

VITAL LIMITED – PROPOSED NEW CONSTITUTION

Introduction

NZX Limited has replaced the former NZX Main Board/Debt Market Listing Rules (dated 1 October 2017) with updated NZX Listing Rules (dated 1 January 2019). Vital transitioned to the new NZX Listing Rules (*New Listing Rules*) on 1 July 2019. As part of its transition, Vital is required to amend its existing constitution (or adopt a new constitution) at its 2019 annual general meeting of shareholders which is consistent with the new Listing Rules.

Vital's existing constitution is an "old style" constitution which unnecessarily repeats mandatory provisions of the NZX Listing Rules and the Companies Act 1993 (resulting in a constitution which is 40 pages long). Rather than amend its existing constitution, Vital wishes to adopt a new short-form constitution. The proposed new constitution is available on Vital's website: <https://vital.co.nz/investors/>.

Summary of changes

The table below has been prepared to summarise the material differences between Vital's existing constitution and the proposed new constitution. The changes fall into three categories:

- 1 changes required in order to comply with the New Listing Rules;
- 2 other proposed changes to the constitution; and
- 3 changes made to streamline the constitution by removing clauses that unnecessarily repeat mandatory provisions in the NZX Listing Rules and the Companies Act 1993.

#	Title	Change	CI ref ¹
Changes required in order to comply with the new Listing Rules			
1	Minimum board composition	The new constitution expressly provides that Vital shall "comply with the minimum Board composition requirements" in the New Listing Rules. The New Listing Rules require Vital	<ul style="list-style-type: none">• Old: N/A• New: 24

¹ "Old" refers to the clause references under Vital's existing constitution and "New" refers to the clause references under the proposed new constitution.

		to have, at minimum, three directors, two directors ordinarily resident in New Zealand and two independent directors. Vital currently complies with all these requirements.	
2	Director rotation	The new constitution reflects the new director rotation requirements in the New Listing Rules. The New Listing Rules provide that a Director must not hold office (without re-election) past the third annual meeting following that Director's appointment or three years, whichever is longer. Previously, the NZX Listing Rules required one third of Directors to retire from office at each annual meeting.	<ul style="list-style-type: none"> • Old: 23.3, 23.4 • New: 26
3	Shareholding voting by poll, scrutineers and declaration of results	<p>The new constitution reflects the new requirement in the New Listing Rules that voting at a meeting of shareholders must be conducted by poll (this was previously optional, unless a poll was demanded in certain situations).</p> <p>Further, the new constitution does not include the requirement in the existing constitution that Vital's auditor will act as the scrutineer of polls conducted at shareholders' meetings. As it is common for the issuer's share registrar to conduct these polls, a scrutineer is not necessary.</p>	<ul style="list-style-type: none"> • Old: 15 • New: Sch. 2, cl. 10-12
4	Managing Director	The existing constitution included the concept of a "managing director", who was not subject to the usual director rotation rules in the NZX Listing Rules. As this concept has been removed from the New Listing Rules, the managing director clauses are not included in the new constitution.	<ul style="list-style-type: none"> • Old: 25 • New: N/A
5	Minimum holding	To reflect a change in the New Listing Rules, the procedure allowing for the sale of share parcels of less than a "minimum holding" (being parcels of shares worth less than \$1,000) has been amended to provide for those shares to be sold on market (including through a broker on behalf of Vital) rather than through NZX or in some other manner approved by NZX.	<ul style="list-style-type: none"> • Old: 9.6 • New: 14
6	Alternate director – board approval	The new constitution now provides that an alternate director may only be appointed if such appointment is approved by a majority of the other directors, and similarly a	<ul style="list-style-type: none"> • Old: 24.1, 24.2

		majority of the directors may remove such alternate director. This change is required by the New Listing Rules.	<ul style="list-style-type: none"> • New: 35
7	Voting restrictions	The new constitution includes a new clause that expressly provides that directors and shareholders must not cast a vote if prohibited from doing so by virtue of any applicable voting restrictions in the New Listing Rules.	<ul style="list-style-type: none"> • Old: N/A • New: 3.2, 3.3
8	Deemed re-election	The existing constitution provided that, in certain circumstances, a director standing for re-election was deemed to be re-elected if no other person was elected. This clause has been removed, as it is inconsistent with the New Listing Rules.	<ul style="list-style-type: none"> • Old: 23.5 • New: N/A
Other changes to the constitution			
9	Quorum for shareholders meeting	The existing constitution provides that a quorum for a meeting of shareholders is five shareholders. Vital's Board recommends restricting this to five shareholders <i>who are entitled to vote</i> . While unlikely, this avoids the possibility of a quorate shareholders' meeting where no shareholders are entitled to vote.	<ul style="list-style-type: none"> • Old: 14.2 • New: Sch. 2, cl. 2
10	Quorum for meeting of other groups	The existing constitution provides that if there is a meeting of an "interest group", the necessary quorum is two persons holding securities of that group. This requirement would be problematic if there was only one shareholder in an interest group. Accordingly, Vital's Board suggests that the quorum for any interest group be members of the interest group holding 5% or more of the total number of shares held by all members of that interest group.	<ul style="list-style-type: none"> • Old: 11.2 • New: 23
11	No casting vote for shareholder meetings	The current constitution provides that the chairperson has a casting vote at meetings of shareholders. From a good corporate governance perspective, it is uncommon for a chairperson to having a casting vote and therefore the casting vote has not be included in the new constitution.	<ul style="list-style-type: none"> • Old: 15.12 • New: Sch. 2, cl. 9
12	Record date for voting entitlement	The Companies Act permits the Board to elect a "record date" to determine which shareholders are entitled to vote at an upcoming meeting of shareholders. It is common	<ul style="list-style-type: none"> • Old: N/A

		for constitutions to provide that such record date will be at 5pm on a day no more than 2 working days before the meeting.	<ul style="list-style-type: none"> • New: 11
13	Maximum number of directors	The new constitution includes a maximum number of directors of 6. Vital considers it is common for the constitution of a listed issuer to specify the maximum size of the board.	<ul style="list-style-type: none"> • Old: N/A • New: 24
14	General modifications for electronic communications	General changes have been made to the constitution to allow for email communication (for example, directors may be notified of a board meeting via email, rather than facsimile).	N/A
Changes made to streamline constitution			
15	Clauses removed	<p>The following clauses of the existing constitution are not included in the new constitution as they generally repeat mandatory provisions in the NZX Listing Rules or Companies Act:</p> <ul style="list-style-type: none"> • Clause 4 (issue of new equity securities) • Clause 5 (buybacks of equity securities and financial assistance) • Clause 9, except clause 9.6 (transfer of shares) • Clause 10 (transmission of shares) • Clauses 11 to 20 (these clauses relate to shareholders' meetings and have been deleted to the extent they repeat the default position under the Companies Act) • Clause 21 (disposal or acquisition of assets) • Clause 22 (transactions with Related Parties) 	N/A

		<ul style="list-style-type: none">• Clause 27 (Audit Committee)• Clause 28 (Directors' remuneration)	
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