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Certified as the Constitution of Domain Name Commission Limited

COMPANIES ACT 1993

CONSTITUTION
OF
DOMAIN NAME COMMISSION LIMITED

IZARD WESTON
SOLICITORS
WELLINGTON



SEP RUL

1.0 EFFECT OF CONSTITUTION

- 1.1 The Company, the Board, the Shareholders and each of the Directors and Shareholders of the Company have rights, powers, duties and obligations set out in the Act except to the extent that they are negated or modified by this Constitution.

2.0 DEFINITIONS

2.1 Interpretation

In this constitution (including the schedules), unless the context otherwise requires:

"Act" means the Companies Act 1993;

"Balance Date" means the date adopted by the Company at which the balance sheet of the Company prepared for the purpose of its annual financial statements is prepared;

"Board" means the Directors numbering not less than the required quorum acting together as a board of directors;

"Company" means Domain Name Commission Limited;

"Constitution" means this Constitution of the Company as amended from time to time;

"Director" means the person appointed for the time being in accordance with the Constitution as a Director of the Company;

"Distribution" has the meaning given to it in the Act;

"Dividend" has the meaning given to it in the Act;

"Interest Group" has the meaning given to it in the Act;

"InternetNZ" means the incorporated society 692906, a society incorporated under the Incorporated Societies Act 1908 and is to be registered a charitable entity with the Charities Commission;

"InternetNZ Directors' Policy" means the current Directors' Policy of InternetNZ to the extent that it is not inconsistent with this Constitution and the Act;

"Major Transaction" has the meaning given to it in the Act;

"Month" means calendar month;

"Ordinary Resolution" means a resolution of shareholders approved by a simple majority of the votes of those Shareholders entitled to vote and voting on the question;

"Related Person" for the purposes of clause 16 and in accordance with section CW 42(1)(c) of the Income Tax Act 2007, means a person specified in paragraphs (i) to (iv) of subsection (5)(b) of that section, the persons currently specified being:

- (a) A settlor or trustee of the trust by which the business is carried on;

- (b) A shareholder or director of the company by which the business is carried on;
- (c) A settlor or trustee of a trust that is a shareholder of the company by which the business is carried on; or
- (d) A person associated with a settlor, trustee, shareholder, or director referred to in any of subparagraphs (a) to (c).

"Shareholder" means a person whose name is entered in the Share Register as the holder for the time being of one or more shares in the Company;

"Share Register" means the register kept pursuant to the Act and includes any division of such register;

"Solvency Test" has the meaning given to it in the Act;

"Special Meeting" means any meeting (other than an annual meeting) of Shareholders entitled to vote on an issue called at any time by the Board or by any other person who by this Constitution is entitled to call meetings of shareholders; and

"Special Resolution" means a resolution approved by a majority of 75% of the votes of those Shareholders entitled to vote and voting on the question.

2.2 No Definition

Any expression not defined in this Constitution but defined in the Act shall bear the same meaning in this Constitution as in the Act.

2.3 Singular and Plural, Persons and Firms

In this Constitution, if it is not inconsistent with the context:

2.3.1 words importing the singular number also include the plural, and vice versa; and

2.3.2 words importing persons include firms and corporations and a firm includes a partnership.

2.4 Headings

Headings shall not affect the interpretation of this Constitution.

2.5 Statutes

Unless the context otherwise requires, references to a statute mean a statute of New Zealand and include any term defined in a statute, as well as:

2.5.1 amendments to that statute;

2.5.2 a statute passed in substitution for that statute; and

2.5.3 regulations passed thereunder.

2.6 Reference to Shares

A reference to a share means a share in the Company.

2.7 References to Clause, Paragraph or Schedule

2.7.1 A reference to a clause means a clause in this Constitution.

2.7.2 A reference to a paragraph means a paragraph within a clause of this Constitution or a paragraph of a schedule to this Constitution.

2.7.3 A reference to a schedule means a schedule to this Constitution.

3.0 CHARITABLE OBJECTS

3.1 The intention is that the Company will operate as a charitable company and be registered with the Charities Commission.

3.2 The Company's charitable objects are those of its Shareholders and the profits, benefits or other income and property (if any) of the Company shall be distributed solely for the benefit of the Shareholders.

