. If the Board reaches a decision which departs from or

substantially conflicts with the opinion of the Development Review Committee, such departure or conflict must be for good reason;

- (c) Any Director voting on a decision made under this Article must declare any interest.
- (d) The Development Review Committee shall include a suitably qualified architect, landscape architect and civil engineer and such other appointees as the Board considers fit.

44.3 For the avoidance of doubt structures existing on the Island at the date of incorporation are deemed to have a development consent.

44.4 The Company shall have the right to provide and maintain all the facilities referred to in Article 44.1(c) and any such facilities which are for the common benefit of Owners may not be provided by persons other than the Company except with the consent of the Board.

#### **By-laws**

45. The Board also is empowered (and has the duty) -
- (a) subject to Article 46 to make rules for the control, management, administration, use and enjoyment of the Island and each of the existing and proposed facilities; and
  - (b) administer and enforce those rules.

#### **Initial By-laws**

46. In the first instance, the Board must adopt as by-laws made by it, by-laws notified to it by the Developer, but the Developer may exercise that right once only in respect of each set of by-laws referred to in Article 48.

#### **Subsequent variations**

47. By-laws subsequently made by the Board cannot have the effect of varying a determination made by a Subsidiary Plan.

#### **By-laws: Nature and content**

48. By-laws may be of the following kinds and deal with the following matters:

- (a) **Community Property By-laws** to regulate the use and control of the Community Land and Community Improvements.
- (b) **Residential By-laws** to regulate the use, enjoyment and control of the Residential Precincts and/or each Neighbourhood (and those rules may vary from Neighbourhood to Neighbourhood depending on the Neighbourhood location and type of development permitted within the particular Neighbourhood).
- (c) **Development Control By-laws** to regulate the design and quality of development within each Precinct and Neighbourhood (by, for example, regulation of size, shape, height, colour, texture and building standards) and those rules (which may be more detailed than but otherwise generally must be consistent with these Articles and the Charter) may vary from Precinct to Precinct and Neighbourhood to Neighbourhood (for example, only a particular style of residential development might be permitted in a particular Neighbourhood) but must provide amongst other things -
  - (i) for a system of compliance checks by the Board (or its nominee);
  - (ii) that approval of an application for development consent is not dispensation from obtaining any relevant approval for the same thing from a relevant government authority, unless the authority previously has agreed with the Company or the applicant to the contrary;
  - (iii) that written approval of the Company is required to any subdivision or amalgamation of land by any Owner except the Developer;
  - (iv) that subdivision or amalgamation will be permitted, but the approval may be given subject to restrictions (for example, as to lot size) determined by the Company from time to time expressly taking into account the principles set out in the Charter and, in particular the development of Denarau Island as a premier destination.
  - (v) that an application for a development consent will be notified of the Company's decision within 20 Business days after receipt of the application (or of any relevant information subsequently requested from the applicant to enable the application to be properly considered).
  - (vi) for the criteria for assessing an application (additional to the general criteria in the Charter) for specific Precincts.

(d) **Recreation facilities by-laws**

Rules to regulate the use and enjoyment of the various recreational and relaxational facilities in the Precincts other than the Hotel Precinct;

(e) **Activities by-laws**

Rules to regulate, restrict or prohibit access to private areas or facilities of a Precinct (for example, “guest only” area of a hotel) and which may limit access rights (being users or patrons other than owners, occupiers or their invitees) to designated areas of the Island, but so that rights of access by government representatives and the police will be preserved in accordance with Fijian laws and otherwise generally owners of land on the Island will have equal rights of way throughout the Island.

(f) **Marina by-laws**

Rules to regulate use, enjoyment and control of the Marina Precinct.

**Sanctions for non-compliance**

49.1 All sets of By-laws are to provide for sanctions of the following kinds (and may provide for others) against non-complying Owners and Occupiers -

- (a) loss of services to be provided by DCL while non-compliance continues;
- (b) loss of rights to use one or more of the Island facilities while non-compliance continues;
- (b) legal action to enforce compliance with the relevant rule;
- (d) the right for the Company to enter a parcel of Land if the non-compliance is of a kind capable of rectification by the Company, and rectify the non-compliance at the cost of the Owner or Occupier.

49.2 Without limiting the sanctions that may be provided within any set of By-laws, By-laws may, in relation to any person who is the Owner or Occupier of a unit in the Residential Precinct which is managed by another person (“Manager”):

- (a) require payment directly from the Manager to the Company all money the Manager is required to pay to the Owner or Occupier, to the extent that such person is then indebted to the Company, and in that case

- (i) the Manager is entitled to rely on the direction to pay given to the Manager by the Company as conclusive evidence (as between the Manager, the Owner or the Occupier and the Company) that the amount stated in it is due and owing by the defaulting Owner or Occupier to the Company and is unpaid;
  - (ii) the Manager is entitled to treat payment of that amount to the Company as discharge and satisfaction of the Manager's obligation to pay that amount to the defaulting Owner or Occupier; and
  - (iii) the Company's receipt for that amount to the Manager is a receipt for that amount as between the Manager and the defaulting Owner or Occupier; and
- (b) require any such Owner or Occupier to provide a mortgage or other security to the Company to secure performance of its obligations under these Articles or any matter arising under them.

**By-laws have effect as Articles**

50. The By-laws as originally made and amendments from time to time will have effect as provisions of these Articles, shall not be inconsistent with the Charter, and shall take effect-
- (a) when made, in the case of the original by-laws;
  - (b) 7 days after they are made, in the case of an amendment.

**Registers of Structure Plan, etc.**

51. The Board must -
- (a) keep a copy of the Structure Plan and each Subsidiary Plan, registers for each set of By-laws and the then current Budget at an office at the Island;
  - (b) keep that office open during normal business hours; and
  - (c) within one day after any By-laws are made or amended, place the By-laws (or the By-laws as amended) in the relevant register.

**Owners' rights of inspection**

52. Each Owner and occupier or a person authorised by the Owner or occupier is entitled to:-
- (a) inspect each document mentioned in Article 51 at any reasonable time during business hours free of charge;
  - (b) a photocopy of any such document on payment of the photocopying fees and service charge from time to time determined by the Board.

### **Disclosure to prospective Owners**

53. The Charter, Structure Plan, Subsidiary Plans, By-laws and then current Budget are to be disclosed to all prospective Owners of Land.

### **Disclosures: How and when**

54. Those disclosures are to be made -
- (a) by the Member proposing to effect the transfer;
  - (b) before an instrument intended to be legally binding is entered into in relation to the transfer.

### **Acknowledgement of disclosure**

55. A copy of the acknowledgement by the transferee to the effect that the disclosures have been so made must be provided to the Company by the Member on request by the Board and, if such a request is made, production of the acknowledgement is a precondition to the Board's approving the transfer.

## **ASSOCIATIONS**

### **Types of associations**

56. Owners of land in a -
- (a) Precinct may establish an association to represent interests of those owners;
  - (b) Neighbourhood may establish an association to represent interest of those owners.

### **Notice of formation**

57. If any such association is established, its committee must give to the Company written notice of its establishment and the person who from time to time is its representative for the purpose of its dealing with the Company.

**Referral of questions**

58. Any association may by its representative refer a question arising under a by-law to the Board for determination.

**Owner's referral right not affected**

59. That right does not limit the right of an Owner separately to refer any such a question to the Board for a determination.

