

# Constitution of Pohutukawa Private Equity V Limited

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## **PART A: INTRODUCTION**

### **INTERPRETATION**

#### **1 Defined terms**

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

*the Act* means the Companies Act 1993;

*the Company* means Pohutukawa Private Equity V Limited;

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

*Invested Capital* has the meaning given to that term in the offering memorandum for the Offer;

*Investment Company* means each of the companies named in the Fifth Schedule other than any such company that has commenced Liquidation and also includes any other entity formed by the Investment Manager (in liaison with the Company) for a similar purpose, at a later date;

*Investment Manager* means Direct Capital V Management Limited or such other entity as may be appointed as a replacement or substitute Investment Manager of the Company from time to time;

*Liquidation* means the liquidation, dissolution, deregistration or receivership of a company or any other event or transaction which involves distribution of all of a company's capital;

*Offer* means the initial offer of Stapled Shares to be made by the Company and the Investment Companies pursuant to an offering memorandum dated on or about 7 December 2016;

*Ordinary Share* means an ordinary share in the Company having the rights, limitations and conditions described in this constitution;

*Redeemable Preference Share* means the non-voting redeemable preference shares in the Company having the rights, limitations and conditions described in this constitution;

*Stapled Shares* means, in respect of each Ordinary Share, that Ordinary Share together with such of the 100 Redeemable Preference Shares in the Company and originally allotted with that Ordinary Share as at the relevant date remain unredeemed, together with a corresponding preference share in each Investment Company held by the holder of such Ordinary Share as specified in the share register;

*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 Expressions which are defined in the Act (whether in section 2, or elsewhere for the purposes of a particular subsection, section or sections) 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**

- 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 The Schedules form part of this constitution.

## **THE RELATIONSHIP BETWEEN THIS CONSTITUTION AND THE ACT**

### 3 **Effect of the Act on this constitution**

The Company, the board, each director, and each shareholder have 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 **Effect of this constitution**

This constitution has no effect to the extent that it contravenes the Act, or is inconsistent with it.

### 5 **Shareholders may alter or revoke this constitution**

The shareholders may alter or revoke this constitution by special resolution. Notwithstanding anything contained elsewhere in this constitution, for the purposes of the definition of "special resolution" as that term applies for the purposes of (and only for the purposes of) this clause 5 and section 32(2) of the Act, any alteration to or revocation of clause 18, 34 and/or 35.1 of the constitution, or this clause 5, shall in addition to the approval of a majority of 75 percent of votes of shareholders entitled to vote and voting, require the written approval of Craigs Investment Partners Limited.

## **PART B: SHARES AND SHAREHOLDERS**

### **SHARES AND ISSUE OF SHARES**

#### 6 **Company's shares**

- 6.1 All shares in the Company shall be Ordinary Shares or Redeemable Preference Shares.
- 6.2 At the time of adoption of this constitution, the Company has 100 Ordinary Shares. The Company has no Redeemable Preference Shares on issue. No money is payable in respect of these Ordinary Shares.





## 7 **Board to issue shares**

7.1 The board may issue Ordinary Shares and Redeemable Preference Shares at any time, but only:

- (a) pursuant to the Offer to a person who holds, or has agreed to subscribe for, Stapled Shares and in such number that will result in such person holding 100 Redeemable Preference Shares and one preference share in each Investment Company for each Ordinary Share held by such person; or
- (b) with the approval by special resolution of the holders of Ordinary Shares and the prior consent of the Investment Manager.

7.2 The issue price of the Ordinary Shares to be issued by the Company pursuant to the Offer shall be nil.

7.3 The issue price of the Redeemable Preference Shares to be issued by the Company pursuant to the Offer shall be \$0.01 per share.

## 8 **Rights Attaching to Ordinary Shares**

8.1 Each Ordinary Share confers on the holder:

- (a) the right to one vote on a poll at a meeting of the Company on any resolution including any resolution to;
  - (i) appoint or remove a director (subject to clauses 34 and 35) or an auditor;
  - (ii) adopt a constitution;
  - (iii) (subject to clause 5) alter this constitution;
  - (iv) approve a major transaction;
  - (v) approve an amalgamation under the Act; and
  - (vi) put the Company into Liquidation;
- (b) the right to an equal share in distributions of capital or income (or both) authorised by the board;
- (c) the right to an equal share in the distribution of the surplus assets of the Company.

## 9 **Rights Attaching to Redeemable Preference Shares**

9.1 Notwithstanding any other provision in this constitution, the Redeemable Preference Shares shall not confer any voting rights.

9.2 The Redeemable Preference Shares shall not be entitled to any income.

9.3 Upon redemption by the Company, the holder of a Redeemable Preference Share shall be entitled to receive \$0.01 per Redeemable Preference Share,



subject to total redemptions received by the holder not exceeding the total subscription price paid by the holder in respect of such share. Redeemable Preference Shares are not redeemable by the holder.

## **SHARE REGISTER**

### **10 Status of registered holder**

The Company may treat the registered holder of a share as the only person entitled to:

- (a) exercise any right to vote attaching to the share;
- (b) receive notices;
- (c) receive a distribution in respect of the share; and
- (d) exercise the other rights and powers attaching to the share.

### **11 Trusts not to be entered on share register**

The Company must not enter any notice of a trust on the share register, whether that trust is express, implied or constructive.

### **12 Share Register to show Stapled Shares**

The share register (or registers) shall be maintained together with the share registers of each Investment Company and must show with respect to each Ordinary Share, the Redeemable Preference Shares in relation to those Ordinary Shares.

### **13 Restrictions on transfer of shares**

No Ordinary Share or Redeemable Preference Shares may be transferred other than contemporaneously with and as part of a transfer of its Stapled Shares.

### **14 Signed transfer to be delivered to Company**

Where shares are to be transferred, a form of transfer signed by the present holder of the shares, or by that holder's attorney, personal representative, or by any other person who may lawfully sign on behalf of that holder, must be delivered to the Company. The transferee must sign the transfer form if the registration imposes a liability to the Company on the transferee. A form of transfer of any Ordinary Shares or Redeemable Preference Shares may include a transfer of their Stapled Shares.