3.3 The Company's activities which are intended to achieve its objects are:

3.3.1 Providing effective management and oversight of the .nz domain space.

3.3.2 Developing policies and procedures for .nz and monitoring compliance with those, while protecting the rights and relationships of all parties in the .nz market, thereby enabling the Shareholder to meet its obligations and responsibilities under RFC 1591 - Domain Name System Structure and Delegation.

4.0 SHARES

4.1 Section 45 of the Act does not apply to the Company. Shares, or options to acquire securities, in the Company may only be issued to or held by InternetNZ, or another registered charitable entity.

4.2 The Board of Directors must obtain the approval of InternetNZ prior to making any decision that relates to the issue, transfer, cancellation or redemption of shares or options, or that alters the rights attaching to such shares or options.

4.3 Additional Shares

Different Classes of Shares may be issued and (without limiting the foregoing) shares may:

4.3.1 be redeemable;

- 4.3.2 confer preferential rights to distributions of capital income;
- 4.3.3 confer special, limited, or conditional voting rights;
- 4.3.4 not confer voting rights; or
- 4.3.5 have limitations or restrictions on transferability.

4.4 Redeemable Shares

The Board may issue shares that are redeemable:

- 4.4.1 at the option of the Company;
- 4.4.2 at the option of the holder of the shares;
- 4.4.3 on a date determined by the Board;

for a consideration that is:

- 4.4.4 determined by the Board;
- 4.4.5 to be calculated in accordance with a formula; or
- 4.4.6 required to be fixed by a suitably qualified person who is not associated with or interested in the Company.

4.5 Options

The Board may issue options to acquire securities on such terms and conditions as shall be determined by the Board at the time when such options are granted. No options may be issued which confer the right on holders to vote other than at meetings of option-holders.

5.0 ISSUE OF SHARES

5.1 Initial Shares

As at the date of this Constitution, the number of initial shares and their class, issued pursuant to section 41(a) of the Act, are those currently on issue.

5.2 Types of Shares

Subject to the Act and this Constitution, the Board may issue shares at any time, to any person, and in any number it determines.

5.3 Consent to Issue

While InternetNZ is the holder of not less than 50% of all the ordinary shares in the Company, the Board may not issue any additional shares or rights or options for any class of shares unless prior to such issue InternetNZ has formally consented in writing to such issue after full and fair disclosure of the proposed issue (including number of shares, issue price, terms of issue and names of the issues).

5.4 Time of Issue

A share is issued when the name of the Shareholder is entered on the Share Register in respect of that share.

5.5 Consideration for Issue of Shares

Subject to clause 4.3, before the Board issue shares, it must:

- 5.5.1 decide the consideration for which the shares will be issued and the terms on which they will be issued;
- 5.5.2 if the shares are to be issued other than for cash, determine the reasonable present cash value of the consideration for the issue;
- 5.5.3 resolve that, in its opinion, the consideration for the shares and their terms of issue are fair and reasonable to the Company and to all existing Shareholders; and
- 5.5.4 if the shares are to be issued other than for cash, resolve that, in its opinion, the present cash value of that consideration is not less than the amount by which the shares will be credited as paid up.

5.6 Clause 5.5 does not apply to

- 5.6.1 the issue of shares that are fully paid up from the reserves of the Company to all Shareholders of the same class and in proportion to the number of shares held by each such Shareholder; nor
- 5.6.2 the consolidation or subdivision of shares.

5.7 Amount Owing on Issue of Shares

Where money or other consideration is due to the Company on shares in accordance with their terms of issue, such an amount does not comprise a call and no notice is required to be given to the holder or other person liable under the terms of issue in order for the Company to enforce payment of the amount due.

5.8 Bonus Shares

The Board may authorise the allotment to Shareholders of shares issued as fully or partly paid up from the assets of the Company.

5.9 Company Paying up Partly Paid Shares

Subject to the Distribution meeting the Solvency Test and to section 47(3) of the Act, the Board may authorise the payment from the assets of the Company any amount unpaid on shares already issued by the Company.

6.0 COMPANY MAY ACQUIRE ITS OWN SHARES

6.1 Purchase of Own Shares

The Company may purchase or otherwise acquire its own shares in accordance with the Act.