**FACILITIES AND SERVICES**

**Utilities services**

60. Each Owner must permit the Company -
- (a) to provide all facilities as specified in Article 44.1(c);
  - (b) to enter on land whenever reasonably necessary to install, maintain or repair any such services.

**Agreements for services**

61. The Board may determine that the Company enter into agreements from time to time with the Owners and occupiers of Land for the provision of services such as grounds maintenance to the Owner or occupier (or to the relevant parcel of Land) on an as needs basis.

**Sub-contracting services**

62. The Board may arrange for the Company to subcontract provision of the services referred to in Article 6.1 on commercially acceptable terms.

**Owner responsible for damage**

63. The Owner of the site on which any development work carried out is directly responsible for or any damage to Community Land, Community Improvements

or Community Plant and the cost of restoration work to return the affected areas to original standards.

### **Insurance against natural disasters**

64. The Board must ensure that the Company keeps on foot insurance of its own assets against damage by major natural disasters (such as, but not limited to, cyclones and hurricane surges), the premiums for which will be allocated in accordance with these Articles as a common cost.

### **BRINGING OF THE ISLAND UNDER LEGISLATION**

#### **When application to be made**

65. If the Fiji Government enacts legislation, either specific to the Island but optionally to apply to it, or of general application to regulate integrated tourism resorts in Fiji (such as the Island), the Board -
- (a) is entitled to apply for designation or recognition of the Island under that legislation (as may be appropriate having regard to the content of the legislation) if that course is approved by special resolution; and
  - (b) must so apply if directed to do so by special resolution.

#### **Parties to co-operate**

66. If such an application is approved, all Members must (and must ensure all owners and occupiers with which they are associated) co-operate with the Company and one another to effect its implementation.
67. For the purpose of Article 66, 'associated' is not limited to any strict legal meaning but is to have the widest meaning it may have in the context of both commercial and family dealing and relationships.

### **ACCESS RIGHTS FOR ADJOINING LAND**

68. If the area (or approximately the area) to the South of the Island and which is shown hatched on the Structure Plan is acquired (as freehold or under a lease from the Crown or the NLTB) by:
- (a) a person other than the Developer, the Board may approve access to and from that area through the Island only on terms determined by it;

- (b) the Developer, there shall be no limitation on access to and from that area through the Island, provided that costs in connection with such access shall be treated as Member Specific Costs.

### **ADDITIONAL CONTROLS**

- 69. Each contract for the sale or lease of Land by the Developer may include provisions, to be registered as a restrictive covenant on the title to the land sold, in addition to any covenant of that kind already registered.
- 70. Covenants referred to in Article 69 may include prohibitions on the sale or other disposition of or dealing with the land concerned while any obligation under another restrictive covenant, an article, or a by-law which is capable of compliance or rectification is not complied with or rectified or any money for contributions to the Company which are due, or which is owing to or recoverable by the Company on any other account, is unpaid.
- 71. If the holder of the A Share so requires the purchaser under any contract for the sale or lease of any Land must enter into a Deed or other document covenanting to be bound by the Articles and (until the registration of suitable restrictive covenants) the Charter.

### **CERTIFICATES FOR SHARES**

#### **Certificates**

- 72.
  - (a) Every Member is entitled, without payment, to one certificate for the shares registered in that Member's name or to several certificates in reasonable denominations, each for a part of the shares.
  - (b) The Company may send any certificate to a Member by prepaid post addressed to the Member at that Member's registered address or as is otherwise directed by the Member and every certificate so sent shall be at the risk of the Member entitled thereto.
  - (c) Share certificates are to be issued under the Seal in any form prescribed by the Board permitted under the Act.
  - (d) If a certificate is worn out or defaced, upon production of the certificate to the Company, the Board may order it to be cancelled and may issue a new certificate;

- (e) If a certificate is lost, stolen or destroyed, upon the giving of such indemnity (if any) and any evidence that the certificate has been lost, stolen or destroyed which the Board may require and upon the payment of any fee the Board may from time to time determine, a new certificate may be issued instead of the lost, stolen or destroyed certificate. A certificate issued to replace a certificate which has been lost, stolen or destroyed may be endorsed as having been issued instead of a lost, stolen or destroyed certificate.

## **CALLS**

### **Power to Make Calls**

- 73. Subject to the terms upon which any shares may have been issued, the Board may make calls from time to time upon the Members in respect of all money unpaid on their shares. Each Member is liable to pay the amount of each call in the manner, at the time and at the place specified by the Board. Calls may be made payable by instalments.

### **Obligation for Calls**

- 74. The Company may make arrangements on the issue of shares for a difference between the holders of those shares in the amount of calls to be paid and the time of payment of the calls.

### **When a Call is Made**

- 75. A call is deemed to have been made at the time when the resolution of the Board authorising the call was passed. Subject to the Act, the call may be revoked or postponed at the discretion of the Board at any time prior to the date on which payment in respect of the call is due.

### **Interest on the Late Payment of Calls**

- 76. If any sum payable in respect of a call is not paid on or before the date for payment, the Member from whom the sum is due is to pay interest on the unpaid amount from the due date to the date of payment at the rate the Board from time to time determines. The Board may waive the whole or part of any interest paid or payable under this Article.

### **Instalments**

77. If, by the terms of an issue of shares, any amount is payable in respect of any shares by instalments, every instalment is payable as if it is a call duly made by the Board of which due notice had been given, and all provisions of these Articles with respect to the payment of calls and of interest or to the forfeiture of shares for non-payment of calls or with respect to liens or charges apply to the instalment and to the shares in respect of which it is payable.

#### **Payment in Advance of Calls**

78. If the Board thinks fit it may receive from any Member all or any part of the money unpaid on all or any of the shares held by that Member beyond the sums actually called up and then due and payable either as a loan repayable or as a payment in advance of calls. The Company may pay interest on the money advanced at the rate and on the terms agreed by the Board and the Member paying the sum in advance.

#### **Non-receipt of Notice of Call**

79. Notice of any call shall be in writing and include such information as the Act may require, but the non-receipt of a notice of any call by, or the accidental omission to give notice of any call to, any Member does not invalidate the call.

### **FORFEITURE AND LIEN**

#### **Notice Requiring Payment of Sums Payable**

80. If any Member fails to pay any sum payable on or in respect of any shares, either for allotment money, calls or instalments, on or before the day for payment, the Board may, at any time after the day specified for payment whilst any part of the sum remains unpaid, serve a notice on the Member requiring that Member to pay the sum together with interest accrued and all expenses incurred by the Company by reason of the non-payment.

#### **Time and Place for Payment**

81. The notice referred to in Article 80 is to name a day on or before which the sum, interest and expenses (if any) are to be paid and the place where payment is to be made. The notice is also to state that, in the event of non-payment at or before the time and at the place specified, the shares in respect of which the sum is payable will be liable to be forfeited.

#### **Forfeiture**

- 82.1 If there is non-compliance with the requirements of any notice given pursuant to Article 80, any shares in respect of which notice has been given may, at any time after the day specified in the notice for payment whilst any part of allotment money, calls, instalments, interest and expenses (if any) remains unpaid, be forfeited by a resolution of the Board to that effect. The forfeiture is to include all dividends, interest and other money payable by the Company in respect of the forfeited shares and not actually paid before the forfeiture.
- 82.2 If a State lease or Native lease is terminated, forfeited, or not renewed on its expiry in favour of the lessee at the date of its expiry, the shares attached to the land comprised in the lease are automatically forfeited.

