
Date

Parties

STEPHEN LESLIE FRANKS

(Settlor)

ROGER LAWRENCE KERR

STEPHEN LESLIE FRANKS

SIR RONALD RAMSAY TROTTER

(Trustees)

BUSINESS INTEGRITY TRUST

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BUSINESS INTEGRITY TRUST

Date: 2001

PARTIES

- (1) **STEPHEN LESLIE FRANKS** of Wellington, Member of Parliament (“the Settlor”)
- (2) **ROGER LAWRENCE KERR** of Wellington, Company Director **STEPHEN LESLIE FRANKS** of Wellington, Member of Parliament, **SIR RONALD RAMSAY TROTTER** of Kapiti, Company Director (“the Trustees”)

BACKGROUND

- A. The Settlor wishes to establish a charitable trust to give effect to the charitable purposes referred to in this deed.
- B. On signing this deed the Settlor has paid \$1 to the Trustees to be held upon the trusts and with the powers set out in this deed.

NOW THIS DEED RECORDS:

1 DEFINITIONS AND CONSTRUCTION

1.1 Defined terms

In this deed, unless the context requires otherwise:

Balance Date means 31 March or any other date which the Trustees adopt by resolution as the date up to which accounts are to be made in each year;

Designated Gift means a gift which is subject to a trust for a specific purpose that comes within the purposes of the Trust Fund;

Income Year means any year or other accounting period ending on a Balance Date;

Related Person for the purposes of *clause 9.6* and in relation to any business to which section CB4(1)(e) of the Income Tax Act 1994 applies, means a person specified in paragraphs (i) to (iv) of the 2nd proviso to that section, the persons currently specified being:

- (a) a settlor or trustee of the trust by which the business is carried on;
or
- (b) a shareholder or director of the company by which the business is carried on; or
- (c) a settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) that person, where he or she and the settlor, trustee, shareholder or director already mentioned in this definition, are associated persons for the purposes of the Income Tax Act 1994;

Teleconference Meeting for the purposes of rule 17 in the *Second Schedule* means a meeting where the participants are contemporaneously linked by telephone or some other means of instant audio or audio and visual communication;

Trust means the charitable trust created by this deed;

Trust Deed when appearing in the rules set out in the *Second Schedule*, means this deed;

Trust Fund means the sum of \$1 referred to in Background B of this deed and includes any money, investments or other property paid or given to or acquired or agreed to be acquired by the Trustees after this deed has been signed with the intention that it be held by the Trustees subject to the trusts and other provisions set out in this deed;

1.2 Construction

In the construction of this deed, unless the context requires otherwise:

- 1.2.1 a reference to “Trustees” is a reference to the trustees for the time being of the Trust Fund, whether original, additional or substituted;
- 1.2.2 a reference to an enactment is a reference to that enactment as amended, or to any enactment that has been substituted for that enactment;
- 1.2.3 the schedules form part of this deed;

1.2.4 headings appear as a matter of convenience and shall not affect the construction of this deed;

1.2.5 if there is a conflict between the rules and the other provisions of this deed the other provisions of this deed shall prevail.

2 CREATION OF THE TRUST

2.1 Declaration of trust

The Settlor directs, and the Trustees acknowledge, that the Trustees shall hold the Trust Fund upon the trusts and with the powers set out in this deed.

2.2 Name of trusts

The trusts created by this deed are to be known as the “Business Integrity Trust” or by such other name as the Trustees may determine by resolution from time to time.

3 PURPOSES

The Trust is established to promote the public interest in the observance of sound commercial law and a justified reputation for integrity of business in New Zealand including:

- 3.1 To take proceedings in any court, tribunal or before any other body designed to ensure that business wrongdoers, and intending wrongdoers, cannot assume that they will be called to account for their wrongdoing only if:
 - (a) to pursue them is in the personal interests of a person directly wronged, or
 - (b) a regulatory agency has the resources and willingness to do so.
- 3.2 To assist with or advocate proceedings having the foregoing objective.
- 3.3 To commission or assist with investigations aimed at detecting or disclosing business wrongdoing.
- 3.4 To advise potential plaintiffs and others who may be in a position to promote action against such wrongdoers.