### **15 Shares transferred by entry on share register**

Shares shall be transferred by entry on the Company's share register of the name of the transferee which appears on the transfer form delivered to the Company.

### **16 Board may refuse or delay a share transfer in certain cases**

The board may in its absolute discretion refuse or delay the registration of any transfer of shares if:

- (a) the transfer is not made in accordance with clause 13;



- (b) the holder of the shares has failed to pay the Company an amount due in respect of those shares, whether by way of consideration for the issue of the shares or in respect of sums payable by the holder of the shares in accordance with this constitution;
- (c) registration would impose a liability to the Company on the transferee and the transferee has not signed the transfer form;
- (d) the transfer is not accompanied by such evidence as the board may reasonably require to establish the right of the transferor to make the transfer; or
- (e) the transfer could have adverse financial or tax implications for the Company or any Investment Company.

**17 Board must refuse a share transfer in certain cases**

The board must refuse the registration of any transfer of shares if it is required to do so by law.

**CALLS, FORFEITURE AND LIENS**

**18 Board may make calls**

The board may make calls on any shareholder for any money that is unpaid on that shareholder's shares and not otherwise payable at a specified time or times under this constitution or the terms of issue of those shares or any contract for the issue of those shares. The First Schedule governs calls on shares.

**19 Forfeiture of shares where calls or other amounts unpaid**

The board may commence procedures in accordance with the Second Schedule for forfeiture of any Stapled Shares if the holder of the Redeemable Preference Shares forming part of those Stapled Shares fails to pay:

- (a) a call, or an instalment of a call, on those Redeemable Preference Shares; or
- (b) any amount that is payable under this constitution or the terms of issue of or any contract for the issue of, those Redeemable Preference Shares.

**20 Company's lien**

The Company has a lien on shares, proceeds of sale of shares, and dividends on the terms set out in the Second Schedule.

**ACQUISITION OF OWN SHARES**

**21 Restrictions on the Company acquiring its own shares**

The Company may only purchase Ordinary Shares in the Company from any shareholder if the Company and each Investment Company contemporaneously purchases the corresponding Stapled Shares of those Ordinary Shares.



22 **Company may acquire and hold or cancel its own shares**

Subject to clause 21, the Company may purchase or otherwise acquire shares issued by the Company and may hold or cancel those shares in accordance with the Act.

23 **Board may acquire shares in the Company on a non-proportional basis**

Subject to clause 21, the board may purchase or otherwise acquire shares issued by the Company from such shareholders and in such numbers or proportions as it thinks fit, in accordance with the Act.

### **SHAREHOLDER RIGHTS**

24 **Statement of rights to be given to shareholders**

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

25 **Company must obtain approval before altering shareholders' rights**

The Company must not take any action that affects the rights attached to shares unless that action has been approved by a special resolution of each interest group in accordance with the Act.

### **DISTRIBUTIONS**

26 **Board may authorise distributions**

The board may authorise a distribution by the Company in accordance with the Act.

27 **Board's power to authorise dividend is restricted**

The board must not authorise a dividend:

- (a) in respect of some but not all the shares in a class; or
- (b) that is of a greater value per share in respect of some shares than it is in respect of other shares of that class,

unless the amount of the dividend in respect of a share of that class is in proportion to the amount paid to the Company in satisfaction of the liability of the shareholder under this constitution or under the terms of issue of the share or under the contract for the issue of the share. Nothing in this clause 27 prevents the board issuing shares wholly or partly in lieu of dividend in accordance with the Act.

28 **Shareholder may waive dividend**

Notwithstanding clause 27, a shareholder may waive his or her entitlement to receive a dividend by giving a written notice to the Company signed by or on behalf of the shareholder.



29 **Board may deduct from distribution amounts owed to Company**

The board may, at its discretion, deduct from any distribution payable to any shareholder any amount owed by the shareholder to the Company on account of any call or otherwise.

**MEETINGS OF SHAREHOLDERS**

30 **Company must hold annual meeting of shareholders**

30.1 Subject to clause 30.2, the board must call an annual meeting of shareholders to be held:

- (a) once in each calendar year; and
- (b) not later than 15 months after the date of the previous annual meeting of shareholders; and
- (c) not later than 6 months after the balance date of the Company.

However no annual meeting need be called and held if everything required to be done at the meeting is done by resolution passed in accordance with clause 32.

30.2 The Company does not have to hold its first annual meeting in the calendar year of its registration but must hold that meeting within 18 months of its registration.

30.3 The Company must hold the meeting on the date on which it is called by the board to be held.

31 **Company may hold special meetings of shareholders**

A special meeting of shareholders entitled to vote on an issue:

- (a) may be called at any time by the board; and
- (b) must be called by the board on the written request of a shareholder holding shares carrying together not less than 5 percent of the voting rights entitled to be exercised on the issue.

32 **Written shareholders' resolution instead of holding a meeting**

32.1 A written resolution signed by at least 75 percent of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, and who together hold at least 75 percent of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders. Any such resolution may consist of several copies of the resolution, each signed by one or more shareholders. A copy of a resolution, which has been signed and sent by electronic communication, will satisfy the requirements of this clause 32.

32.2 The Company must send a copy of the resolution to every shareholder who did not sign the resolution or on whose behalf the resolution was not signed, within five working days of the resolution being passed.



**33 Proceedings at meetings of shareholders**

The Second Schedule governs the proceedings at meetings of shareholders.

**PART C: DIRECTORS**

**APPOINTMENT AND REMOVAL**

**34 Number of directors**

The minimum number of directors shall be two and the maximum number of directors shall be three.

**35 Appointment of directors**

35.1 From incorporation of the Company until the date on which ~~For so long as there is Invested Capital in Pohutukawa V~~ ceases to have Invested Capital (after first having had Invested Capital), Craigs Investment Partners Limited shall be entitled to appoint all of the directors of the Company (and may from time to time replace any such appointment). For the avoidance of doubt, the initial directors of the Company will be deemed to have been appointed by Craigs Investment Partners Limited.