### **Notice of Forfeiture**

83. When any share is forfeited, notice of the resolution of the Board (if Article 82.1 applies) or of the forfeiture (if Article 82.2 applies) is to be given to the Member in whose name it stood immediately prior to the forfeiture, and an entry of the forfeiture and the date of forfeiture is to be made in the Register. Failure to give notice or make the entry as required by this Article does not invalidate the forfeiture.

### **Disposal of Forfeited Shares**

84. Any forfeited share is deemed to be the property of the Company and the Board may sell or otherwise dispose of or deal with the share in any manner it thinks fit and with or without any money paid on the share by any former holder being credited as paid up, but must sell it to the next lessee, if the share was forfeited pursuant to Article 82.2 and the relevant lessor grants or will grant a replacement lease to the same or another lessee and that new lessee has agreed to acquire the share.

### **Annulment of Forfeiture**

85. The Board may, at any time before any forfeited share is sold or otherwise disposed of, annul the forfeiture of the share upon any condition it thinks fit.

### **Liability Notwithstanding Forfeiture**

86. Any Member whose shares have been forfeited is, notwithstanding the forfeiture, liable to pay and is obliged forthwith to pay to the Company all sums of money, interest and expenses owing upon or in respect of the forfeited shares at the time of forfeiture, together with expenses and interest from that time until

payment at the rate the Board from time to time determines. The Board may enforce the payment or waive the whole or part of any sum paid or payable under this Article as it thinks fit.

### **Company's Lien**

87. The Company has a first and paramount lien for unpaid calls, instalments, interest due in relation to any calls or instalments and any amounts the Company is called upon by law to pay in respect of the shares of a Member upon shares registered in the name of the Member in respect of which the calls, instalments and interest are due and unpaid (whether presently payable or not) or in respect of which the amounts are paid and upon the proceeds of sale of the shares. The lien extends to all dividends and bonuses from time to time declared in respect of the shares provided that, if the Company registers a transfer of any shares upon which it has a lien without giving the transferee notice of any claim it may have at that time, the shares are freed and discharged from the lien of the Company in respect of that claim.

### **Sale of Shares to Enforce Lien**

88. The Company may do all such things as may be necessary or appropriate for it to do to effect a transfer or to protect any lien, or other right to which it may be entitled under any law or these Articles.

### **Title of Shares Forfeited or Sold to Enforce Lien**

- 89.1 In a sale or a re-allotment of forfeited shares or in the sale of shares to enforce a lien, an entry in the Board's minute book that the shares have been forfeited, sold or re-allotted in accordance with these Articles is sufficient evidence of that fact as against all persons entitled to the shares immediately before the forfeiture, sale or re-allotment of the shares. The Company may receive the purchase money or consideration (if any) given for the shares on any sale or re-allotment.
- 89.2 In a re-allotment, a certificate signed by a Director or the Secretary to the effect that the shares have been forfeited and the receipt of the Company for the price of the shares constitutes a good title to them.
- 89.3 In a sale, the Company may appoint a person to execute or effect a transfer in favour of the person to whom the shares are sold.
- 89.4 Upon the issue of the receipt or the execution of the transfer the person to whom the shares have been re-allotted or sold is to be registered as the holder of the shares, discharged from all calls or other money due in respect of the shares

prior to the re-allotment or purchase and the person is not bound to see to the regularity of the proceedings or to the application of the purchase money or consideration; nor is the person's title to the shares affected by any irregularity or invalidity in the proceedings relating to the forfeiture, sale or re-allotment.

- 89.5 The net proceeds of any sale or re-allotment are to be applied first in payment of all costs of or in relation to the enforcement of the lien or the forfeiture (as the case may be) and of the sale or re-allotment, next in satisfaction of the amount in respect of which the lien exists as is then payable to the Company (including interest) and the residue (if any) paid to, or at the direction of, the person registered as the holder of the shares immediately prior to the sale or re-allotment or to the person's executors, administrators or assigns upon the production of any evidence as to title required by the Board.
- 89.6 If a certificate for the shares is not produced to the Company, the Board may, where the Company is required by the Act to issue certificates for shares, issue a new certificate distinguishing it from the certificate (if any) which was not produced.

## **PAYMENTS BY THE COMPANY**

### **Payments by the Company**

90. If any law of any place imposes or purports to impose any immediate or future or possible liability on the Company to make any payment or empowers any government or taxing authority or government official to require the Company to make any payment in respect of any securities held either jointly or solely by any holder or in respect of any transfer of those securities or in respect of any interest, dividends, bonuses or other money due or payable or accruing due or which may become due or payable to the holder by the Company on or in respect of any securities or for or on account or in respect of any holder of securities, whether in consequence of:
- (a) the death of the holder;
  - (b) the non-payment of any income tax or other tax by the holder;
  - (c) the non-payment of any estate, probate, succession, death, stamp or other duty by the holder or the trustee, executor or administrator of that holder or by or out of the holder's estate;
  - (d) any assessment of income tax against the Company in respect of interest or dividends paid or payable to the holder; or

(e) any other act or thing,

the Company in each case:

- (i) is to be fully indemnified from all liability by the holder or the holder's trustee, executor or administrator and by any person who becomes registered as the holder of the securities on the distribution of the deceased holder's estate;
- (ii) has a lien upon the securities for all money paid by the Company in respect of the securities under or in consequence of any law;
- (iii) has a lien upon all dividends, bonuses and other money payable in respect of the securities registered in the Register as held either jointly or solely by the holder for all money paid or payable by the Company in respect of the securities under or in consequence of any law, together with interest at a rate the Board may determine from time to time from the date of payment to the date of repayment, and may deduct or set off against any dividend, bonus or other money payable any money paid or payable by the Company together with interest;
- (iv) may recover as a debt due from the holder or the holder's trustee, executor or administrator or any person who becomes registered as the holder of the securities on the distribution of the deceased holder's estate, any money paid by the Company under or in consequence of any law which exceed any dividend, bonus or other money then due or payable by the Company to the holder together with interest at a rate the Board may determine from time to time from the date of payment to the date of repayment; and
- (v) may, if any money is paid or payable by the Company under any law, refuse to register a transfer of any securities by the holder or the holder's trustee, executor or administrator until the money and interest is set off or deducted or, in case the money and interest exceeds the amount of any dividend, bonus or other money then due or payable by the Company to the holder, until the excess is paid to the Company.

Nothing in this Article prejudices or affects any right or remedy which any law confers on the Company, and, as between the Company and each holder, each holder's trustee, executor, administrator and estate, any right

or remedy which the law confers on the Company is enforceable by the Company.

## **TRANSFER AND TRANSMISSION OF SHARES**

### **Instrument of Transfer**

91. Subject to these Articles, a Member may transfer all or any of its shares:
- (a) in any manner required or permitted by the Act for the purpose of facilitating dealings in securities; and
  - (b) by any instrument in writing in any usual or common form or in any other form that the Directors approve.