- 3.5 To foster government and public understanding of the obstacles to enforcement, and maintenance of a climate of routine compliance with sound commercial law.
- 3.6 To assist competent authorities in pursuing proceedings or otherwise acting to advance the foregoing objectives.
- 3.7 To oppose, or assist in opposing, proceedings which have or may have the effect of deterring, or blocking investigation, reporting or other disclosure or action intended in good faith to promote integrity in the administration or governance of commercial entities in New Zealand or in regulatory agencies including, without limitation, promoting investigative journalism with any of these purposes.
- 3.8 For any other purposes within New Zealand (whether relating to the relief of poverty, the advancement of education or religion or any other matter beneficial to the community) which are charitable according to the law of New Zealand.

4 INCOME TRUSTS

4.1 Power to pay, apply or appropriate income

The Trustees may pay, apply or appropriate, or decide to pay, apply or appropriate as much of the income arising from the Trust Fund in an Income Year as they think fit for or towards one or more of the purposes of the Trust. And if the Trustees provide for more than one purpose they need not treat each purpose equally.

4.2 Provisions relating to payments, applications and appropriations of income

- 4.2.1 The Trustees, by written resolution, may appropriate any investments for one or more of the purposes of the Trust in anticipation of a payment or application under clause 4.1.
- 4.2.2 In any Income Year, the Trustees may appropriate all or part of the income derived or to be derived from the Trust Fund during that Income Year even though, at the time of appropriation, they have not received the income being appropriated.
- 4.2.3 If the Trustees appropriate any income for any purpose of the Trust the recipient of that income shall take an absolute and indefeasible interest in that income as from the date on which it is appropriated.

4.3 Power to retain income

The Trustees need not distribute all of the income arising from the Trust Fund in an Income Year, but may retain or decide to retain all or part of that income to establish or augment any reserve fund, which may be used at any later time for any purpose for which income arising from the Trust Fund may be used.

5 CAPITAL TRUSTS

At any time the Trustees may, or may decide to pay, apply or appropriate as much of the capital of the Trust Fund as they think fit for or towards one or more of the purposes of the Trust. And if the Trustees so provide for more than one purpose they need not treat each purpose equally. Any payment, application or appropriation of capital may be made either in addition to or in place of any payment, application or appropriation of income.

6 RECEIPTS

6.1 Receipt of gifts

The Trustees may receive solicited and unsolicited gifts of any real or personal property for the purposes of the Trust or for any specific purpose that comes within the purposes of the Trust.

6.2 Separate specific trusts

6.2.1 If the Trustees accept a Designated Gift they must keep that Designated Gift and any income derived from it separate from the general assets of the Trust Fund, and administer it as a separate specific trust in terms of the trust under which it was given.

6.2.2 The Trustees shall not use the assets of any separate specific trust to make good any deficit, loss, damage or breach of trust relating to any other separate specific trust. Similarly, the Trustees shall not use the general assets of the Trust Fund for such purposes.

6.2.3 Each separate specific trust shall bear its own administration expenses plus a fair proportion (determined by the Trustees) of the administration expenses applicable to the general purposes of the Trust.

6.3 Receipts for payments

The receipt of the secretary, treasurer or other person or persons appearing to the Trustees to be authorised to give receipts on behalf of

the recipient of any payment made under the terms of this deed, shall be a complete discharge to the Trustees for that payment.

7 INCORPORATION UNDER THE CHARITABLE TRUSTS ACT 1957

If they consider it appropriate the Trustees may apply under the Charitable Trusts Act 1957 for incorporation as a Board under the name Business Integrity Trust Board, or under such other name approved by the Registrar of Incorporated Societies.

8 MEMBERSHIP

8.1 Trustees may establish a membership

The Trustees may:

- 8.1.1 invite persons, firms and corporations who wish to support or take an interest in the purposes of the Trust to become members of the Trust;
- 8.1.2 establish different classes of membership;
- 8.1.3 fix and charge membership fees (including joining fees and subscriptions) for members or each class of members, as the case may be;
- 8.1.4 call members' meetings;
- 8.1.5 subject to clause 8.2, confer membership rights on members; and
- 8.1.6 issue membership certificates or other evidence of membership.

8.2 Limitations on personal benefit arising from membership rights

- 8.2.1 The Trustees may not permit any member of the Trust or any person associated with a member of the Trust to determine or fetter any decision of the Trustees relating to:
- (a) the payment of any income of the Trust Fund to, or on behalf of, that member or associated person; or
 - (b) the conferring of any benefit or advantage on, or on behalf of, that member or associated person.