35.2 Subject to clause 35.1, any person who is not disqualified under the Act may be appointed as a director of the Company by:

- (a) an ordinary resolution of the shareholders; or
- (b) the board to fill any vacancy.

**36 Removal of directors**

Any director (other than a director appointed by Craigs Investment Partners Limited in accordance with clause 35.1) may be removed from office by an ordinary resolution passed at a meeting called for the purpose of, or for purposes that include, removal of the director.

**37 Shareholding qualification for directors**

There is no shareholding qualification for directors.

**CHAIRPERSON**

**38 Directors to elect chairperson of the Board**

The directors must elect one of their number as chairperson of the board.

**39 Chairperson to hold office on certain terms**

The chairperson of the board holds that office until he or she vacates office or the directors elect a chairperson in his or her place.

**VACATION OF OFFICE**

**40 Office of director vacated in certain cases**

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

- (a) dies; or



- (b) becomes disqualified from being a director pursuant to section 151 of the Act; or
- (c) resigns that office in accordance with clause 41; or
- (d) is removed from office in accordance with this constitution or the Act.

41 **Directors' resignation procedure**

A director may resign office by delivering a signed notice of resignation in writing to the address for service of the Company. The notice is effective when it is received at that address or at a later time specified in the notice.

**MANAGEMENT OF THE COMPANY**

42 **Board to manage Company**

The Company's business and affairs must be managed by, and under the direction or supervision of, the board, except to the extent that the Act or this constitution provides otherwise.

43 **Board has powers necessary to manage Company**

The board has all the powers necessary for managing, and for directing and supervising the management of, the Company's business and affairs, except to the extent that the Act or this constitution provides otherwise.

44 **Special resolutions necessary for major transactions**

The Company must not enter into a major transaction unless the transaction is:

- (a) approved by a special resolution of shareholders; or
- (b) contingent on approval by a special resolution of shareholders.

**PROCEEDINGS OF THE BOARD**

45 **Meetings of the board**

The Third Schedule governs the proceedings at meetings of the board. The Third Schedule to the Act does not apply to proceedings of the board.

46 **Written resolutions of board permitted**

A resolution in writing signed or assented to by all of the directors then entitled to receive notice of a meeting of the board (or their alternate directors) shall be as valid and effective as if it had been passed at a meeting of the board duly convened and held.

47 **Written resolutions may be in counterparts**

Any written resolution may consist of several copies of the resolution, each signed or assented to by one or more of the directors (or their alternate directors). A copy of a written resolution, which has been signed and is sent by electronic communication, will satisfy the requirements of this clause 47.



## DELEGATION OF POWERS

### 48 **Restriction on board's right to delegate its powers**

The board may delegate to a committee of directors, a director, an employee of the Company or any other nominated person, any one or more of its powers other than its powers under any of the sections of the Act set out in the Second Schedule to the Act.

### 49 **Board delegates to comply with regulations**

In exercising the board's delegated powers, any committee of directors, director, employee or employees of the Company or any other nominated person must comply with any regulations that the board may impose.

### 50 **Committee proceedings**

The provisions of this constitution relating to proceedings of the board shall, insofar as they are not altered by regulations made by the board, also apply to proceedings of any committee of directors.

## INTERESTED DIRECTORS

### 51 **Directors must disclose their interests**

51.1 As soon as a director becomes aware of the fact that he or she is interested in a transaction or proposed transaction with the Company or an Investment Company, then unless the Act provides otherwise or all entitled persons have agreed to or concur in the Company entering into the transaction, that director must cause to be entered in the interests register, and disclose to the board:

- (a) the nature and monetary value of his or her interest (if the monetary value of the interest is able to be quantified); or
- (b) the nature and extent of his or her interest (if the monetary value of the interest cannot be quantified).

### 52 **General disclosure in certain cases will suffice**

52.1 For the purposes of clause 51 a general notice entered in the interests register and disclosed to the board to the effect that a director:

- (a) is a shareholder, director, officer, or trustee of another named Company or other person; and
- (b) is to be regarded as interested in any transaction which may, after the date of the entry or disclosure, be entered into with that other Company or person,

shall be a sufficient disclosure of that interest in relation to such transactions.

### 53 **Failure to disclose does not affect validity of transaction**

Any failure by a director to comply with clause 51 does not affect the validity of a transaction entered into by the Company or the director. However, the transaction may be avoided under clause 54.



**54 Company may avoid transaction if director interested**

Where the Company enters into a transaction in which a director is interested, the Company, if it is permitted to do so by the Act, may avoid that transaction in accordance with the Act. However, if all entitled persons have agreed to or concur in the Company entering into such a transaction then this clause 54 will not apply.

**55 Interested director may not vote**

55.1 A director of the Company who is interested in a transaction entered into, or to be entered into, by the Company or an Investment Company may not vote on a matter relating to the transaction but he or she may:

- (a) attend a meeting of directors at which a matter relating to the transaction arises, and be included among the directors present at the meeting for the purpose of a quorum;
- (b) sign a document relating to the transaction on behalf of the Company; and
- (c) do anything else as a director in relation to the transaction,

as if he or she were not interested in the transaction.

**REMUNERATION****56 Board's power to authorise remuneration and other benefits**

56.1 The board may authorise:

- (a) the payment of remuneration or the provision of other benefits by the Company to a director for services as a director;
- (b) subject to approval by an ordinary resolution of shareholders the payment by the Company to a director of compensation for loss of office;
- (c) subject to approval by an ordinary resolution of shareholders the making of loans by the Company to a director;
- (d) subject to approval by an ordinary resolution of shareholders the giving of guarantees by the Company for debts incurred by a director; and
- (e) the entering into of a contract to do any of the things set out in this clause 56.

**ALTERNATE DIRECTORS****57 Directors may appoint and remove alternate directors**

57.1 Every director may:

- (a) appoint any person who is not disqualified by the Act from being a director and whose appointment has been approved in writing by a



majority of the other directors to act as an alternate director in his or her place; and

(b) remove that person from that office,

by giving written notice to that effect to the Company.