### **Registration Procedure**

92. Where an instrument of transfer referred to in Article 91 is to be used by a Member to transfer shares the following provisions apply:
- (a) it must be executed by or on behalf of both the transferor and the transferee;
  - (b) the instrument of transfer must be left for registration at the share registry of the Company, accompanied by the certificate for the shares to which it relates (if any) and such information as the Directors properly require to show the right of the transferor to make the transfer, and in that event, the Company must, subject to the powers vested in the Directors by these Articles, register the transferee as a Member;
  - (c) the Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without charge except in the case where the issue of a certificate is to replace a lost or destroyed certificate;
  - (d) on registration of a transfer of shares, the Company must cancel the old certificate (if any).
- 93.1 A transferor of shares remains the holder of the shares transferred until the transfer (if any) is registered in respect of the shares and the name of the transferee is entered in the register in respect of the shares. The right to any dividends declared on any shares subject to a transfer will be determined by

reference to the record date for the purposes of that dividend and the date of registration of the transfer.

- 93.2 A transferor of shares shall not be entitled to any dividend payable after the date of registration of the transfer notwithstanding that the transferor has paid any or all of its Contributions for the current and any past year. A transferee shall be liable for all Contributions payable on account of the shares transferred whether or not those Contributions relate to the current year or any preceding years.

### **Closing Register**

94. Subject to the provisions of the Act, the Register may be closed at any time the Board thinks fit.

### **Right to refuse registration**

- 95.1 Notwithstanding any other provisions contained in these Articles (other than Article 95.2), the Company may in the Directors' absolute discretion and without assigning any reason therefor, refuse to register or prevent or interfere with the registration of a transfer of securities in the Company.

- 95.2 The Directors will register a transfer of securities in Article 95.1 unless:

- (a) there is a lien in terms of Article 87;
- (b) they are not reasonably satisfied that the transfer will comply with the terms of Article 20.1(a) or 20.2;
- (c) there is an unremedied failure to pay contributions in accordance with Articles 25-38.

### **Transmission by Death**

96. The trustee, executor or administrator of a deceased Member (who is not one of several joint holders) is the only person recognised by the Company as having any title to securities registered in the name of the deceased Member provided that the Board may, subject to compliance by the transferee with these Articles, register any transfer signed by a Member prior to the Member's death notwithstanding that the Company has notice of the Member's death.

### **Transmission by Operation of Act**

97. A person (a 'transmittee') who establishes to the satisfaction of the Board that the right to any securities has devolved on the transmittee by will or by operation of law may be registered as a Member in respect of the securities or may (subject to the provisions in these Articles relating to transfers) transfer the securities provided that the Board has the same right to refuse to register the transmittee as if the transmittee was the transferee named in an ordinary transfer presented for registration.

## **ALTERATION OF CAPITAL**

### **Power to Alter Share Capital**

98. Subject to any relevant article, the Company in general meeting by special resolution may from time to time alter its share capital in any one or more of the ways provided for by the Act.

### **Board may Give Effect to Alteration of Share Capital**

99. The Board may do anything which is required to give effect to any resolution authorising alteration of the share capital of the Company and, without limitation, may make provision for the issue of fractional certificates or sale of fractions of shares and distribution of net proceeds as it thinks fit.

### **Power to Reduce Capital**

100. The Company may from time to time by special resolution reduce its capital (including any capital redemption reserve fund, share premium account or fund representing money paid upon the issue of options) in any manner allowed by the Act.

## **GENERAL MEETINGS**

### **General Meetings**

- 101.1 General meetings of the Company may be convened and held at the times and places and in the manner determined by the Board. Except as required under the Act, the Members may not convene a meeting of the Company. By resolution of the Board any general meeting (other than a general meeting which has been requisitioned by Members in accordance with the Act) may be cancelled or postponed prior to the date on which it is to be held.
- 101.2 The Chairman of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the Chairman to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not:
  - (i) a Member or a proxy, attorney or representative of a Member;
  - (ii) a director; or
  - (iii) an auditor of or other professional advisor to the Company.

### **Notice of General Meeting**

102. Subject to the provisions of the Act relating to special resolutions, not less than fourteen days' notice of a general meeting may be given by the Board in the form and in the manner the Board thinks fit save that the Board is required to give at least twenty-one days notice of any general meeting at which the Board proposes or these Articles require that an election of Directors be held. Notice of meetings shall be given to the Members and to such persons as are entitled under these Articles or under the Act. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.

### **PROCEEDINGS OF MEETINGS**

#### **Business of General Meetings**

103. The business of an annual general meeting is to receive and consider the accounts and reports required by the Act to be laid before each annual general meeting, to appoint an auditor who shall be a Member of the Fiji Institute of Accountants, to elect Directors in the place of those retiring under these Articles, and to transact any other business which, under these Articles, is required to be

transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Except with the approval of the Board, with the permission of the Chairman or pursuant to the Act, no person may move at any meeting either:

- (a) in regard to any special business of which notice has been given under Section 144 of the Act, any resolution or any amendment of a resolution; or
- (b) any other resolution which does not constitute part of special business of which notice has been given under Article 102.

The auditors and other professional advisors are entitled to attend and be heard on any part of the business of a meeting which concerns them.

### **Quorum**

104. Subject to any requirement of the Act, a proportion of 35% of all Members eligible to attend and vote constitutes a quorum for a meeting. No business may be transacted at any meeting except the election of a Chairman and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business.

### **Adjournment in Absence of Quorum**

105. If within fifteen minutes after the time specified for a general meeting a quorum is not present, the meeting, if convened upon a requisition by Members, is to be dissolved, and in any other case it is to be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is not present within thirty minutes after the time specified for holding the meeting, the meeting is to be dissolved.

### **Chairman**

- 106.1 The Chairman of the Board, who shall be elected by a simple majority of the Directors from their number, is entitled to take the chair at every general meeting.
- 106.2 If at any general meeting:
- (a) the Chairman of the Board is not present at the specified time for holding the meeting; or

- (b) the Chairman of the Board is present but is unwilling to act as Chairman of the meeting,

the Deputy Chairman of the Board is entitled to take the chair at the meeting.

106.3 If at any general meeting:

- (a) there is no Chairman of the Board or Deputy Chairman of the Board;
- (b) the Chairman of the Board and Deputy Chairman of the Board are not present at the specified time for holding the meeting; or
- (c) the Chairman of the Board and the Deputy Chairman of the Board are present but each is unwilling to act as Chairman of the meeting,

the Members present may choose another Director as Chairman of the meeting and if no Director is present or if each of the Directors present are unwilling to act as Chairman of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

### **Acting Chairman**

107. If during any general meeting the Chairman acting pursuant to Article 106 is unwilling to act as chairman for any part of the proceedings, the Chairman may withdraw as Chairman during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be Acting Chairman of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings the Acting Chairman is to withdraw and the Chairman is to resume acting as Chairman of the meeting.

### **General Conduct of Meeting**

108. The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined by the Chairman. The Chairman may at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present. The Chairman may require the adoption of any procedure which are in the Chairman's opinion necessary or desirable for the proper and

orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

### **Adjournment**

109. The Chairman may at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairman exercises a right of adjournment of a meeting pursuant to this Article, the Chairman has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chairman exercises that discretion, no vote may be taken by the Members present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

### **Voting**

110. Except on a Restricted Matter while the A Share is on issue (when the question must be submitted to a poll), each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote. Except as otherwise provided by these articles, the chairman does not have a casting vote.

### **Declaration of Vote on a Show of Hands; When Poll Demanded**

111. At any meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Company signed by the Chairman of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded either immediately before or immediately after any question is put to a show of hands either by Members entitled to at least 10% of the total voting rights of all Members present at the meeting or by the Chairman and is deemed to be demanded if the question is about a Restricted Matter. No poll may be demanded on the question of election of a chairman of a meeting.