- 8.2.2 Any such income paid must be reasonable and relative to that which would be paid in an arm's length transaction (being the open market value).
- 8.2.3 Membership shall not confer on any member the right to receive any of the income or capital of the Trust Fund or to control the Trustees in the exercise of their powers.

9 GENERAL PROVISIONS

9.1 Appointment of new and additional Trustees

- 9.1.1 The Trustees may not act if there are less than two, or more than five Trustees;
- 9.1.2 The statutory power of appointment of new Trustees shall be vested in the Trustees, but if at any time there are no Trustees then it shall be vested in the President for the time being of the New Zealand Law Society;
- 9.1.3 The Trustees shall also have power to appoint any person at any time as an additional Trustee of all or any of the trusts, provided that in making the appointment they do not exceed the maximum number of Trustees permitted under this deed;
- 9.1.4 The appointment of any Trustee may be renewed with the consent of that Trustee and the approval of the other Trustees.
- 9.1.5 The Trustees shall seek additional and replacement trustees by requesting nominations from at least five of the organisations or bodies appearing to the Trustees at the time, to best represent well informed and responsible opinion and leadership of business in New Zealand. At the date of this deed such organisations comprise Business New Zealand, the New Zealand Business Roundtable, the New Zealand Stock Exchange, the New Zealand Society of Investment Analysts, the Shareholders Association of New Zealand, the Deans of the University Schools of Business, the Institute of Directors in New Zealand and the Market Surveillance Panel.

9.2 Alterations to deed

- 9.2.1 This deed (apart from the Second Schedule, which contains its own alteration provisions) may be altered only by a resolution of all the

Trustees present and voting at a duly convened and conducted meeting of the Trustees.

- 9.2.2 The secretary of the Trust shall give each Trustee written notice of any proposed resolution for the alteration of this deed at least 14 days before the date of the meeting at which it is to be considered.
- 9.2.3 A resolution for the alteration of any part of this deed shall be effective only if the alteration does not prejudice the charitable nature of the Trust. Clauses 3, 8.2 and 9.6 shall not be altered without first obtaining written confirmation from the Commissioner of Inland Revenue that the proposed alteration does not prejudice the charitable nature of the purposes of the Trust.
- 9.2.4 The predominant or main purpose of the trust is to remain the promotion of the public interest in the observance of sound commercial law and a justified reputation for integrity of business in New Zealand, unless the High Court of New Zealand first gives approval to altering this main purpose.

9.3 Advice of counsel

If the Trustees are in doubt over any matter relating to the administration of the Trust Fund, or over the exercise of any power vested in them, they may obtain and act upon the opinion of a barrister of the High Court of New Zealand of at least 7 years' standing. And they may act upon the barrister's opinion without being liable to any person who may claim to be beneficially interested in respect of anything done in accordance with that opinion. This right to obtain and act upon a barrister's opinion, however, will not restrict the Trustees' right to apply to the High Court of New Zealand for directions.

9.4 Disclosure of interests

- 9.4.1 A Trustee will be interested in a transaction to which the Trust is a party if the Trustee:
- (a) is a party to, or will derive a material financial benefit from that transaction;
 - (b) has material financial interest in another party to the transaction;

- (c) is a director, officer or trustee of another party to, or person who will or may derive a material financial benefit from the transaction, not being a party that is wholly owned by the Trust;
- (d) is the parent, child or spouse of another party to, or person who will or may derive a material financial benefit from the transaction; or
- (e) is otherwise directly or indirectly interested in the transaction.

9.4.2 As soon as a Trustee becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Trust, he or she must disclose to his or her co-trustees at a meeting of the Trustees:

- (a) if the monetary value of the Trustee's interest is able to be quantified, the nature and monetary value of that interest; or
- (b) if the monetary value of the Trustee's interest cannot be quantified, the nature and extent of that interest.

9.4.3 A disclosure of interest by a Trustee must be recorded in the minute book of the Trust.

9.5 Dealing with "interested" Trustees

9.5.1 Subject to clauses 9.4 and 9.6, each Trustee may act as a Trustee and still contract or otherwise deal with the Trustees in his or her personal capacity or in any other capacity as if he or she had not been appointed as a Trustee. This right to continue to act as a Trustee shall apply even though a Trustee's interest or duty in a particular matter may conflict with his or her duty to the beneficiaries of the Trust Fund.