**58 Alternate director has powers of appointor**

While acting in the place of the director who appointed him or her, the alternate director has, and may exercise and discharge, all the powers, rights, duties and privileges of that director (including the right to sign any document, including a written resolution, and to act as chairperson, but excluding the right to appoint an alternate). He or she is also subject to the same terms and conditions of appointment as that director, except in respect of remuneration.

**59 Termination of appointment of alternate director**

The appointment of an alternate director terminates automatically if the director who appointed him or her ceases to be a director.

**PART D: GENERAL**

**CHANGE OF COMPANY NAME**

**60 A director may apply to change Company name**

A director may apply to the Registrar of Companies to change the name of the Company if the board has approved the director doing so.

**INDEMNITY AND INSURANCE FOR DIRECTORS AND EMPLOYEES**

**61 Company may indemnify directors and employees for certain liabilities**

The Company is authorised to indemnify a director or employee of the Company or a related company for any liability or costs for which a director or employee may be indemnified under the Act. The board may determine the terms and conditions of any such indemnity.

**62 Company may effect insurance for directors and employees**

The Company may, with the prior approval of the board, effect insurance for a director or employee of the Company or a related company for any liability or costs for which a company may effect insurance for a director or employee under the Act. The board may determine the amounts and the terms and conditions of any such insurance.

**EXECUTION OF CONTRACTS**

**63 Manner of execution**

63.1 A contract or other enforceable obligation may be entered into by the Company as follows:



- (a) an obligation which, if entered into by a natural person, would, by law, be required to be by deed, may be entered into on behalf of the Company in writing signed under the name of the Company by –
  - (i) two or more directors; or
  - (ii) a director, or any other person authorised by the Board, whose signature must be witnessed; or
  - (iii) one or more attorneys appointed by the Company in accordance with clause 64;
- (b) an obligation which, if entered into by a natural person, is by law, required to be in writing, may be entered into on behalf of the Company in writing by a person acting under the Company's express or implied authority; and
- (c) an obligation which, if entered into by a natural person, is not, by law, required to be in writing, may be entered into on behalf of the Company in writing or orally by a person acting under the Company's express or implied authority.

#### 64 **Company may appoint attorneys**

The Company may, by an instrument in writing executed in accordance with clause 63, appoint one or more persons as its attorney or attorneys either generally or in relation to a specified matter or matters. An act of an attorney in accordance with the instrument binds the Company.

### **REMOVAL OF COMPANY FROM REGISTER**

#### 65 **Directors may remove Company from register**

65.1 If the Company:

- (a) has ceased to carry on business, discharged in full its liabilities to all known creditors, and distributed its surplus assets in accordance with the Act; or
- (b) has no surplus assets after paying its debts in full or in part, and no creditor has applied to the Court for an order putting the Company into liquidation,

the board may request the Registrar to remove the Company from the New Zealand register.

### **LIQUIDATION**

#### 66 **Distribution of Surplus Assets**

66.1 If the Company is liquidated the liquidator shall, at the direction of shareholders by special resolution, but subject to any other sanction required by the Act:



- (a) distribute to the holders of the Redeemable Preference Shares in cash or in kind such surplus assets as are required to satisfy their preferential entitlement to distributions of the Company;
- (b) second, divide among the holders of Ordinary Shares in cash or in kind the whole or any part of the remaining surplus assets of the Company.

**67 Distribution in Kind**

67.1 For the purpose of distributing surplus assets the liquidator may:

- (a) fix such values for surplus assets as the liquidator considers to be appropriate, and
- (b) determine how the division will be carried out as between shareholders; and
- (c) vest the whole or part of any such surplus assets in trustees upon such trusts for the benefit of such of the shareholders as the liquidator thinks fit,

but so that no shareholder is compelled to accept any shares or other securities on which there is any liability.



## FIRST SCHEDULE - CALLS, FORFEITURE AND LIENS

### INTERPRETATION

#### 1 **Clause references**

Unless stated otherwise, references to clauses are references to clauses in this Schedule.

### CALLS ON SHARES

#### 2 **Shareholders must pay calls**

Every shareholder on receiving at least 30 days' written notice specifying the time or times and the place of payment must pay, in accordance with that notice, the amount called to be paid in respect of any shares that he or she holds. The board may revoke or postpone a call, or require a call to be paid by instalments. Each call shall be for a minimum of \$0.015 per Stapled Share ~~(or such lesser amount as remains uncalled in respect of each Stapled Share).~~

#### 3 **Call made when Board resolution passed**

A call is regarded as having been made at the time when the board resolution authorising the call was passed.

#### 4 **Joint holders are jointly and severally liable**

The joint holders of a share are jointly and severally liable to pay all calls for that share.

#### 5 **Unpaid calls will accrue interest**

If an amount called is not paid in full at the time specified for payment, the person from whom the amount is due must pay the Company interest on the amount that remains unpaid at a rate determined by the board as being 4% per annum above the 90 day bank bill rate as at the date the call was made, and calculated from the time specified for payment until the day of actual payment. The board may waive some or all of the payment of that interest.

#### 6 **Amounts payable under terms of issue treated as calls**

Any amount that becomes payable on issue or at any specified date under this constitution or under the terms of issue of a share or under a contract for the issue of a share, will be regarded as being a call duly made and payable on the specified date. If the payment is not made, the relevant provisions of this constitution will apply as if the amount had become payable by virtue of a call made in accordance with this constitution.

### FORFEITURE OF SHARES

#### 7 **Directors may by notice require forfeiture of shares if calls unpaid**

The directors may during the time that a call, instalment, or other amount remains unpaid on any shares, serve a notice on the holder requiring payment of the unpaid call, instalment, or other amount, together with any accrued interest.



**8 Notice of forfeiture must satisfy certain requirements**

The notice served under clause 8 must specify a date not earlier than 5 working days after the date the notice is served by which the payment is to be made. The notice must also state that in the event of non-payment by the appointed time, the Stapled Shares to which the call, instalment, or other amount relates will be liable to be forfeited by the shareholder.

