

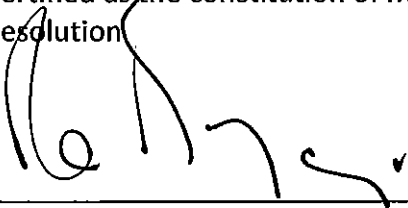
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# Motor Trade Finances Limited

## Constitution

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Certified as the constitution of Motor Trade Finances Limited adopted by a Special Resolution



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Chairperson

Date: 24 February 2011

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## PART A: INTRODUCTION

### INTERPRETATION

#### 1 Defined terms

In this constitution:

##### 1.1 The following expressions have the following meanings:

*the Act* means the Companies Act 1993;

*the Board* means Directors who number not less than the required quorum acting together as the board of directors of the Company;

*the Company* means Motor Trade Finances Limited;

*this constitution* means this constitution as it may be altered from time to time in accordance with the Act;

*Associated Person* has the meaning given to that term in Listing Rule 1.3 of the Listing Rules of the NZSX and as set out in clause 3 of the Fifth Schedule;

*Control Limit* means the limit on the number of Shares which can be held by a Shareholder and Associated Persons as set out in clause 7 of the constitution and the Fifth Schedule;

*Director* means a person appointed as a director of the Company in accordance with this constitution;

*Employee* in relation to the Company includes an employee or officer of the Company or any of its subsidiaries, a labour only contractor, consultant, or consultant company who or which contracts with the Company or with any of its subsidiaries, any trustee or trustees on behalf of any of the above employees or officers, and any trustee or trustees of any pension, superannuation or like fund established for the benefit of any of the above employees or officers;

*Executive Director* means any Director who is an employee or labour only contractor of the Company or any of its related companies and includes any Managing Director appointed in accordance with this constitution;

*Independent Director* means a Director who is not an executive of the Company and who has no disqualifying relationship. For the purposes of this definition, a disqualifying relationship means any direct or indirect interest or relationship

that could reasonably influence, in a material way, the Director's decisions in relation to the Company or the holding of a shareholding in the Company that would qualify that person to be elected as a Director.

*Minimum Holding* means that number and class of Shares in the Company as determined from time to time by the Board;

*NZX* means NZX Limited;

*Originator* means a person firm or company that has entered into an Originator Agreement with the Company;

*Originator Agreement* means any agreement entered into with a person firm or company for the acquisition or placement of finance receivables with the Company where for the purposes of this Constitution the parties to that agreement are the Company and a Shareholder or a person who has applied to purchase or be issued Shares in the Company;

*ordinary resolution* means a resolution approved by a majority of more than 50% of the votes of the holders of the security entitled to vote and voting on the resolution;

*perpetual preference shares* means any perpetual preference shares issued by the Company which have a right to a fixed or adjustable dividend, which have no rights to vote except on a separate class meeting of holders of those shares, and which shares can only be redeemed at the option of the Company;

*Person* includes a company, limited partnership, individual or any other legal entity;

*Quoted* means any Shares that are quoted on a trading platform operated by the NZX or any other recognised exchange;

*Rules* means the Listing Rules of NZX Limited for the NZSX as altered from time to time;

*Share* means a share in the Company;

*Shareholder Originator* means a Shareholder who has, and continues to originate, finance receivables with the Company under an Originator Agreement;

*Shareholder* means a person holding Shares in the Company;

*special resolution* means a resolution approved by a majority of 75% of votes of the holders of the Shares entitled to vote and voting;

*substantial security holder* has the meaning given to that term in section 2 of the Securities Markets Act 1988;

*written or in writing* in relation to words, figures and symbols includes all modes of presenting or reproducing those words, figures and symbols in a tangible and visible form.

1.2 Subject to *clause 1.1*, expressions:

- (a) which are defined in the Rules (whether or not expressed with an initial capital letter) have the meanings given by those Rules.
- (b) which are defined in the Act (whether generally or for the purposes of one or more particular provisions) have the meanings given to them by the Act. Where an expression is defined in the Act more than once and in different contexts, its meaning will be governed by the context in which it appears in this constitution.