### **Taking a Poll**

112. If a poll is demanded as provided in Article 111, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in respect of the dispute made in good faith is final.

### **Continuation of Business**

113. A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

### **Special Meetings**

114. All the provisions of these Articles as to general meetings apply to any special meeting of any class of Members which may be held pursuant to the operation of these Articles or the Act.

## **VOTES OF SHAREHOLDERS**

### **Voting Rights**

115. Subject to the powers or restrictions on voting from time to time affecting any class of shares and subject to any preceding Articles:
- (a) (i) subject to paragraphs (ii) and (iii), on a show of hands, each Member present has one vote;
  - (ii) where a person is entitled to vote in more than one capacity, that person is entitled only to one vote on a show of hands; and
  - (b) on a poll, each Member present:
    - (i) has one vote for each fully paid share held; and
    - (ii) has for each share which is not fully paid a fraction of a vote equivalent to the proportion which the amount paid up on that share bears to the total issue price for that share.

### **Voting Rights of Personal Representatives, etc.**

116. Any person entitled under Articles 96 or 97 to transfer any shares may vote at a general meeting in the same manner as if the person were the registered holder of the shares provided that at least forty-eight hours before the time of holding the meeting at which the person proposes to vote the person has satisfied the Board of the person's right to transfer the shares, unless the Board has previously admitted the person's right to vote at the meeting in respect of the shares.

### **Appointment of Proxies**

- 117.1 Any Member may appoint a proxy to vote at a general meeting on that Member's behalf and may direct the proxy to vote either for or against each or any resolution. A proxy need not be a Member in the Company. The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, or any other place the Board may determine from time to time, not later than forty-eight hours (or a lesser period as the Directors may determine and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote. No instrument appointing a proxy is, except as provided in this Article, valid after the expiration of 12 months after the date of its execution. Any Member who is or who intends to be absent or resident abroad may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all meetings during the Member's absence or residence abroad and until revocation.
- 117.2 If stated in the notice convening the general meeting an instrument appointing a proxy may unless an original document or attested copy of a power or authority must also be deposited, be deposited by sending a copy of the instrument by facsimile to the facsimile number specified in the notice of meeting.

### **Voting by Corporation**

118. Any corporation, being a Member and entitled to vote, may by resolution of its directors or other governing body or by an instrument of proxy authorise any person, though not a Member of the Company, to act as its representative at meetings, and such representative shall, in accordance with his authority and until his authority is revoked by the corporation which he represents, be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were a natural person who was a Member.

### **Validity of Vote**

119. A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy or power of attorney or transfer of the shares in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind, revocation or transfer has been received at the Office before the meeting or any adjourned meeting. A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

### **Form and Execution of Instrument of Proxy**

120. An instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, under its common seal or signed by a duly authorised officer and in the form which the Board may from time to time prescribe to accept. The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy. An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and the Board may authorise completion of the proxy by the insertion of the name of any Member of the Board as the person in whose favour the proxy is given.

### **Board to Issue Forms of Proxy**

121. The Board may issue with any notice of general meeting of Members of any class of Members forms of proxy for use by the Members. Each form shall make provision for the Member to write in the name of the person or persons to be appointed as proxy and may provide that, if the Member does not so write in one or more names, the proxy shall be one or more persons named on the form. The form may include the names of any of the Directors or of any other persons as suggested proxies. The forms shall be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

### **Attorneys of Shareholders**

122. Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must

be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

### **Rights of Shareholder Indebted to Company in Respect of Other Shares**

123. Subject to any restrictions from time to time affecting the right of any Member or class of Members to attend any meeting, a Member holding a share in respect of which for the time being no money are due and payable to the Company is entitled to be present at any general meeting and to vote and be counted in a quorum notwithstanding that monies are then due and payable to the Company by the Member in respect of any other share held by the Member provided that, upon a poll, a Member is only entitled to vote in respect of shares held by the Member upon which, at the time when the poll is taken, no money is due and payable to the Company.

## **DIRECTORS**

### **Appointment by holder Groups**

124.1 At all times -

- (a) the B Shares Joint Owners have the right to appoint 3 Directors;
- (b) the holders of the C Shares have the right (subject to Article 125) to appoint 2 Directors;
- (c) the holders of the D Shares and F Shares (in the aggregate) have the right to appoint 1 Director; and
- (d) the holder of the E Shares has the right to appoint 1 Director;

124.2 In each such case (and in the case of Article 125) -

- (a) the power to appoint includes a power at will to remove and replace;
- (b) a notice of appointment or removal signed by not less than 51% of the holders of the shares of the relevant class will have effect on receipt by the Company; and

- (c) an appointment or removal effected by ordinary resolution at a meeting of the holders of the shares of the relevant class will have effect on and from the conclusion of the meeting.

### **Substitute appointment by holder of A Shares**

- 125. If at any time there is no Director who is a Fiji resident, the holder of A Share may appoint such a person to be a Director, and a person so appointed is a substitute for one of the Directors (determined by the holder of the C Shares) appointed under article 124.1 (b).

### **Number and Appointment of Directors**

- 126.1 All Directors are required to be natural persons.
- 126.2 Articles 124.1 to 141 are subject to the Articles 124 and 125.
- 126.3 The number of Directors (not including Alternate Directors) shall be seven.

### **Power to Appoint Directors**

- 127. The Board has the power at any time to appoint any person as a Director, either to fill a casual vacancy or as an addition to the Board but so that the number of Directors does not exceed the maximum number determined pursuant to Article 126. Any Director appointed under this Article may hold office only until the next general meeting of the Company and is then eligible for election at that meeting but is not to be taken into account in determining the number of Directors who are to retire by rotation at the meeting.

### **Remuneration of Directors**

- 128.1 Subject to Article 128.2 the Directors shall be paid out of the funds of the Company as remuneration for their services as Directors, such sum accruing from day to day as the Company in general meeting determines to be divided among them in such proportion and manner as they agree or in default of agreement equally.
- 128.2 The Directors' remuneration for their services as Directors shall be by fixed sum and not a commission on or percentage of profits or operating revenue and shall not be increased except at a general meeting where particulars of the proposed increase have been given to the Members in the notice convening the meeting.

### **Remuneration of Directors for Extra Services**

129. Any Director who serves on any committee, or who devotes special attention to the business of the Company, or who otherwise performs services which in the opinion of the Board are outside the scope of the ordinary duties of a Director, or who at the request of the Board engages in any journey on the business of the Company, may be paid extra remuneration as determined by the Board.

### **Travelling and Other Expenses**

130. Every Director is, in addition to any other remuneration provided for in these Articles, entitled to be paid from Company funds all reasonable travel, accommodation and other expenses incurred by the Directors in attending meetings of the Company or of the Board or of any Committees or while engaged on the business of the Company.

### **Retirement Benefits**

131. Any Director may be paid a retirement benefit, as determined by the Board, in accordance with the Act. The Board is authorised to make arrangements with any Director with respect to the payment of retirement benefits in accordance with this Article.

### **Directors may contract with Company**

- 132.1 A Director is not disqualified by the office of Director from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company by a Director nor any contract or arrangement entered into by or on behalf of the Company in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason of holding the office of Director or of the fiduciary relationship established by the office.
- 132.2 No Director may as a Director vote in respect of any contract or arrangement in which the Director has directly or indirectly any personal material interest and if the Director does vote his vote may not be counted nor shall the Director be counted in the quorum present at the meeting but -
- (a) either or both of these prohibitions may at any time be relaxed or suspended to any extent by ordinary resolution passed at a general meeting;

- (b) neither prohibition applies to a Director appointed by the holder of the A Share on a question related to a Restricted Matter.