**9 Failure to comply with notice may lead to forfeiture**

Where a valid notice under clause 8 is served on a shareholder and the shareholder fails to comply with the notice, then the board:

9.1 may resolve that any Stapled Shares for which that notice was given and all distributions authorised and not paid before the notice was served be forfeited; and

9.2 may cancel any share certificate relating to any share which has been forfeited pursuant to any such resolution.

**10 Board may deal with forfeited share**

Subject to the provisions of clause 13 of this constitution, a forfeited Stapled Share may be sold or otherwise disposed of on such terms and in such manner as the board thinks fit. However, the board may cancel the forfeiture at any time before the sale or other disposition on such terms as the board thinks fit if the call, instalment or other amount which remains unpaid on all Stapled Shares is paid.

**11 Shareholder whose shares are forfeited loses rights**

A person whose shares have been forfeited immediately ceases to be a shareholder in respect of those shares notwithstanding any other provision of this constitution, and remains liable to pay the unpaid amount he or she owes the Company, but that liability shall cease if the Company receives payment in full of all money owing for those shares.

**12 Director's statutory declaration is conclusive**

A statutory declaration given by a director that any Stapled Shares have been duly forfeited on a stated date shall be conclusive evidence of the facts stated in that declaration against any person claiming an entitlement to that share.

**13 Company may sell forfeited share**

The Company may receive consideration, if any, given for forfeited Stapled Shares following a sale or disposition, and may execute a transfer of the shares in favour of the person to whom the shares are sold or disposed of, and register that person as the holder of the shares. The Company has no duty to the holder of the forfeited Stapled Shares to seek a buyer for such shares or in respect of any consideration obtained, however any such consideration so received (less any costs of disposal) shall be returned to the holder of the forfeited Stapled Shares. Any acquirer shall not be bound to see to the application of the purchase money, if any, nor shall the title to the forfeited Stapled Shares be affected by any irregularity or invalidity in the procedures under this constitution in respect of the forfeiture, sale or disposal of those shares.



## LIENS

### 14 **Company's lien**

The Company shall have a lien, ranking in priority over all other equities, on:

14.1 all shares registered in the name of a shareholder (whether solely or jointly with others);

14.2 the proceeds of sale of such shares and any corresponding Stapled Shares; and

14.3 all dividends authorised in respect of such shares and any corresponding Stapled Shares,

for:

14.4 unpaid calls and instalments payable in respect of any such shares or corresponding Stapled Shares (of which such shares form part);

14.5 interest on any such calls or instalments;

14.6 sale expenses owing to the Company in respect of any such shares or any corresponding Stapled Shares; and

14.7 any amounts that the Company may be called on to pay under any statute, regulation, ordinance or other law in respect of the shares or any Stapled Shares of a shareholder, whether the period for payment has arrived or not.

### 15 **Waiver of lien**

Registration of a transfer of shares on which the Company has any lien will operate as a waiver of the lien, unless the Company first gives notice to the contrary to the transferee.

### 16 **Company may sell share on which it has a lien**

Subject to the provisions of clause 13 of this constitution the Company may sell a share together with any corresponding Stapled Shares on which it has a lien in such manner as the board thinks fit, where:

16.1 the lien on the share is for a sum which is presently payable; and

16.2 the registered holder of the share, or the person entitled to it on his or her death or bankruptcy, has failed to pay that sum within 5 days after the Company has served him or her with written notice demanding payment of that sum.

### 17 **The Company may transfer share and apply proceeds**

17.1 The Company may receive consideration given for a share and any corresponding Stapled Shares sold under clauses 17 and 19, and may execute a transfer of the share and any corresponding Stapled Shares in favour of the person to whom the share is sold, and register that person as



the holder of the share and any corresponding Stapled Shares discharged from all calls due prior to the purchase. The purchaser shall not be bound to see to the application of the purchase money, and his or her title to the shares and any corresponding Stapled Shares shall not be affected by any irregularity or invalidity in the proceedings relating to the sale.

- 17.2 The Company must apply the sale proceeds in payment of the sum presently payable on the lien, and the balance, if any, shall (subject to a like lien for sums not presently payable that existed upon the share before the sale) be paid to the person entitled to the shares at the date of sale.

#### **FORFEITURE AND SALE OF SHARES HELD IN ANY INVESTMENT COMPANY**

- 18 If any Stapled Shares are forfeited, or are sold by reason of the exercise of any lien, in accordance with the constitution of the Investment Company, the Company will require the shareholder to sell the corresponding Ordinary Shares together with corresponding Stapled Shares whereupon the shareholder shall sell and transfer such shares to the transferee of the Stapled Shares. If the shareholder fails to sell and transfer such shares, the Company shall have the rights to transfer the shares and apply the proceeds of sale in accordance with clause 18.





## SECOND SCHEDULE - PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

### INTERPRETATION

#### 1 **Construction**

- 1.1 Unless stated otherwise, references to clauses are references to clauses in this Schedule.
- 1.2 A reference in this Schedule to a shareholder present at a meeting or entitled to vote at a meeting includes a reference to a proxy of a shareholder, a representative of a corporate shareholder, an attorney of a shareholder, and any person who may lawfully act on behalf of a shareholder.

### NOTICE

#### 2 **Written notice must be given to shareholders, directors and auditors**

Written notice of the time and place of a meeting of shareholders must be sent to every shareholder entitled to vote at the meeting and to every director and any auditor of the Company not less than 10 working days before the meeting. One combined notice of meeting for all or some of the Company and the Investment Companies may be given to each shareholder.

#### 3 **Notice must state nature of business**

The notice must state:

- 3.1 the nature of the business to be transacted at the meeting in sufficient detail to enable a shareholder to form a reasoned judgment in relation to it; and
- 3.2 the text of any special resolution to be submitted to the meeting.

#### 4 **Irregularities in notice may be waived**

Any irregularity in a notice of a meeting is waived if all the shareholders entitled to attend and vote at the meeting attend the meeting without protest as to the irregularity or if all such shareholders agree to the waiver.

#### 5 **Company's accidental failure to send notice does not invalidate meeting**

If the Company accidentally fails to send notice of a meeting to any person entitled to that notice, the failure to send the notice will not invalidate the proceedings at that meeting.