The Company may hold shares acquired in accordance with sections 67A to 67C of the Act.

7.0 REDEMPTION OF SHARES

7.1 Power to Redeem

The Company may, pursuant to its terms of issue, redeem any share which is issued as redeemable.

7.2 Cancellation of Shares Redeemed

Shares that are redeemed by the Company are deemed to be cancelled immediately on redemption.

8.0 TRANSFER OF SHARES

8.1 Shareholder May Transfer Shares

A Shareholder may transfer shares, subject to clause 8.2.

8.2 Board's right to refuse registration of transfer

8.2.1 The Board may, within 30 Working Days of the receipt of a transfer of shares, refuse or delay the registration of the transfer if the Board considers that it is not in the best interests of the Company to register the transfer.

8.2.2 A resolution of the Board to refuse or delay a transfer of shares must set out in full the reason for doing so, and a copy of the resolution must be sent to the transferor and transferee within five Working Days of the date of the resolution being passed.

8.3 Form of Transfer

8.3.1 Every form of transfer shall be in any usual common form or other form which the Board may approve and shall be executed by or on behalf of the transferor to the satisfaction of the Board. If a share is not fully paid up, the form of transfer (or a separate transferee's acceptance document in any usual form or common form or other form which the Board may approve) shall also be executed by or on behalf of the transferee to the satisfaction of the Board.

8.4 Transferor Holder Until Transferee Registered

The transferor shall remain the holder of the share until the name of the transferee is entered in the Share Register.

8.5 Registration of Transfer

Subject to clause 8.3, on receipt of a duly completed form of transfer the Company must enter the name of the transferee on the Share Register as holder of the shares unless the Board has resolved in accordance with clause 8.2 to refuse or delay the transfer of the shares.

9.0 DISTRIBUTION TO SHAREHOLDERS**9.1 Satisfaction of Solvency Test**

The Board, if it is satisfied on reasonable grounds that the Company will immediately after the Distribution satisfy the Solvency Test, may authorise a Distribution at a time, and of an amount, and to any Shareholders it determines and otherwise than in accordance with the terms of issue.

9.2 No Interest on Distribution

No Distribution shall bear interest against the Company.

9.3 Deductions from Distribution

The Board may deduct from any Distribution payable to a shareholder all such money as may be due from that Shareholder to the Company on account of:

9.3.1 unpaid calls and instalments and any interest payable on such amounts in respect of shares for which the Distribution is being paid; and

9.3.2 such amounts as the Company may be called upon by law to pay in respect of those shares including withholding and other taxes.

10.0 NOTICES AND INFORMATION FOR SHAREHOLDERS**10.1 Notices, Reports, Financial**

Shareholders of all Classes shall be entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued by the Company to holders of securities carrying votes.

10.2 Shareholders may request Information

10.2.1 A Shareholder may at any time make a written request for information held by the Company.

10.2.2 A Shareholder may question, discuss and comment on the management of the Company at a meeting of Shareholders.

11.0 MEETINGS OF SHAREHOLDERS

11.1 Proceedings at Meetings

The provisions of the first schedule to the Act shall govern the proceedings at meetings of Shareholders.

12.0 POWERS AND DUTIES OF THE BOARD

12.1 Management by the Board

The business and affairs of the Company shall be managed by, or under the direction or supervision of, the Board.

12.1.1 The Board has all the powers necessary for managing and for directing and supervising the management of the business and affairs of the Company.

12.1.2 The Board may delegate its powers in accordance with the Act.

12.1.3 The Board will, at all times, act in the best interests of the Shareholders.

12.2 Director duties

Subject always to the provisions of the Companies Act 1993, as the Company is a wholly-owned subsidiary, a Director shall (even when exercising powers or performing duties as a Director), act in a manner which he or she believes is in the best interests of its Shareholders, even though it may not be in the best interests of the Company.

12.3 Delegation by Board

The Board may delegate to a committee of Directors, a Director, or an employee of the Company any one or more of its powers, other than the powers referred to in the second schedule to the Act.

13.0 APPOINTMENT AND REMOVAL OF DIRECTORS

13.1 Directors are appointed and removed according to the InternetNZ Directors' Policy.

13.2 Number of Directors

The number of Directors shall ordinarily be five however, in the sole discretion of InternetNZ, the number of Directors may be increased to six.