9.5.2 An interested Trustee must ensure that the other Trustees have an opportunity to consider any matter in which the Trustee is interested without the interested Trustee.

9.5.3 No matter or action in which the interested Trustee is interested is authorised or determined if, without the vote of the interested Trustee, it would not be so authorised or determined.

9.6 Prohibition of benefit or advantage in business activity

9.6.1 In the carrying on of any business under this deed no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Related Person where that Related Person, in his or her capacity

as a Related Person, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:

- (a) the nature or amount of that benefit, advantage or income; or
- (b) the circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

9.6.2 A person who is in the course of, and as part of the carrying on of his or her business of a professional public practice, shall not, by reason only of him or her rendering professional services to the Trust or to any company by which any business of the Trust is carried on, be in breach of the terms of this clause 9.6.

9.7 Liability of Trustees

A Trustee shall be liable only for any loss attributable to his or her dishonesty or to his or her wilful commission or omission of an act which he or she knows to be a breach of trust. In particular, no Trustee shall be bound to take, or liable for failing to take, any proceedings against a co-Trustee for breach or alleged breach of trust.

9.8 Indemnity

Any Trustee, officer or employee of the Trust shall be indemnified out of the assets of the Trust against any liability which he or she incurs in successfully defending any civil or criminal proceedings issued because of his or her actions in relation to the Trust. If some of the assets of the Trust are held on separate specific trusts then such a Trustee, officer or employee may be indemnified out of those assets to the extent that the Trustees in their discretion think just and equitable.

9.9 No private pecuniary profit of any individual and exceptions

9.9.1 No private pecuniary profit shall be made by any person involved in this Trust, except that:

- (a) any Trustee or committee member appointed by the Trustees shall be entitled to be reimbursed out of the assets of the Trust for all expenses which he or she properly incurs in connection with the affairs of the Trust;
- (b) the Trust may pay reasonable and proper remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;

- (c) any Trustee is to be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Trustee or by any firm or entity of which that Trustee is a member, employee or associate in connection with the affairs of the Trust;
- (d) any Trustee may retain any remuneration properly payable to that Trustee by any company or undertaking with which the Trust may be in any way concerned or involved for which that Trustee has acted in any capacity whatever, notwithstanding that that Trustee's connection with that company or undertaking is in any way attributable to that Trustee's connection with the Trust.

9.9.2 The Trustees, in determining all reimbursements, remuneration and charges payable in terms of this clause, shall ensure that the restrictions imposed by clauses 8.2 and 9.6 of this deed are strictly observed.

9.10 Winding up

9.10.1 The Trustees may wind up the Trust if:

- (a) in their opinion, it becomes impossible, impracticable or inexpedient to carry out the purposes of the Trust set out in clauses 3.1 to 3.7; and
- (b) they decide not to exercise their power under clause 3.8 to pay, apply or appropriate the Trust Fund for the purposes set out in that clause.

9.10.2 On the winding up or dissolution of the Trust, the Trustees must give or transfer all surplus assets after the payment of costs, debts and liabilities:

- (a) to some charitable organisation or body within New Zealand having similar objects to the Trust; or
- (b) for some charitable purpose or purposes within New Zealand.

10 TRUSTEES' POWERS

10.1 General power

It is intended that in the exercise of their discretion the Trustees shall have the fullest possible powers in relation to the Trust Fund, and that

they may do anything they think necessary, expedient or desirable even though it is something which they would not normally have power to do in the absence of an express power or an order of the Court. However:

10.1.1 this general power does not authorise the Trustees to do anything which may prejudice the charitable nature of the purposes of the Trust; and

10.1.2 all the Trustees' powers, authorities and discretions shall be subject to any direction to the contrary in any instrument evidencing or conferring a gift accepted by the Trustees, whether the gift is a Designated Gift or is generally for the purposes of the Trust Fund.

10.2 Specific powers

Without prejudice to the generality of clause 10.1, or to any of the Trustees' express or implied powers, the Trustees shall have the powers specified in the First Schedule and may exercise them either alone or with any other person(s).

11 RULES

The rules (with any valid alterations) set out in the Second Schedule which govern the appointment, retirement and proceedings of the Trustees subject to the provisions of this deed, will bind the Trustees both before and after their incorporation as a Board under the Charitable Trusts Act 1957.