132.3 A Director who is interested in any contract or arrangement may, notwithstanding the interest, attest the affixing of the Seal to any document evidencing or otherwise connected with the contract or arrangement.

#### **Director May Hold Other Office**

133. A Director may hold any other office or position under the Company (except that of auditor) in conjunction with the office of Director, on terms and at a remuneration in addition to remuneration (if any) as a Director, as the Board approves.

134. A Director may be or become a director of or hold any other office or position under any corporation promoted by the Company, or in which it may be interested, whether as a vendor or Member or otherwise, or with any other corporation or organisation, and the Director is not accountable for any benefits received as a director or Member of or holder of any other office or position under that corporation or organisation.

#### **Exercise of Voting Power in Other Corporations**

135. The Board may exercise the voting power conferred by the shares in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the Directors or any of them directors of that corporation or voting or providing for the payment of remuneration to the directors of that corporation) and a Director of the Company may vote in favour of the exercise of those voting rights notwithstanding that the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

#### **Directors May Lend to the Company**

136. Any Director may lend money to the Company at interest with or without security or may, for a commission or profit, guarantee the repayment of any money borrowed by the Company and underwrite or guarantee the subscription of shares or securities of the Company or of any corporation in which the Company may be interested without being disqualified in respect of the office of Director and without being liable to account to the Company for the commission or profit.

## ALTERNATE DIRECTORS

### Director May Appoint Alternate Director

137. Subject to these Article, each Director has power from time to time to appoint any person to act as an Alternate Director in the Director's place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise the Director is unable to attend to duties as a Director. The appointment is to be in writing and signed by the Director and a copy of the appointment is to be given by the appointing Director to the Company by forwarding or delivering it to the Office. The appointment takes effect immediately upon receipt of the appointment at the Office. The following provisions apply to an Alternate Director:
- (a) the Alternate Director may be removed or suspended from office upon receipt at the Office of written notice, letter, telex, facsimile transmission or other form of visible communication from the Director by whom the Alternate director was appointed to the Company;
  - (b) the Alternate director is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the Alternate Director was appointed is not present;
  - (c) the Alternate Director is entitled to exercise all the powers (except the power to appoint an Alternate Director) and perform all duties of a Director, in so far as the Director by whom the Alternate Director was appointed had not exercised or performed them;
  - (d) the Alternate Director is not, unless the Board otherwise determines (without prejudice to the right to reimbursement for expenses pursuant to Article 130) entitled to receive any remuneration as a Director from the Company, and any remuneration (not including remuneration authorised by the Board or reimbursement for expenses) paid to the Alternate Director by the Company is to be deducted from the remuneration of the Director by whom the Alternate Director was appointed;
  - (e) the office of the Alternate Director is vacated upon the death of, or vacation of office by the Director by whom the Alternate Director was appointed;
  - (f) the Alternate Director is not to be taken into account in determining the number of Directors or rotation of Directors; and

- (g) the Alternate Director is, while acting as a Director, responsible to the Company for the Alternate Director's own acts and defaults and is not to be deemed to be the agent of the Director by whom the Alternate Director was appointed.

## **VACATION OF OFFICE OF DIRECTOR**

### **Vacation of Office by Director**

138.1 The Office of a Director is vacated:

- (a) upon the Director becoming an insolvent under administration, suspending payment generally to creditors or compounding with or assigning the Director's estate for the benefit of creditors;
- (b) upon the Director becoming a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws relating to mental health;
- (c) upon the Director being absent from meetings of the Board during a period of 3 consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (d) upon the Director resigning office by notice in writing to the Company;
- (e) upon the Director being removed from office pursuant to the Act or these articles; or
- (f) upon the Director being prohibited from being a Director by reason of the operation of the Act or these articles.

138.2 A Director who vacates office pursuant to Article 138.2 is not to be taken into account in determining the number of Directors who are to retire by rotation at any annual general meeting.

### **Directors Who are Employees of the Company**

139. The office of a Director who is an employee of the Company becomes vacant upon the Director ceasing to be employed by the Company but the person concerned is eligible for re-appointment or re-election as a Director of the Company.

## **MANAGING DIRECTOR**

### **Appointment of a Managing Director**

140. The Board may from time to time appoint one of the Board to be Managing Director (who may bear that title or any other title determined by the Board) for a period ending on the happening of events (if any) stipulated by the Board, at a remuneration which may be by way of salary or commission on or participation in profits or by any or all of these methods (but not by a commission on or percentage of operating revenue) and otherwise on terms as determined by the Board from time to time. The Board may confer upon a Managing Director any of the powers exercisable under these Articles by the Board as it thinks fit and upon any conditions it thinks expedient but the conferring of powers by the Board upon a Managing Director does not exclude the exercise of those powers by the Board.

### **Managing Director Not to be Subject to Retirement by Rotation**

141. A Managing Director is subject to the same provisions as to resignation and removal as the other Directors of the Company and ceases to be a Managing Director on ceasing to hold office as a Director.

## **PROCEEDINGS OF DIRECTORS**

### **Procedures, Quorum and Notice**

142. The Board may meet together, upon giving 7 days notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Until otherwise determined by the Board, five (5) Directors form a quorum. Notice is deemed to have been given to a Director if sent by mail, personal delivery, facsimile transmission or telex to the usual place of residence of the Director or at any other address given to the Secretary by the Director from time to time.

### **Meetings by Telephone or Other Means of Communication**

143. The Directors may meet either in person or by telephone or by other means of communication by which all persons participating in the meeting are able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting was at that place for the duration of the meeting.

### **Votes at Meetings**

144. Questions arising at any meeting of the Board are decided by a majority of votes except that in the case of an equality of votes, the Chairman has a casting vote.

### **Convening of Meetings**

145. The Board may at any time, and the Secretary, upon the request of any one Director, must, convene a meeting of the Board.

### **Chairman**

146. The Board may elect a Chairman and a Deputy Chairman of its meetings and determine the period for which each is to hold office. If no Chairman or Deputy Chairman is elected or if at any meeting the Chairman and the Deputy Chairman are not present at the time specified for holding the meeting (or, if being present, the relevant Directors refuse to act as Chairman or Deputy Chairman), the Directors present may choose one of their number to be Chairman of the meeting.

### **Powers of Meetings**

147. A meeting of the Board or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

### **Delegation of Powers to Committees**

148. The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees consisting of a Director or Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in the delegate.

### **Proceedings of Committees**

149. The meetings and proceedings of any Committee are to be governed by the provisions of these Articles for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under Article 148.

### **Validity of Acts**

- 150.1 All acts done at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a Member of the Committee (as the case may be).
- 150.2 If the number of Directors is reduced below the minimum number fixed pursuant to these Articles, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

### **Resolution in Writing**

151. A resolution in writing of which notice has been given to all Directors and which is signed by all of the Directors entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted and may consist of several documents in the same form each signed by one or more of the Directors. For the purposes of this Article the references to `Directors' include any Alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but do not include any other Alternate Director. A telex, facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is deemed to be a document in writing signed by the Director.