13.3 First Directors

The first Directors of the Company are the persons named as the Directors in the application for registration of the Company.

13.4 Appointment and Removal by Notice

13.4.1 The Directors are the persons appointed from time to time as Directors by a notice in writing signed by the Shareholders and who have not been removed, resigned or disqualified from office under this Constitution.

13.4.2 A Director may be removed from office at any time by notice in writing signed by the shareholder.

13.4.3 A notice given under 13.3.1 or 13.3.2 takes effect upon receipt of it (including receipt of a facsimile copy) at the registered office of the Company, unless the notice specifies a later time at which the notice will take effect. The notice may comprise one or more similar documents separately signed by the Shareholder.

13.4.4 A Director holds office until his or her retirement, disqualification or removal in accordance with this Constitution.

13.5 Appointment and Removal of Directors by Resolution

13.5.1 A Director may also be appointed or removed from office by an Ordinary Resolution.

13.5.2 A resolution to appoint two or more Directors may be voted on as one resolution without each appointment being voted on individually.

13.6 Disqualification and Removal

The office of Director is vacated if the person holding that office:

13.6.1 is removed from office in accordance with the Act or under clauses 13.3 or 13.4;

13.6.2 resigns in writing;

13.6.3 becomes disqualified from being a director pursuant to the Act;

13.6.4 dies;

13.6.5 becomes a protected person under the Protection of Personal and Property Rights Act 1988; or

13.6.6 is an undischarged bankrupt;

13.6.7 is disqualified from being an officer of a charitable entity under section 16(2) of the Charities Act 2005; or

13.6.8 reaches the expiry of their term of appointment as defined in the InternetNZ Directors' Policy.

13.7 Resignation

A Director may resign office by signing a written notice of resignation and delivering it to the Company. The notice takes effect upon the later of the receipt of it at the registered office of the Company (including receipt of a facsimile copy), (where InternetNZ is a Shareholder) receipt of a copy of such notice at its registered office or by its President, and at any later time specified by notice.

13.8 Qualification of Director

A director shall not hold shares, but is required to be a member of InternetNZ.

14.0 PROCEEDINGS OF THE BOARD

14.1 Proceedings and Powers of the Board

14.1.1 A meeting of the Board may be held either:

14.1.1.1 By a number of Directors sufficient to form a quorum, being assembled together at the place, date, and time appointed for the meetings, or

14.1.1.2 By means of audio, or audio and visual communication by which all the directors participating in the meeting and constituting a quorum, can simultaneously hear each other throughout the meeting.

14.1.2 Where a meeting of the Board is held pursuant to clause 14.1.1.2, at the commencement of the meeting each Director participating must acknowledge his or her presence to all the other Directors participating. A Director may not leave the meeting by disconnecting his or her means of communication unless he or she has previously obtained the express consent of the chairperson.

14.2 For the purposes of clause 14.1.1 a quorum for a meeting of the Board is a majority of the Directors

14.3 The provisions of the Third Schedule to the Act shall govern the proceedings of the Board, subject to clause 14.1.

15.0 REMUNERATION AND OTHER BENEFITS OF DIRECTORS

15.1 As a restriction to the powers conferred on the Board by the Act, the Board may only authorise the payment of remuneration or the provision of other benefits by the Company to a Director:

15.1.1 For services as a Director;

15.1.2 Where the payment is reasonable;

15.1.3 Where the relevant action has been approved by written notice signed by the Shareholders; and

15.1.4 Where that payment is consistent with the InternetNZ Directors' Policy.

15.2 The Director who is interested in the transaction referred to at clause may not:

15.2.1 Vote on a matter relating to the transaction; or

15.2.2 Sign a document relating to the transaction on behalf of the Company;

however that Director may, subject to the consent of the other Directors, attend or continue attendance at a meeting of the Directors at which a matter relating to the transaction is discussed provided that the Director is not included among the Directors present at the meeting for the purpose of a quorum.

15.3 Clause 15.1 does not prevent a Director being reimbursed for reasonable travelling, accommodation and other expenses incurred in the course of performing duties or

exercising powers as a Director of the Company, provided that the expenses incurred are not more than would be incurred for such reasonable expenses in a normal commercial transaction.