Signed by **Stephen Leslie Franks**
as settlor

in the presence of:

Name:

Occupation:

Address:

Signed by **Stephen Leslie Franks**
as trustee

in the presence of:

Name:

Occupation:

Address:

Signed by **Roger Lawrence Kerr**
as trustee

in the presence of:

Name:

Occupation:

Address:

Signed by **Sir Ronald Ramsay
Trotter** as trustee

in the presence of:

Name:

Occupation:

Address:

FIRST SCHEDULE: TRUSTEES' SPECIFIC POWERS

The Trustees have power:

1 To raise funds

To raise money for any of the purposes of the Trust by all lawful means, including the conduct of fundraising campaigns.

2 To invest

To invest the Trust Fund and the income from it in any form of investment, and to vary any such investment from time to time. Where, for the time being, there is more than one person acting as a trustee of the Trust Fund, and one or more, but not all, of them is or are engaged in a profession, employment or business which is or includes acting as a trustee or investing money on behalf of others, then in exercising any power of investment, that trustee or those trustees (as the case may be) shall not be required to exercise the care, diligence and skill that a prudent person engaged in that profession, employment or business would exercise in managing the affairs of others. Rather, that trustee or those trustees (as the case may be) shall be required only to exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of others.

3 To retain investments

To retain any investments coming into the Trustees' hands as part of the Trust Fund for as long as the Trustees think proper, even if they are not investments which could be properly made by a trustee.

4 To sell

To sell any real or personal property forming part of the Trust Fund in the manner and on the terms and conditions the Trustees think fit, including (without limitation) power to allow such part of the purchase price as the Trustees think fit to remain on loan with or without security or to be payable by instalments.

5 To postpone sale

To postpone the sale of any real or personal property forming part of the Trust Fund for as long as the Trustees think fit without being liable for any resultant loss to the Trust Fund.

6 To let

To let any real and personal property at such rent and on such terms and conditions (including an option to purchase) as the Trustees think fit and to accept surrenders of any leases and tenancies.

7 To borrow

To borrow any money at whatever rate of interest and upon whatever other terms and conditions the Trustees may think fit. For this purpose the Trustees may give security for repayment over the entire Trust Fund or any part of it, whether or not any part over which the security is given benefits from the borrowing.

8 To carry on business

8.1 To carry on any business, whether in partnership or otherwise, for as long as the Trustees think fit. They may use any part of the Trust Fund as capital in the business, and may also employ in the business such managers, agents, employees and other persons (including any Trustee other than the Settlor or anyone who for the time being is the sole Trustee of the Trust Fund) as they think fit.

8.2 The Trustees shall be absolutely indemnified out of the Trust Fund for any losses which they may sustain in so carrying on any such business.

8.3 Subject to the terms and conditions on which any business is carried on by the Trustees, the net annual profits from any business shall, at the Trustees' discretion, be distributable as income in the Trustees' hands without having to be first applied in making good any earlier business losses. Any business losses for any year, unless the Trustees decide otherwise, shall be borne by the capital of the Trust Fund and not recouped out of later profits.

9 To accept payment in company securities

In the sale of any business to a company, to accept payment for all or part of the purchase price in ordinary deferred or preference shares (whether fully paid or partly contributory) or debentures or debenture stock of such company. In exercising this power the Trustees shall not be taken to be exercising a power of investment.

10 To promote a company

To promote a company or companies for the purpose of acquiring any business or the assets of any business.

11 To act in relation to certain companies

In respect of any company in which the Trust Fund holds or is the beneficial owner of shares, notes, stock or debentures:

11.1 to act as a director of the company and to receive and retain fees or other remuneration for so acting without having to account to the Trust Fund unless the Trustees otherwise require;

11.2 to provide out of the Trust Fund on such terms as the Trustees think fit further capital for the company either by way of advances, loans, deposits or otherwise (with or without security) or by taking further shares in the company, but only insofar as the Trustees are satisfied on reasonable grounds that the provision of such further capital will contribute to the ability of the Trustees to fulfil the charitable purposes specified in *clause 3*;

11.3 to concur in the winding up, reconstruction or amalgamation of the company or in the modification of its regulations, on whatever terms the Trustees think fit; and

11.4 generally to act in relation to the company in whatever manner the Trustees consider to be in the best interests of the Trust Fund.

12 To subdivide

To subdivide any real property forming part of the Trust Fund and to meet the costs of subdivision out of the Trust Fund.