#### 6 **Notice of an adjournment**

- 6.1 If a meeting is adjourned for less than 30 days no notice of the time and place of the adjourned meeting need be given other than by announcement at the meeting from which the adjournment took place.



- 6.2 If a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given in the same way as notice was given of the meeting from which the adjournment took place.

## **MEETING AND QUORUM**

### **7 Methods of holding meetings**

- 7.1 A meeting of shareholders may be held by a quorum of the shareholders:
- (a) being assembled together at the place, date and time appointed for the meeting; or
  - (b) participating in the meeting by means of an audio, audio and visual, or electronic communication; or
  - (c) by a combination of both the methods described in clauses 7.1(a) and 7.1(b) above.
- 7.2 The Company is not required to hold meetings of shareholders in the manner specified in clause 7.1(b). Meetings will be held in that manner only if the notice of meeting so specifies or the board otherwise decides that the Company should do so.
- 7.3 The Company may hold a meeting of shareholders contemporaneously with a meeting of shareholders of all or some of the Company and the Investment Companies.

### **8 Business to be transacted only if a quorum is present**

Subject to clause 11, business may be transacted at a meeting of shareholders only if a quorum is present at the time when the meeting proceeds to business.

### **9 Quorum for shareholders' meeting**

A quorum for a meeting of shareholders is present if four shareholders are present.

### **10 Meeting convened at shareholders' request dissolved if no quorum**

If a quorum is not present within 30 minutes after the time appointed for the meeting convened on the written request of shareholders holding shares together carrying at least 5 percent of the voting rights entitled to be exercised, the meeting will be dissolved automatically.

### **11 Other meetings to be adjourned if no quorum**

If a quorum is not present within 30 minutes after the time appointed for a meeting, the meeting will be adjourned to the same day in the following week at the same time and place, or to such other day, time, and place as the directors may appoint. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the shareholders present will constitute a quorum.



## **CHAIRPERSON**

### **12 Chairperson of board to be chairperson of meeting**

The chairperson of the board, if one has been elected by the directors and is present at a meeting of shareholders, will chair the meeting.

### **13 Directors may elect chairperson if chairperson of board not available**

If no chairperson of the board has been elected or, if at any meeting of shareholders the chairperson of the board is not present within 15 minutes of the time appointed for the commencement of the meeting or is unwilling to act, the directors present may elect one of their number to be chairperson of the meeting.

### **14 As a last resort shareholders may elect chairperson**

If at any meeting of shareholders, no director is willing to act as chairperson or if no director is present within 15 minutes of the time appointed for the commencement of the meeting, the shareholders present may elect one of their number to be chairperson of the meeting.

### **15 Chairperson's power to adjourn meeting**

15.1 The chairperson of a meeting at which a quorum is present:

- (a) may adjourn the meeting with the consent of the shareholders entitled to attend and vote at that meeting; and
- (b) must adjourn the meeting if directed by the meeting to do so.

15.2 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

## **VOTING**

### **16 Voting by show of hands or voice vote at meeting**

In the case of a meeting of shareholders held under clause 7.1(a), unless a poll is demanded, voting at the meeting will be by a show of hands or by voice vote, as the chairperson may determine.

### **17 Voting by voice if audio-conference meeting**

In the case of a meeting of shareholders held under clause 7.1(b) or (c), unless a poll is demanded, voting at the meeting will be by the shareholders signifying individually their assent or dissent by voice or by such other manner as the chairperson may decide.

### **18 Voting by electronic means**

To the extent permitted by the Act and the Rules, the Board may allow shareholders to vote by signifying their assent or dissent by electronic means (including, for the avoidance of doubt, voting on a personal computer, with such vote being transmitted to the meeting), instead of the shareholder voting by another method permitted by the Act or this constitution.



19 **Votes of joint holders**

Where two or more persons are registered as the holders of a share, the vote of the person named first in the share register and voting on a matter must be accepted to the exclusion of the votes of the other joint holders.

20 **Shareholder loses voting rights if calls unpaid**

A shareholder is not entitled to vote at any meeting of shareholders other than a meeting of an interest group, unless all sums due to the Company by that shareholder in respect of any share or corresponding Stapled Share registered in that shareholder's name have been paid.

21 **Chairperson not allowed casting vote**

In the case of an equality of votes, whether on a show of hands, voice vote or on a poll, the chairperson of the meeting is not entitled to a casting vote.

22 **Chairperson's declaration of result**

22.1 Unless a poll is demanded, a declaration by the chairperson of the meeting that a resolution on a show of hands or voice vote is carried by the requisite majority or lost, shall be conclusive evidence of that fact.

22.2 The result of a poll declared by the chairperson of the meeting shall be deemed to be the resolution of the meeting at which the poll was demanded.

**POLLS**

23 **Poll may be demanded by shareholders**

At a meeting of shareholders, a poll may be demanded, either before or after a vote by show of hands or voice vote, by:

23.1 at least 5 shareholders having the right to vote at the meeting; or

23.2 a shareholder or shareholders having the right to exercise at least 10 percent of the total votes to be cast on the business to be transacted at the meeting; or

23.3 a shareholder or shareholders holding shares that confer a right to vote at the meeting and on which the total amount paid up is at least 10 percent of the total amount paid up on all the shares that confer that right.

24 **Time at which polls to be taken**

A poll demanded on the election of a chairperson of a meeting or on a question of adjournment must be taken immediately. A poll demanded on any other question is to be taken at such time as the chairperson of the meeting directs. The meeting may proceed to deal with any business other than that upon which a poll has been demanded pending the taking of the poll.

25 **Counting votes cast in a poll**

If a poll is taken, votes must be counted according to the votes attached to the shares of each shareholder present and voting.



- 26 **Result of a poll to be treated as resolution of the meeting**  
The result of a poll declared by the chairperson of the meeting will be treated as the resolution of the meeting at which the poll was demanded on the issue for which the poll was taken.
- 27 **Proxy allowed to demand a poll**  
The instrument appointing a proxy to vote at a meeting confers authority to demand, or join in demanding a poll, and a demand by a person as proxy for a shareholder has the same effect as a demand by the shareholder.