## 2 Construction

In this constitution:

- 2.1 Headings appear as a matter of convenience and do not affect the interpretation of this constitution;
- 2.2 The singular includes the plural and vice versa, and words importing one gender include the other genders;
- 2.3 A reference to an enactment or any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or those regulations;
- 2.4 A reference to *permitted by the Act* means not prohibited by the Act or not prohibited by the Rules;
- 2.5 The Schedules form part of this constitution.

### RELATIONSHIP BETWEEN CONSTITUTION AND ACT

## 3 Effect of the Act on this constitution

The Company, the Board, each Director, and each Shareholder has the rights, powers, duties, and obligations set out in the Act except to the extent that they are negated or modified, in accordance with the Act, by this constitution.

## 4 Shareholders may alter or revoke this constitution

The Shareholders may alter or revoke this constitution by special resolution.

**5 Share confers rights on Shareholder**

5.1 Subject to the terms on which a Share is issued, or to any class rights attached to a class of Shares, a Share confers on the holder:

- (a) subject to the provisions of *clauses 6 and 7*, the right to one vote, on a poll at a meeting of Shareholders on any resolution, including any resolution to:
- appoint or remove a Director or an auditor in accordance with this constitution; or
  - adopt a constitution; or
  - alter this constitution; or
  - approve a major transaction; or
  - approve an amalgamation under the Act; or
  - put the Company into liquidation.
- (b) a right to be distributed rebates or other commissions, incentives and returns in proportion to the amount and profitability of finance receivables introduced by the Shareholder Originator to the Company;
- (c) subject to clause (b) above the right to an equal share in dividends authorised by the Board; and
- (d) subject to clause (b) the right to an equal share in the distribution of the Company's surplus assets.

5.2 Each Share having the right to vote which is not fully paid shall carry only a fraction of the vote which would be exercisable if the Share was fully paid. The fraction must be equivalent to the proportion which the amount paid (not credited) is of the total amounts paid and payable (excluding amounts credited and amounts paid in advance of a call).

5.3 Shareholders of all classes shall be entitled to attend meetings of Shareholders and to receive copies of all notices, reports and financial statements issued generally to holders of Shares carrying votes.

5.4 All Shares issued by the Company which have voting rights are and shall be governed by the rights and limitations affecting control, voting and ownership set out in the Fifth Schedule.

**6 Holders of Perpetual Preference Shares**

Notwithstanding clauses 5.1 and 5.2 no holder of any perpetual preference shares shall have any right to vote at a meeting of Shareholders of the Company and shall only have the rights attached to those said Shares on issue or as may be varied by special resolution.

**7 Restriction on Shareholding**

No Shareholder nor any Associated Person of that Shareholder may at any time hold in aggregate a relevant interest in excess of 10% of the Shares on issue in the Company entitled to vote at a meeting of Shareholders. Subject as aforesaid unless the Shareholders have approved by a special resolution a shareholder holding in excess of 10% of the voting Shares on issue (with the holder or intended holder of the Shares in excess of such 10% limit not voting on that special resolution) a Shareholder and any Associated Persons shall not hold a relevant interest in Shares in aggregate in excess of 10% of the total voting Shares on issue. If a Shareholder and Associated Persons of that Shareholder hold a relevant interest in more than 10% of the voting Shares the directors can declare any voting Shares held above such 10% limit by that Shareholder or Associated Person to be disqualified from voting provided that this clause does not prevent a person disqualified from voting under this clause, who has been appointed as a proxy or voting representative by another person who is not disqualified from voting under this clause, from voting in respect of the Shares held by that other person in accordance with the express instructions of that other person provided that person who has made the appointment is not an Associated Person. The provisions of the Fifth Schedule shall apply to this clause and if a conflict arises between this clause and the Fifth Schedule the provisions of the latter shall apply. For the purposes of this clause and the Fifth Schedule all references to Shares are to voting shares held by originators and excluded are all perpetual preference shares.

**8 Board to ascertain disqualified holders**

The Board must use reasonable endeavours to ascertain, no later than five business days before any meeting to consider a resolution on which the Constitution prohibits certain persons from voting, the identity of holders of Shares who are disqualified from voting on that resolution, and on request must supply a list of such holders to any holder of Shares of the Company entitled to vote on that resolution.