13 To maintain property

To maintain, manage and improve property which, or any interest in which, forms part of the Trust Fund, in whatever manner the Trustees think fit. For those purposes, the Trustees may pay and apply any of the capital and income of the Trust Fund as they think fit.

14 To develop

To spend any sums out of the capital or income of the Trust Fund the Trustees think fit in developing any real property forming part of the Trust Fund, and to dedicate any roads required in respect of the development.

15 To purchase property

To purchase as an asset of the Trust Fund any property or interest in property which the Trustees consider will benefit the Trust Fund. In

exercising this power the Trustees shall not be taken to be exercising a power of investment.

16 To grant and acquire options

To grant acquire, dispose of and exercise any option to purchase, lease or exchange any interest in real or personal property of any value, whether the option is incidental to, or independent of, any sale, lease, exchange or other disposition. An option may be granted acquired or disposed of on such terms and conditions as the Trustees think fit, and in respect of a grant, may be granted at a price determined at the time of the grant or at such later date as the Trustees think fit. The Trustees shall not be personally liable for any loss arising from their exercise of this power and shall be indemnified accordingly out of the Trust Fund.

17 To make loans and advances

To make any loans or advances (with or without security) for any of the purposes of the Trust Fund in such manner and on such terms and conditions as the Trustees think fit.

18 Capital, income and blended funds

To determine whether any money is to be considered as capital or income, and which expenses should be paid out of capital and out of income respectively, and also to apportion blended funds. Each determination or apportionment shall be final and binding on all persons beneficially interested in the Trust Fund.

19 Depreciation or replacement funds

To set up and maintain any depreciation or replacement funds for any purpose the Trustees may consider advisable, and in this regard to determine in their discretion:

19.1 the amount of income to be credited from time to time to any of those funds;

19.2 whether those funds are income or capital.

20 Bank accounts

To open any bank accounts in any name(s) either on the Trustees own behalf or jointly with some other person(s), and to overdraw any such account with or without giving security. The Trustees may also make arrangements with any bank for any one or more of the following persons to operate on any of the Trustees' accounts at that bank:

20.1 the Trustees; and

20.2 any delegate(s) named in writing by all the Trustees.

21 To guarantee obligations

To guarantee or indemnify the liability of any person or corporation and to give security in support of any such guarantee or indemnity.

22 To insure

To insure any building or other insurable property to any amount up to its full insurable value, or at the Trustees' option, up to its full replacement value, against destruction or damage by fire, earthquake, fire following earthquake and such other risks as the Trustees think fit. The Trustees may pay the premiums out of income or capital as they think fit.

23 To waive debts

Without being liable for loss, to waive any debts due to the Trust Fund, either absolutely or on such terms as the Trustees think expedient.

24 To deposit funds

To deposit all or part of the Trust Fund in any currency in a savings or other interest or non-interest bearing account with any bank, trust, company or other financial or investment institution in any jurisdiction in the world. In making any deposit the Trustees shall not be liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

25 To hold the Trust Fund uninvested

To hold any part of the Trust Fund uninvested and in any currency for as long as the Trustees think fit without being liable for any loss due to devaluation or any foreign exchange or other governmental restriction.

26 To protect or enhance assets

To enter into any type of contract whatever to protect, maintain or enhance the value of any assets acquired or held by the Trustees or which they have the right to acquire or hold.

SECOND SCHEDULE: RULES GOVERNING THE APPOINTMENT, RETIREMENT AND PROCEEDINGS OF THE TRUSTEES

PART I - CONSTITUTION OF THE TRUSTEES

1 The Trustees

The first Trustees shall be:

Roger Lawrence Kerr of Wellington, Company Director
Stephen Leslie Franks of Wellington, Member of Parliament
Sir Ronald Ramsay Trotter of Kapiti, Company Director

2 Term of office

A Trustee shall hold office for a term not exceeding five years from the date of appointment but shall be eligible for re-appointment for a further term or terms.

3 Quorum

Two Trustees shall constitute a quorum at meetings of the Trustees.