## **SHAREHOLDER PROPOSALS**

- 28 **Shareholder proposals by written notice**  
A shareholder may give written notice to the board of a matter the shareholder proposes to raise for discussion or resolution at the next meeting of shareholders at which the shareholder is entitled to vote.
- 29 **Board to give notice of proposal at Company's expense**  
If the board receives the notice at least 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the Company, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 30 **Board to give notice of proposal at shareholder's expense**  
If the board receives the notice at least 5 working days and not more than 20 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 31 **Board may give notice of proposal on short notice**  
If the notice is received by the board less than 5 working days before the last day on which notice of the relevant meeting of shareholders is required to be given by the board, the board must, if practicable, and at the expense of the shareholder, give notice of the shareholder proposal and the text of any proposed resolution to all shareholders entitled to receive notice of the meeting.
- 32 **Proposing shareholder may include statement**  
If the directors intend that shareholders may vote on the proposal by proxy or by postal vote, they must give the proposing shareholder the right to include in or with the notice given by the board a statement of not more than 1000 words prepared by the proposing shareholder in support of the proposal, together with the name and address of the proposing shareholder.
- 33 **Board may exclude statement in some cases**
- 33.1 The board is not required to include in or with the notice given by the board:



- (a) any part of a statement prepared by a shareholder that the directors consider to be defamatory, frivolous or vexatious; or
- (b) any part of a proposal or resolution prepared by a shareholder which the directors consider to be defamatory.

- 34 **Shareholder to give security for costs for proposal with short notice**  
Where the costs of giving notice of the shareholder proposal and the text of any proposed resolution are required to be met by the proposing shareholder, the proposing shareholder must, on giving notice to the board, deposit with the Company or tender to the Company a sum sufficient to meet those costs.

## **PROXIES**

- 35 **Proxies permitted**  
A shareholder may exercise the right to vote by being present in person or represented by proxy.
- 36 **Proxy to be treated as shareholder**  
A proxy for a shareholder is entitled to attend and be heard at a meeting of shareholders as if the proxy were the shareholder.
- 37 **Appointment of proxy must be in writing or approved electronic format and specify restrictions**
- 37.1 A proxy must be appointed by a notice in writing that is signed, or in the case of an electronic notice sent, by the shareholder, or by appointing the proxy online as per the Company's instructions in the notice of meeting. and the notice must state whether the appointment is for a particular meeting or a specified term. A proxy need not be a shareholder of the Company.
- 37.2 A shareholder may appoint more than one proxy for a particular meeting, provided that more than one proxy is not appointed to exercise the rights attached to a particular share held by the shareholder.
- 38 **Notice of proxy to be produced at least 48 hours before meeting**  
No appointment of a proxy is effective in relation to a meeting unless a copy of the notice of appointment is produced to the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the notice proposes to vote. If the written notice appointing a proxy is signed under power of attorney, a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney must accompany the notice.
- 39 **Form of notice of proxy**  
A notice appointing a proxy shall be in the form set out in the Fourth Schedule or in a form as near to it as circumstances allow, or in such other form as the board may direct.



40 **Vote by proxy valid where no notification before meeting of disqualified proxy**

40.1 Where:

- (a) the shareholder has died or become incapacitated; or
- (b) the proxy, or the authority under which the proxy was executed, has been revoked; or
- (c) the share in respect of which the notice of proxy is given has been transferred,

before a meeting at which a proxy exercises a vote in terms of a notice of proxy but the Company does not receive written notice of that death, incapacity, revocation, or transfer before the start of the meeting, the vote of the proxy is valid.

41 **Postal votes are permitted only at board's determination**

A shareholder may exercise the right to vote at a meeting by casting a postal vote only if the board, prior to the giving of notice of a meeting, has so determined and, if the board so determines, the provisions of clause 7 of the first schedule to the Act shall apply. For the avoidance of doubt, a postal vote may be cast using electronic means permitted by the board.

### **CORPORATE REPRESENTATIVES**

42 **Corporations may act by representative**

A body corporate which is a shareholder may appoint a representative to attend any meeting of shareholders on its behalf in the same manner as that in which it could appoint a proxy. The representative shall be entitled to attend and be heard at a meeting of shareholders as if the representative were the shareholder.

### **MINUTES**

43 **Board must keep minutes of proceedings**

The board must ensure that minutes are kept of all proceedings at meetings of shareholders and that a record is kept of all written resolutions of shareholders. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate.

### **OTHER PROCEEDINGS**

44 **Shareholder participation by electronic means**

44.1 For the purposes of this schedule, a shareholder, or the shareholder's proxy or representative, may participate in a meeting by means of audio, audio and visual, or electronic communication if:

- (a) the Board approves those means; and



- (b) the shareholder, proxy, or representative complies with any conditions imposed by the Board in relation to the use of those means (including for example, conditions relating to the identity of the shareholder, proxy, or representative and that persons approval or authentication (including electronic authentication) of the information communicated by electronic means).
- 44.2 To avoid doubt, participation in a meeting includes participation in any manner specified in this schedule or permitted by the constitution.
- 45 **Meeting may regulate other proceedings**  
Except as provided in this Schedule, a meeting of shareholders may regulate its own procedure.