**9 Deadline for challenge**

A resolution of, or proceeding at, a meeting in breach of *clause 7* must not be treated as unenforceable on the basis of a breach of *clause 7*. This does not prejudice any remedy (other than those which take legal effect against the Company) which any holder of Shares may have against any disqualified person who casts a vote at a meeting in breach of *clauses 7 and 8*. Any objection by a holder of Shares to the accuracy or completeness of any list provided pursuant to *clause 8* must be disregarded by the Company and the chairperson of the relevant meeting if it is notified to the Company later than one full business day before the time fixed for commencement of the meeting.

**10 Statement of rights to be given to holders of Shares**

Where the Act requires, the Company must issue a statement of rights complying with the Act to any holder of Shares who asks for one.

**11 Modification of rights of Shareholders**

The Company must not take any action that affects the rights attached to Shares or to any class of Shares unless that action has been approved by a special resolution of each interest group. For the purposes of this clause:

**11.1** *class* means a class of Shares having attached to those Shares identical rights, privileges, limitations and conditions;

**11.2** *interest group*, in relation to any action or proposal affecting rights attached to Shares, means a group of holders of Shares:

- (a) whose affected rights are identical;
- (b) whose rights are affected by the action or proposal in the same way; and
- (c) subject to *clause 11.3*, who comprise the holders of one or more classes of Shares in the Company;

**11.3** one or more interest groups may exist in relation to any action or proposal and if:

- (a) action is taken in relation to some holders of Shares in a class and not others; or
- (b) a proposal expressly distinguishes between some holders of Shares in a class and other holders of Shares of that class,

then holders of Shares in the same class may fall into two or more interest groups;

**11.4** the rights attached to a Share include:

- (a) the rights, privileges, limitations and conditions attached to that Share by the Act, this constitution, or the document which governs the rights of that Share, including voting rights and rights to distributions;
- (b) the right to have the procedure set out in this clause observed by the Company;

- (c) the right that a procedure required by this constitution or the document which governs the rights of that Shares for the amendment or alteration of rights not be amended or altered.

**12 Further issues of Shares do not affect rights of existing holders**

Subject to this constitution, the Board may issue Shares that rank as to voting or distribution rights, or both, equally with or in priority to any existing Shares in the Company. Any such issue will not be treated as an action affecting the rights attached to those existing Shares unless the terms of issue of those Shares expressly provide otherwise.

**13 Actions taken not invalid**

The taking of an action by the Company affecting the rights attached to Shares is not invalid by reason only that the action was not approved in accordance with *clause 11*.

**14 Cancellation of unpaid amounts subject to Shareholder approval**

No obligation to pay any amount which is unpaid on any Shares shall be cancelled, reduced or deferred without the authority of an ordinary resolution of that class of Shares.

**15 Consolidation and subdivision reclassification**

The Board may:

- 15.1 consolidate and divide Shares or any class of Shares in proportion to those Shares or the Shares in that class; or
- 15.2 subdivide Shares or any class of Shares in proportion to those Shares or the Shares in that class;
- 15.3 reclassify Shares of a different class or distinguished by a denominator into Shares of the same class and having the same right;
- 15.4 create new classes of Shares.

**ISSUE OF SHARES**

**16 Board to issue Shares**

The Board may issue Shares in accordance with this constitution.

**17 Board need not comply with statutory pre-emptive rights**

If the Board issues Shares that rank as to voting or distribution rights, or both, equally with or in priority to the Shares already issued by the Company, the Board need not first offer those Shares to existing Shareholders for acquisition, unless any other provision of this constitution requires otherwise.

**18 Issues of new Shares are restricted**

The Board must not issue any Shares unless:

18.1 the precise terms and conditions of the specific proposal to issue those Shares have been approved (subject to *clause 20*) by separate resolutions (passed by a simple majority of votes) of holders of each class of Shares of the Company whose rights or entitlements could be affected by the issue, and the issue is completed in the case of an issue made solely to Employees, within twelve months, and in all other circumstances, within six months, after the passing of those resolutions; or

18.2 the issue is made in accordance with any of *clauses 19* to *25*.