4 Termination of office

A Trustee shall cease to hold office if he or she:

- 4.1 retires from office by giving written notice to the Trustees or the secretary of the Trust;
- 4.2 completes his or her term of office;
- 4.3 refuses to act;
- 4.4 is absent without leave from 3 consecutive ordinary meetings of the Trustees;
- 4.5 becomes physically or mentally incapacitated to the extent that in the opinion of the other Trustees, expressed in a resolution, he or she is unable to perform the duties of a Trustee properly;
- 4.6 becomes bankrupt or makes any composition or arrangement with his or her creditors;

4.7 is convicted of an indictable offence; or

4.8 in the opinion of the other Trustees expressed in a resolution, is for any other reason unfit to carry out the duties of a Trustee.

5 Record of changes of Trustees

Upon every appointment, retirement, re-appointment or termination of office of any Trustee the Trustees will ensure that an entry is made in the minute book of the Trust to that effect and that any statutory requirements as to the vesting of the Trust Fund in the Trustees are satisfied.

6 Validity of Proceedings

6.1 Where, for any reason, a Trustee is not properly appointed or is disqualified from holding office, anything done by that Trustee (or by a meeting at which he was present as a Trustee or committee member) before discovery of the irregularity, shall be as valid as if that Trustee had been duly appointed or had not been disqualified (as the case may be).

6.2 If at any time the Trustees number less than the minimum number of Trustees required by this Deed, anything done by the continuing Trustees in accordance with the provisions of this Deed pending the prompt appointment of a new Trustee or Trustees or toward such appointment shall be as valid as if the requirement for a minimum number of Trustees had been met during that period.

7 Appointment of secretary and others

The Trustees may appoint a secretary and any other officers or employees that the affairs of the Trust may require on such terms and conditions as they think fit. The Trustees may also remove and replace any persons so appointed.

8 Do all other necessary or desirable things

The Trustees may do all other lawful things that are necessary or desirable in their opinion for the carrying out of the purposes of the Trust.

PART II - ADMINISTRATIVE PROVISIONS

9 Ordinary meetings

The Trustees shall meet as often as they consider desirable for the efficient and proper conduct of the affairs of the Trust, but in any event at least twice in each Income Year.

10 Special meetings

A special meeting may be called at any time by two or more Trustees.

11 Notice of meetings

11.1 Written notice of every ordinary or special meeting, shall be either hand-delivered, posted or sent by facsimile to each Trustee at least 7 days before the date of the meeting. The secretary or some other person acting under the direction of the Trustees or, in the case of a special meeting, acting under the direction of those Trustees calling the meeting, shall give the notice of the meeting. No notice shall be required for adjourned meetings except to those Trustees who were not present when the meeting was adjourned.

11.2 Every notice of a meeting shall state the place, day and time of the meeting, and in the case of a notice of a special meeting, shall also state the subject-matter of the meeting.

11.3 The requirement for notice of a meeting may be waived if all of those Trustees who are for the time being in New Zealand give their written consent to such a waiver.

12 Interested Trustee may vote

Subject to clause 9.5 a Trustee who is interested in a transaction entered into, or to be entered into, by the Trust may:

12.1 vote on a matter relating to the transaction;

12.2 attend a meeting of Trustees at which a matter relating to the transaction arises, and be included among the Trustees present at the meeting for the purpose of a quorum;

12.3 sign a document relating to the transaction on behalf of the Trust;
and

12.4 do anything else as a Trustee in relation to the transaction, as if he or she were not interested in the transaction.

13 Chairperson

The Trustees shall elect a chairperson of their meetings and determine the term of his or her office. The chairperson shall take the chair at all the meetings of the Trustees and shall have a casting as well as a deliberative vote. If the chairperson cannot be present, or is not present within 10 minutes of the time appointed for any meeting, the Trustees present shall elect one of their number to be chairperson of the meeting.

14 Adjournment

If a quorum is not present within 30 minutes after the time appointed for any meeting the Trustee or Trustees present may adjourn the meeting. The chairperson may adjourn any meeting on the adoption of a resolution for its adjournment.

15 Committees

The Trustees may appoint sub-committees, ad hoc committees or executive committees as they may from time to time think expedient for carrying out the purposes of the Trust. Any such committee may co-opt any other person, whether a Trustee or not, to be a member of that committee. And subject to these rules and to any directions that the Trustees might give, each committee may regulate its own procedure.

16 Resolutions

16.1 Except where these rules or the Trust Deed provide otherwise, a resolution is validly made when it is passed by a simple majority of those present and voting at a duly convened and conducted meeting of the Trustees or of a committee (as the case may be).