### THIRD SCHEDULE - PROCEEDINGS OF THE BOARD

- 1 Director or employee under director's instructions to convene meetings**  
A director, or an employee or nominated person of the Company or the Investment Manager, at the request of a director, may convene a meeting of the board by giving notice in accordance with this Schedule.
- 2 Notice to contain certain details**  
The notice of meeting must include the date, time and place of the meeting and an indication of the matters to be discussed in sufficient detail to enable a reasonable director to appreciate the general import of the matters.
- 3 Period of notice required to be given to directors**  
At least 2 days' notice of a meeting of the board must be given to every director who is in New Zealand. If a director, who is for the time being absent from New Zealand, supplies the Company with an email address to which notices are to be sent during his or her absence, then notice must be given to that director. Otherwise notice need not be given to any director for the time being absent from New Zealand. However, if he or she has an alternate director who is in New Zealand, then notice must be given to that person. Where the chairperson or, in the chairperson's absence from New Zealand, any other director believes it is necessary to convene a meeting of the board as a matter of urgency, shorter notice of the meeting of the board may be given, so long as at least 2 hours notice is given.
- 4 Notice to be sent to director's address**  
The notice of meeting must be sent to the address or email address which the director provides to the Company for that purpose, but if an address or email address is not provided, then to his or her last place of employment or residence or email address known to the Company.
- 5 Directors may waive irregularities in notice**  
Any irregularity in the notice of a meeting is waived if all directors entitled to receive notice of the meeting attend the meeting without protest as to the irregularity, or if all directors entitled to receive notice of the meeting agree to the waiver.
- 6 Methods of holding meetings**  
A meeting of the board may be held either:

  - 6.1 By a number of directors who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - 6.2 By means of audio, or audio and visual, or other electronic means of communication by which a quorum of directors participating can simultaneously hear each other throughout the meeting.
- 7 Quorum for Board meeting**  
The quorum necessary for the transaction of business at a meeting of the board is two directors or such a number that constitutes a majority of the



directors. No business may be transacted at a meeting of the board unless a quorum is present.

**8 Meeting adjourned if no quorum**

If a quorum is not present within 30 minutes after the time appointed for a meeting of the board, the meeting will be adjourned automatically until the following working day at the same time and place. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the directors present will constitute a quorum.

### **CHAIRPERSON**

**9 Chairperson to chair meetings**

The chairperson of the board will chair all meetings of the board at which he or she is present.

**10 Directors may elect chairperson of meeting if chairperson of Board is not present**

If no chairperson is elected, or if at a meeting of the board the chairperson is not present within 5 minutes after the time appointed for the commencement of the meeting, then the directors present may elect one of their number to be chairperson of the meeting.

### **VOTING**

**11 Voting on resolutions**

Each director has one vote. A resolution of the board is passed if it is agreed to by all directors present without dissent or if a majority of the votes cast on it are in favour of it. A director present at a meeting of the board may abstain from voting on a resolution, and any director who abstains from voting on a resolution will not be treated as having voted in favour of it for the purposes of the Act.

**12 Voting on Listing**

Notwithstanding the foregoing, any resolution to seek a listing of the Company's securities on any stock exchange shall require the unanimous approval of the Board.

**13 Chairperson does not have casting vote**

In the case of an equality of votes, the chairperson of directors does not have a casting vote.

### **MINUTES**

**14 Board must keep minutes of proceedings**

The board must ensure that minutes are kept of proceedings at meetings of the board and that a record is kept of all written resolutions of directors. Minutes which have been signed correct by the chairperson of the meeting are evidence of the proceedings at the meeting unless they are shown to be inaccurate. Minutes and resolutions may be kept electronically.



## **OTHER PROCEEDINGS**

- 15 **Board may regulate other proceedings**  
Except as set out in this Schedule, the board may regulate its own procedure.



**FOURTH SCHEDULE - PROXY FORM**

**POHUTUKAWA PRIVATE EQUITY V LIMITED**

**SECTION 1: SHAREHOLDER DETAILS (please print clearly)**

Full name:

Full address:

If shares are held jointly, enter details of other joint holders:

Full name:

Full address:

Full name:

Full address:

**SECTION 2: APPOINTMENT OF PROXY**

*(Please note that if the shares are held jointly, the appointment made in this section is made on behalf of each joint holder).*

I appoint

Full name:

Full address:

as my proxy to exercise my vote at the \*[annual/special] meeting[s] of shareholders of the Company [and ] to be held on \*[date], and at any adjournment of [that meeting/those meetings]. If the person I have appointed is unable to be my proxy then I appoint

Full name:

Full address:

**SECTION 3: VOTING INSTRUCTIONS**

*(Please note that if the shares are held jointly, the voting instructions given in this section are given on behalf of each joint holder).*

I direct my proxy to vote in the following manner:

*(Tick the box that applies)*

For    Against

**\*[General Business]**



1              

2              

3              

**\*[Special Business]**

\*[4 Identify resolution]   

***Signed by each shareholder named in Section 1***

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Date:**

**Notes**

1.    *As a shareholder you may attend the meeting and vote, or you may appoint a proxy to attend the meeting. A proxy need not be a shareholder of the Company.*
2.    *If you are joint holders of shares each of you must sign this proxy form. If you are a Company this proxy form must be signed on behalf of the Company by a person acting under the Company’s express or implied authority.*
3.    *For this proxy form to be valid, you must complete it and send it to \*[addressee] at \*[full postal address] so as to ensure that it is received by \*[time] on \*[day and date]. If it has been signed under a power of attorney please send a copy of the power of attorney (unless already deposited with the Company) and a signed certificate of non-revocation of the power of attorney with this proxy form.*
4.    *If you return this form without directing the proxy how to vote on any particular matter, the proxy will vote as he or she thinks fit.*



**FIFTH SCHEDULE – INVESTMENT COMPANIES**

- 1 Pohutukawa Tahī Limited
- 2 Pohutukawa Rua Limited
- 3 Pohutukawa Toru Limited
- 4 Pohutukawa Whā Limited
- 5 Pohutukawa Rima Limited
- 6 Pohutukawa Ono Limited
- 7 Pohutukawa Whitu Limited
- 8 Pohutukawa Waru Limited
- 9 Pohutukawa Iwa Limited
- 10 Pohutukawa Tekau Limited
- 11 Pohutukawa Tekau Mā Tahī Limited
- 12 Pohutukawa Tekau Mā Rua Limited
- 13 Pohutukawa Tekau Mā Toru Limited
- 14 Pohutukawa Tekau Mā Whā Limited
- 15 Pohutukawa Tekau Mā Rima Limited
- 16 Pohutukawa Tekau Mā Ono Limited
- 17 Pohutukawa Tekau Mā Whitu Limited
- 18 Pohutukawa Tekau Mā Waru Limited
- 19 Pohutukawa Tekau Mā Iwa Limited
- 20 Pohutukawa Rua Tekau Limited