**19 Resolution not required if terms allow new issue**

A resolution pursuant to *clause 18.1* of the holders of a class of Shares is not required if:

19.1 the terms of issue of those Shares expressly reserved the right to make the issue of new Shares in question, and specified at least the maximum number, and class, of new Shares which could be issued, and the time within which they could be issued; or

19.2 those Shares were issued on terms that the holders of those Shares would vote together with the holders of another class or classes of Shares on a resolution of the nature referred to in *clause 18.1* and the issue is approved by a resolution (passed by a simple majority of votes) of holders of all the relevant classes voting together.

**20 Board may issue new Shares on pro rata basis**

The Board may issue Shares if:

20.1 those Shares are offered to holders of existing Shares of the Company on a basis which, if the offer were accepted by all such holders, would maintain the existing proportionate rights of each existing holder (relative to other holders of Shares) to votes and to distribution rights, and that offer is renounceable; or

20.2 those Shares are issued to holders of existing Shares of the Company as fully paid Shares on a basis which maintains the existing proportionate rights of each existing holder (relative to other holders of Shares) to votes and to distribution rights.

Notwithstanding *clauses 20.1* and *20.2*, the Board is entitled:

20.3 to issue any Shares in respect of which an offer is not accepted, or which because of fractional entitlements are not otherwise offered, to such persons and in such manner as the Board considers equitable and in the interests of the



Company, provided that the price and terms and conditions of the issue of such Shares are not materially more favourable to the persons to whom they are issued than the terms of the original offer; and

- 20.4 to offer and issue Shares to the holders of existing Shares in accordance with specific rights attached to those existing Shares to participate in issues of Shares, notwithstanding that the effect may be that existing proportionate rights to votes and distribution rights are not maintained; or
- 20.5 to authorise a disproportionate offer to the extent necessary to round up holdings of Shares to a Minimum Holding, or to avoid the creation of holdings which are less than Minimum Holdings; or
- 20.6 to not offer or issue Shares to holders of existing Shares the terms of which expressly exclude the right to participate in the relevant offer or issue.

**21 Board may issue new Shares within 20% limit**

The Board may issue Shares if:

- 21.1 the issue is not made in whole or in part to any Director, Associated Person of a Director or Employee; and
- 21.2 the total number of Shares issued, and all other Shares of the same class issued pursuant to this clause will not exceed 20% of the total number of voting Shares on issue after including in that calculation the Shares to be issued.
- 21.3 Those Shares when issued may be subject to such condition or restrictions, or the holder of those Shares may be required to enter into such deeds and agreements, as determined by the Board to be appropriate.
- 21.4 The holder or holders of those Shares so issued under the terms of this clause shall be subject to a restriction that the total number of votes which such holders may cast on a poll shall not exceed 20% of the aggregate number of votes cast on that poll by all Shareholders who vote on the resolution. The Board may attach a classification to the Shares so issued to denote this voting restriction.
- 21.5 The Shareholders may by special resolution vary any of the provisions of this clause provided that the holder of the Shares issued under this clause shall not be entitled to vote on that resolution.

**22 Board may issue new Shares to Employees**

Notwithstanding clause 21 the Board may issue Shares if:

- 22.1 the issue is made to Employees and Directors; and

- 22.2 the issue is of a class of Shares already on issue; and
- 22.3 the total number of Shares issued, and all other Shares of the same class issued to Employees and Directors pursuant to this clause during the period of twelve months preceding the date of the issue, does not exceed 5% of the aggregate of:
- (a) the total number of Shares of that class on issue at the commencement of that period; and
  - (b) the total number of Shares of that class issued during that period pursuant to *clauses 18.1, 20, 21, 23 to 25 and 30*; and
- 22.4 the total number of Shares issued, and all other Shares of the same class issued to Employees and Directors pursuant to this clause during the period of five years preceding the date of the issue, does not exceed 10% of the total number of Shares of that class or all classes of voting Shares on issue immediately preceding the date of the issue.

For the purposes of this *clause 22*:

- 22.5 Shares which will, or may, convert to other Shares are deemed to be of the same class as, and to correspond in number to, the Shares into which they will, or may, convert provided that where the conversion ratio is fixed by reference to the market price of the underlying Shares, the market price, unless otherwise specified in the terms of their issue, shall be such market price; and
- 22.6 an issue to a Director, or an associated person of a Director, solely in that person's capacity as a trustee of a bona fide employee share scheme, superannuation scheme, or the like, in which that Director or associated person has no beneficial interest, is deemed not to be an issue to a Director or associated person of a Director, or an issue in which Directors or associated persons participate.