16.2 The Trustees may vary or cancel any resolution at an ordinary or special meeting.

16.3 A written resolution signed by all the Trustees or by all the members of a committee shall be as effective for all purposes as a resolution passed at a properly convened and conducted meeting of the Trustees or of that committee (as the case may be). Such a resolution may comprise several duplicated documents, each signed by one or more of the Trustees or members of the committee (as the case may be).

17 Minutes

- 17.1 The Trustees shall keep a proper record in a minute book of all decisions taken and business transacted at every meeting of the Trustees.
- 17.2 Any minute of the proceedings at a meeting which is purported to be signed by the chairperson of that meeting or by the chairperson of the next succeeding meeting shall be evidence of those proceedings.
- 17.3 Where minutes of the proceedings at a meeting of the Trustees have been made in accordance with the provisions of this rule then, until the contrary is proved, the meeting shall be deemed to have been properly convened and its proceedings to have been properly conducted.

18 Teleconference Meetings

For the purposes of these rules a Teleconference Meeting between a number of Trustees or committee members who constitute a quorum, together with the secretary or another person acting as a secretary, shall be deemed to constitute a meeting of the Trustees or the committee members (as the case may be). All the provisions in these rules relating to meetings shall apply to Teleconference Meetings so long as the following conditions are met:

- 18.1 All of the Trustees or committee members (as the case may be) for the time being entitled to receive notice of a meeting shall be entitled to notice of a Teleconference Meeting and to be linked for the purposes of such a meeting. Notice of a Teleconference Meeting may be given on the telephone;
- 18.2 Throughout the Teleconference Meeting each participant and the secretary or person acting as a secretary must be able to hear each of the other participants taking part;
- 18.3 At the beginning of the Teleconference Meeting each participant must acknowledge his or her presence for the purpose of that meeting to all the others taking part;
- 18.4 A participant may not leave the Teleconference Meeting by disconnecting his or her telephone or other means of communication without first obtaining the chairperson's express consent. Accordingly, a participant shall be conclusively presumed to have been present and to have formed part of the quorum at all

times during the Teleconference Meeting unless he or she leaves the meeting with the chairperson's express consent;

18.5 A minute of the proceedings at the Teleconference Meeting shall be sufficient evidence of those proceedings, and of the observance of all necessary formalities, if certified as a correct minute by the chairperson of that meeting and by the secretary or person acting as a secretary.

19 Annual report and financial statements

At their first ordinary meeting in each Income Year (other than the first Income Year) the Trustees shall present a report dealing with the affairs of the Trust, supported by a statement of the Trust's income and expenditure during the previous Income Year and a statement of its assets and liabilities at the end of that Income Year.

20 Audit

If the Trustees at any time resolve to appoint an auditor then they will ensure that the financial statements of the Trust for each Income Year are audited by a chartered accountant in public practice within 4 months after the end of that Income Year. The person appointed as auditor must not be a Trustee.

21 Control of funds

All money received by or on behalf of the Trust shall be paid immediately to the credit of the Trust in an account or accounts with a Bank or Banks selected from time to time by the Trustees. All cheques and other negotiable instruments, withdrawal slips and receipts for money shall be signed, drawn, accepted, endorsed or otherwise executed (as the case may be) on behalf of the Trust in such manner as the Trustees decide from time to time.

22 Custody and use of common seal

If the Trustees become incorporated as a board under the Charitable Trusts Act 1957 they shall have custody of the common seal, and from time to time by resolution, they may adopt any seal they think fit. The common seal must not be affixed to any document unless the Trustees have already authorised its use on that document. And when a document is to be sealed on the prior authority of the Trustees the seal must be affixed to the document in the presence of two Trustees who must sign the document.

PART III - ALTERATIONS TO RULES

23 Alterations to Parts I and III

Parts I and III of these rules may be altered only by a resolution of all of the Trustees present and voting at a duly convened and conducted meeting of the Trustees.

24 Alterations to Part II

Part II of these rules may be altered by a resolution of the Trustees.

25 Restraints on alteration

A resolution for the alteration of any Part of these rules shall be effective only if:

25.1 where a meeting was required to consider the proposed resolution, each Trustee was given written notice of the resolution at least 14 days before the date of the meeting;

25.2 the alteration does not conflict with the provisions of the Trust Deed; and

25.3 the alteration does not prejudice the charitable nature of the purposes of the Trust.