16.0 PECUNIARY PROFIT

16.1 In carrying on business under this Constitution no benefit, advantage or income shall be afforded to, or received, gained, achieved or derived by any Director, Related Person or person having control where that person, in his or her capacity as a Director, Related Person or person having control, is able in any way (whether directly or indirectly) to determine, or to materially influence the determination of:

16.1.1 The nature or amount of that benefit, advantage or income; or

16.1.2 The circumstances in which that benefit, advantage or income is, or is to be, so afforded, received, gained, achieved or derived.

16.2 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 Company, be in breach of the terms of this clause 16.

17.0 INDEMNITY AND INSURANCE

17.1 Indemnity of Directors and Employees

The Company shall indemnify every Director and employee of the Company and every wholly-owned subsidiary (and indemnify any Director or employee of a related company) in respect of:

17.1.1 any costs incurred by him or her in any proceedings:

17.1.1.1 that relates to liability for any act or omission in his or her capacity as a Director or employee; and

17.1.1.2 in which judgment is given in his or her favour, or in which he or she is acquitted, or which it is discontinued;

17.1.2 liability to any person other than the Company or related Company for any act or omission in his or her capacity as a Director or employee; and

17.1.3 costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability,

not being criminal liability or liability in respect of a breach, in the case of the Director, of the duty specified in Section 131 of the Act, or in the case of an employee, of any fiduciary duty owed to the Company or a related company.

17.2 Insurance Against Liability

The Company may, with the prior approval of the Board, effect insurance for a Director or employee of the Company or related company in respect of:

- 17.2.1 liability, not being criminal liability, for any act or omission in any Director's or employee's capacity as a Director or employee;
- 17.2.2 costs incurred by that Director or employee in defending or settling any claim or proceeding relating to any such liability; or
- 17.2.3 costs incurred by that Director or employee in defending any criminal proceedings in which he or she is acquitted.

17.3 Definitions

For the purpose of this clause 17, the words "Director", "effect insurance", "employee", "indemnify" and "indemnity" shall have the respective meanings given to them in section 162(9) of the Act.

18.0 LIQUIDATION**18.1 Distribution of Surplus Assets**

Subject to the terms of issue of any shares, on the liquidation of the Company, any assets of the Company remaining after payment of the debts and liabilities of the Company and the costs of liquidation shall be distributed to the Shareholders in proportion to their shareholding.

18.2 Distribution in Specie

Upon the liquidation of the Company, the liquidator may with the sanction of an Ordinary Resolution and any other sanction required by law, distribute the assets to the Shareholders. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trust for the benefit of the Shareholder as the liquidator thinks fit (but so that no Shareholders shall be compelled to accept any shares or other securities whereon there is any liability).

19.0 NOTICE**19.1 In addition to any other means of notice authorised by the Act or recognised at law, a notice is deemed duly served in the following circumstances:**

- 19.1.1 Upon a Director, if served at the place of residence of such Director, or at his or her last known place of residence, employment or business;
- 19.1.2 Upon Shareholders at their address as shown on the share register and in the case of InternetNZ, at its registered office or served upon its President.

and service may be effected by:

- 19.1.3 Leaving the notice at the premises where service is authorised with a person applying to have charge of such place or securely affixing such notice to or within such premises.
- 19.1.4 Transmitting a copy of the notice by facsimile or similar means to a receiving machine at the premises where a person or body may be served.
- 19.2 Any notice not delivered personally to the recipient shall be deemed served at the commencement of the business day next following the date in which the notice is left at or faxed to the appropriate premises, or at such earlier time as the recipient acknowledges.
- 19.3 Without limiting the ways in which InternetNZ may issue any notice, a notice of InternetNZ is sufficiently authorised if signed by the President of InternetNZ or someone to whom such President has authorised in writing to give such notice, notices of that particular class, or notices in general, or in the case of service by facsimile, is endorsed with a copy of such signature.
- 19.4 A recipient of any notice from InternetNZ shall not be entitled or obliged to enquire into the authority of the President for giving such notice. A recipient of a notice signed by a delegate of the President may only enquire into the authority of the delegate if a copy of the delegation authority is not exhibited to the notice and is not supplied in response to a request made by the recipient promptly after service.

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