**23 Board may issue new Shares in other cases**

The Board may issue Shares if:

- 23.1 the issue is made as consideration in an offer made by the Company:
- (a) under any take-over code approved under the Takeovers Act 1993; or
  - (b) to acquire assets of the same or similar type of assets to those held by the Company; or
  - (c) under any take-over provisions within a jurisdiction other than New Zealand which provides for prior notice, publicity and disclosure which in

the opinion of the Board is at least as useful to the recipients of the offer as the requirements of one or more of the provisions referred to in (a) above;

- 23.2 the issue is made upon conversion of any Shares from time to time issued by the Company if the terms of issue of those Shares provided for conversion to Shares of the kind issued; or
- 23.3 the issue is made to an existing holder of Shares of the Company in order to bring that holder's holding up to a Minimum Holding; or
- 23.4 the issue is made pursuant to an arrangement, amalgamation or compromise effected pursuant to Part XIII or Part XV of the Act; or
- 23.5 the issue is made pursuant to a plan for the issue of Shares in lieu of dividends or other payments due to Shareholders.

#### **24 Issue of Small Shareholdings**

Notwithstanding the provisions in clauses 18 to 23 the Company is permitted to issue Shares in the following circumstances:

- 24.1 where the Shares are offered to all Shareholders of the same class and where the total amount payable by each Shareholder does not exceed \$5,000;
- 24.2 if that offer is to enable a Shareholder to increase a shareholding to a Minimum Holding.

#### **25 Issues of Shares to Shareholder Originators**

- 25.1 Notwithstanding the provisions of clauses 17 to 22 if there are not sufficient Shares available for sale by existing Shareholders to enable a new or existing Shareholder Originator to obtain a Minimum Holding the Company may issue:
  - (a) such new Shares of such class as may be determined by the Board;
  - (b) new Shares to increase the shareholding of an existing Shareholder Originator to the minimum number of Shares that the Board determines are required to be held by a Shareholder Originator based on the balance outstanding of finance receivables introduced by that Shareholder Originator into the Company;
- 25.2 The Board at its discretion may vary the number of Shares required to be held in the Company by Shareholder Originators and may also issue any Shares of a class to enable existing Shareholder Originators to increase their shareholding to the number and class as specified by the Board. The Board shall take into account in

issuing any new Shares any existing Shares that are not held by Shareholder Originators and which may be available for purchase by Shareholder Originators.

25.3 The Board may designate classifications to Shares so that:

- (a) Shares held by Shareholder Originators and which are equal to the Minimum Holding required to be held by that Shareholder Originator cannot be sold except if approved by the Board;
- (b) Shares held in excess of the Minimum Holding as in (a) above and Shares held by Shareholders who are not Shareholder Originators may be traded through a share trading system as determined by the Board.

**25.4 Condition of Holding Shares**

The Board may impose conditions on the holding of Shares, including and without limiting the same, that the relevant Shareholder:

- (a) has entered into an Originator Agreement with the Company and has complied with all the terms of that agreement; and/or
- (b) complies at all times with a code of conduct or other policies introduced by the Board to ensure continued compliance with statutory obligations and best practice in the market; and/or
- (c) may be required at the direction of the Board to sell Shares in the Company for a breach of the provision of this Constitution or the terms of any agreements entered into with the Company.

**26 Issue to persons signing an Originator Agreement**

26.1 Notwithstanding clauses 18 to 23 the Company may issue new Shares to any person who is signing an Originator Agreement with the Company;

26.2 The Directors may determine the minimum number of Shares that a person must hold when first becoming a Shareholder if Shares are offered to that person on the entering into of an Originator Agreement.

**27 Sale of treasury stock treated as issue of Shares**

For the purposes of *clause 19* and *clauses 20 to 24*, and subject to *clause 25* the transfer by the Company of treasury stock to a person is deemed to constitute the issue of Shares.

**28 Entitlements to third party Shares treated as issue of Shares**

Entitlements conferred by the holding of Shares of the Company, to shares of a third party (whether or not that third party is an issuer), must not be created or conferred