## **POWERS OF THE BOARD**

### **General Powers of the Board**

- 152.1 The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred upon them by these Articles) may exercise all powers and do all things as are within the power of the Company and are not by these Articles or by Act directed or required to be exercised or done by the Company in general meeting.
- 152.2 The Board may not exercise powers restricted in terms of Article 6.1 (c) for so long as the A Share remains unredeemed or uncalled.

### **Power to Borrow and Guarantee**

153. The Board may not exercise the powers of the Company to raise or borrow money or to guarantee the debts or obligations of any person or to enter into any other financing arrangement unless it first obtains the approval (by way of special resolution) of the Company in a general meeting. Provided that this Article shall not apply to the levying of Contributions or Special Levies under Article 29 and 30.

#### **Power to Give Security**

154. The Board may not exercise the powers of the Company to charge any property or business of the Company or any of its uncalled capital and must not issue debentures or performance bonds or give security for a debt, liability, or obligation of the Company or of any other person without first obtaining the approval (by way of special resolution) of the Company in a general meeting.

#### **Power to Authorise Debenture Holders, etc. to Make Calls**

155. Without limiting the generality of Article 152, if any uncalled capital of the Company is included in or charged by any debenture, mortgage or other security, the Board may, by instrument under the Seal, authorise the person in whose favour the debenture, mortgage or other security is executed or any other person in trust for him to make calls on the Members in respect of that uncalled capital and to sue in the name of the Company or otherwise for the recovery of money becoming due in respect of calls made and to give valid receipts for those money, and the authority subsists during the continuance of the debenture, mortgage or other security, notwithstanding any change in the Directors, and is assignable if expressed to be.

#### **Power to Issue at a Discount or Premium**

156. Subject to the Act, any bonds, debentures or other securities may be issued at a discount or premium or otherwise and with or without the right of or obligation on the holder thereof to exchange the same in whole or in part of shares in the Company at a certain or uncertain time or with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of Directors and otherwise and generally with such rights and options and upon such conditions in all respects as the Board thinks fit.

#### **Personal Liability of Officer**

157. If the Board or any Member thereof or any officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, the Board may execute or cause to be executed any charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the persons or person so becoming liable as aforesaid from any loss in respect of such liability.

### **Disposal of Main Undertaking or Assumption of Liability for Large Amounts**

- 158.1 The approval (by way of special resolution) of the Company in a general meeting shall be required for:
- (a) Any sale or disposal of the Company's main undertaking or majority in value of its assets; or
  - (b) assumption of liability by the Company in excess of \$500,000 in respect of any single transaction.
- 158.2 No person who may benefit (other than as a holder of securities issued by the Company) from the sale or disposal, and no associate of such person, may vote on any resolution to approve or ratify the sale or disposal.

### **BRANCH REGISTER**

#### **Branch Register**

159. Subject to the Act and these articles, the Company may cause to be kept in any place a branch register of Members. The Board in its discretion may from time to time determine which Members or class of Members may be registered on any branch register and appoint an authority in any place in which a branch register is kept to keep the branch register and enter and remove particulars of shares transferred from or to any other register of Members and approve or reject transfers in the branch register, and every authority if authorised by the board may, in respect of transfers or other entries proposed to be registered in the branch register for which the authority is appointed, exercise all the powers of the Board in the same manner and to the same extent and effect as if the Board was actually present and exercised those powers.

### **THE SEAL**

#### **Execution of Cheques, Bills, etc.**

160. All cheques, bills of exchange and promissory notes shall be signed, drawn, made, accepted or endorsed (as the case may be) for and on behalf of the Company by 2 directors, or by one Director and the Secretary or some other officer authorised by the Board, or in such other manner as the Board may from time to time determine.

### **Affixing the Seal**

161. The Board is to provide for the safe custody of the Seal, which should only be used by the authority of the Board. Every instrument to which the Seal is affixed is to be signed by a Director and countersigned by the Secretary or by a second Director or by another person appointed by the Board for the purpose. The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

## **MINUTES**

### **Minutes**

162. The Board is to ensure that minutes are duly recorded in any manner it thinks fit:
- (a) of the names of the Directors present at each meeting of the Board and of any Committees; and
  - (b) of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and any Committees,

and the minutes of any meeting of the Board or of any Committee or of the Company, if purporting to be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting, are prima facie evidence of the matters stated in the minutes.

## **DIVIDENDS**

### **Declaration of Dividend**

163. The Board may from time to time declare a dividend to be paid to the Members entitled. The dividend is (subject to the rights of, or any restrictions on, the holders of shares created or raised under any special arrangement as to dividend) payable on all shares in proportion to the amount of total issue price for the time being paid or credited as paid in respect of the shares, and may be declared at a rate per annum in respect of a specified period provided that (for the purposes

of this Article) no amount paid on a share in advance of calls is to be treated as paid on that share.

### **Interim Dividends**

164. The Board may from time to time pay to the Members on account of the next forthcoming dividend any interim dividend as in its judgement the position of the Company justifies.

### **Dividends Out of Profits**

165. No dividend is payable except out of the profits of the Company, and no dividend or other money payable on or in respect of a share carries interest as against the Company. The declaration of the Board as to the amount of the profits of the Company is conclusive.

### **Reserves**

166. The Board may, in priority to any dividend, set aside out of the profits of the Company any sums as it thinks proper as a reserve, which at the discretion of the Board may be applicable for any purpose to which the profits of the Company may be properly applied, and pending application may be employed in the business of the Company or be invested in any investments the Board may from time to time think fit. Any income derived from or accretions to such shares, securities or other investments may either be carried to the credit of the reserve fund or reserve funds represented by such shares, securities or other investments or be dealt with as profits arising from the business of the Company.

### **Distribution Otherwise Than in Cash**

167. When declaring a dividend the Board may:
- (a) direct payment of the dividend wholly or in part by the distribution of specific assets or documents of title and in particular of paid up shares, debentures or debenture stock of the Company or any other Company; and
  - (b) (if the Company in general meeting has approved the adoption of a plan in that behalf), determine and announce that each Member entitled to participate in the dividend may elect that the payment of the dividend be satisfied in respect of all, or a number of shares less than all of the shares held by the Member by the allotment of paid up shares in accordance with the plan.

### **Power to Capitalise Profits**

168. The Board may resolve that the whole or any portion of any sum forming part of the undivided profits of the Company or standing to the credit of any reserve or other account (including without limitation any share premium reserve) and which is available for distribution, be capitalised and distributed to Members in the same proportions in which they would be entitled to receive it if distributed by way of dividend or in accordance with either the terms of issue of any shares or the terms of any plan for the issue of securities for the benefit of officers or employees and that all or any part of the sum be applied on their behalf either in paying up the amounts for the time being unpaid on any issued shares held by them, or in paying up in full (either at par or at any premium the Board may determine) unissued shares or other securities the Company (of an aggregate nominal amount equal to the amount capitalised) to be issued to them accordingly, or partly in one way or partly in the other.

### **Appropriation and Application of Amounts to be Capitalised**

169. The Board may specify the manner in which any fractional entitlements and any difficulties relating to distribution are to be dealt with and, without limiting the generality of the foregoing, may specify that fractions are to be disregarded or that any fractional entitlements are to be increased to the next whole number or that payments in cash in lieu of fractional entitlements be made. The Board may make all necessary appropriations and applications of the amount to be capitalised pursuant to Article 168 and all necessary allotments and issues of fully paid shares or debentures. Where required, the Board may appoint a person to sign a contract on behalf of the Members entitled upon a capitalisation to any shares or debentures, which provides for the issue to them, credited as fully paid of any further shares or debentures or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised.

### **Transfer of Shares**

170. A transfer of shares registered after the transfer books close for dividend purposes, but before a dividend is payable, does not pass the right to any dividend declared before the books are closed.

### **Retention of Dividends**

171. The Board may retain the dividends payable on shares which any person is under Articles 96 or 97 entitled to transfer until the person becomes registered as

a Member in respect of the shares or duly transfers them. The Board may also retain any dividends on or in respect of which (or on or in respect of the shares upon which any such dividend is payable) the Company has a lien or charge under Article 87 and may apply the same in or towards satisfaction of the calls, instalments or sums owing in respect of which the lien or charge exists.

### **How Dividends are Payable**

172. Payment of any dividend may be made in any manner and by any means as determined by the Board. Without prejudice to any other method of payment which the Board may adopt any dividend may be paid by cheque or warrant made payable to the Member entitled to the dividend or in the case of joint holders to the Member whose name stands first in the Register in respect of the joint holding. Payment in any dividend may be made by sending the cheque, warrant or other means of payment to the Member entitled to the dividend through the post to the address of the Member in the Register, and upon posting every payment of any dividend is at the risk of the Member.

### **Unclaimed Dividends**

173. All unclaimed dividends may be invested or otherwise made use of by the Board for the benefit of the Company until claimed or otherwise disposed of according to law.

## **NOTICES**

### **Service of Notices**

174. A notice may be given by the Company to any Member, or in the case of joint holders to the Member whose name stands first in the Register, personally, by leaving it at the Member's registered address or by sending it by prepaid post, electronic mail, telex or facsimile transmission addressed to the Member's registered address. All notices sent by prepaid post to persons whose registered address is not in Fiji are to be sent by airmail.

### **When Notice Deemed to be Served**

175. Any notice sent by post is deemed to have been served at the expiration of 48 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted. Any notice served on a Member personally or left at the Member's registered address is deemed to have been served when delivered. Any notice served on a Member by telex is deemed to have been served on receipt by

the Company of the answer back code of the recipient at the end of the transmission. Any notice served on a Member by facsimile transmission is deemed to have been served when the transmission is sent.

#### **Shareholder Not Known at Registered Address**

176. Where a Member does not have a registered address or where the Company has bona fide reason to believe that a Member is not known at the Member's registered address, all future notices are deemed to be given to the Member if the notice is exhibited in the Office for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the Member informs the Company of a registered place of address.

#### **Signature to Notice**

177. The signature to any notice to be given by the Company may be written or printed.

#### **Reckoning of Period of Notice**

178. Where a given number of days' notice or notice extending over any other period is required to be given the day of service is not to be reckoned in the number of days or other period.

#### **Notice to Transferor Binds Transferee**

179. Every person who, by operation of law, transfer or any other means becomes entitled to be registered as the holder of any shares is bound by every notice which, prior to the person's name and address being entered in the Register in respect of those shares, was duly given to the person from whom the person derives title to those shares.

#### **Service on Deceased Shareholders**

180. A notice delivered or sent by post to the registered place of address of a Member pursuant to these Articles is (notwithstanding that the Member is then dead and whether or not the Company has notice of the Member's death) deemed to have been duly served in respect of any registered shares, whether held solely or jointly with other persons by the Member, until some other person is registered in the Member's place as the holder or joint holder and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators and all persons (if any) jointly interested with the Member in the shares.

## **WINDING UP**

### **Distribution In Specie**

181.1 If the Company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the contributors as the liquidator thinks fit in specie or in kind any part of the assets of the Company, and may vest any part of the assets of the Company in trustees upon any trusts for the benefit of all or any of the contributors as the liquidator thinks fit.

### **Variation of Rights of Contributors**

181.2 If thought expedient, any division may be otherwise than in accordance with the legal rights of the contributors and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but in case any division otherwise than in accordance with the legal rights of the contributors is determined, any contributory who would be prejudiced by the division has a right to dissent and ancillary rights as if the determination were a special resolution passed pursuant to the Act relating to the sale or transfer of the Company's assets by a liquidator in a voluntary winding up.

### **Liability to Calls**

181.3 If any shares to be divided in accordance with Article 181.2 involve a liability to calls or otherwise, any person entitled under the division to any of the shares may by notice in writing within 10 business days after the passing of the special resolution, direct the liquidator to sell the person's proportion and pay the person the net proceeds and the liquidator is required, if practicable, to act accordingly.

## **INDEMNITY**

### **Indemnity**

182.1 Subject to the Act, the Company shall indemnify any Director, Secretary or executive officer of the Company against a liability:

- (a) incurred by a Director, Secretary or executive officer acting in that capacity to a person other than the Company or a related body corporate where the liability does not arise out of a lack of good faith;
- (b) for the costs and expenses incurred by the Directors, Secretary or executive officer:

- (i) in defending proceedings, whether civil or criminal, in which judgement is given in favour of the Director, Secretary or executive officer or in which he or she is acquitted; or
- (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Director, Secretary or executive officer under the Act.

182.2 Every employee who is not a Director, Secretary or executive officer of the Company may be indemnified out of the property of the Company against a liability:

- (a) incurred by the employee acting in that capacity;
- (b) for the costs and expenses incurred by an employee:
  - (i) in defending proceedings, whether civil or criminal, in which judgement is given in favour of the employee or in which the person is acquitted; or
  - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

### **Insurance**

182.3 Subject to the Act, the Company may pay insurance premiums in respect of insurance for the benefit of a Director, Secretary or executive officer acting in that capacity against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a liability arising from negligence or other conduct not being a liability incurred by the person acting in that capacity and arising out of conduct involving a wilful breach of duty in relation to the Company or a breach of the provisions of the Act dealing with improper use of inside information or position.

182.4 The Company may pay insurance premiums in respect of insurance for the benefit of the auditor or an employee of the Company who is not a Director, Secretary or executive officer concerned in the management of the Company.

## DISPUTE RESOLUTION

### Procedure

183. Any dispute arising out of or in connection with interpretation, existence, validity or termination of the Articles or the Charter, shall be referred to and finally resolved by arbitration in Fiji as follows:
- (a) A party claiming that a dispute has arisen must give written notice to the other parties to the dispute specifying the nature of the dispute;
  - (b) on receipt of the notice specified in clause (a) the parties to the dispute must within seven (7) days seek to resolve the dispute;
  - (c) if the dispute is not resolved within seven days or within such further period as the parties agree, then the dispute is to be referred to arbitration;
  - (d) if the dispute arises out of or is in connection with any Contribution or other amount to be paid to DCL and is referred to arbitration then:
    - (i) pending the decision of the arbitrators, the party required to pay the Contribution or other amount to DCL (“Debtor”) must pay to DCL the amount specified by DCL, and
    - (ii) the arbitrators may as part of their decision require DCL to refund the whole or any part of the amount paid by the Debtor.
  - (e) the manner of arbitration is to be agreed upon by the parties within a further fourteen (14) days, but failing such agreement:
    - (i) each party shall nominate its own arbitrator and the arbitrators so selected shall nominate a third independent arbitrator;
    - (ii) the committee constituted by all those arbitrators shall, after consulting the parties, determine the mode and timetable for arbitration;
    - (iii) a majority decision reached by that committee of arbitrators including as to allocation of costs of the arbitration shall be binding on the parties.
  - (f) the place of arbitration shall be Nadi, Fiji.