

## Farmers' Mutual Group – adoption of initial constitution and explanatory note

### Business

- 1 The Board of FMIA gives notice that it intends to propose that Members pass the following as a special resolution:

That the Members of the Farmers' Mutual Insurance Association adopt as the initial constitution of Farmers' Mutual Group the constitution published on the Farmers' Mutual Group website and initialled by the Chairman on each page for identification purposes, and authorise the Board to update references in the constitution to clause numbers of the Farmers' Mutual Group Bill if required as a result of amendments made by Parliament to the Bill.

### Explanatory note

#### Item 1 – Adoption of initial constitution of FMG

Copies of the proposed constitution and Farmers' Mutual Group Bill are available on the FMG website [www.fmg.co.nz](http://www.fmg.co.nz). Copies will also be sent to every member who requests them for no charge. The address to request copies is PO Box 521, Wellington, Attention: Lisa Murray. Copies may also be obtained by contacting the call centre at 0800 366 466.

#### Introduction

In this explanatory note:

**Bill** means the Farmers' Mutual Group Bill, a private bill before Parliament.

**FMIA** means Farmers' Mutual Insurance Association.

**Mutual** means Farmers' Mutual Group, being the new name for FMIA once the Bill comes into force.

**Member** means a member of FMIA or FMG as the context requires.

Members will be aware that FMIA is intending to promote the Bill in Parliament. The Bill has now been introduced to Parliament and has been referred to the Primary Production Select Committee.

The Bill's principal purpose is to:

- incorporate FMIA as a mutual under the enacted Bill (thereby preserving its mutuality),
  - change FMIA's name to Farmers' Mutual Group (the Mutual),
  - give the Mutual the same capacity and powers as a company,
  - establish a modern governance regime for the Mutual based on that in the Companies Act 1993, and
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- disband some of the obsolete requirements in FMIA's current legislation.

These changes will allow the Mutual to operate more efficiently in the modern business environment, and to better meet Members' financial services needs.

Clause 13 of the Bill requires the Mutual to have a constitution which sets out the respective rights, powers, duties and obligations of the Mutual, the board, each director and each Member. Clause 4 of the Bill permits the Members of FMIA to adopt by special resolution a constitution to be the initial constitution of the Mutual.

### **Effect of the adoption by Members of the proposed constitution**

If the Members of FMIA adopt the proposed constitution, the Board of FMIA will regard that as an endorsement for the Board to continue to progress the Bill through Parliament and to incorporate FMIA under the Bill when it takes effect, without any further approval of or reference to Members.

If Members adopt the proposed constitution but the Bill is amended by Parliament in a material respect, the Board will consult Members and will consider seeking a fresh endorsement to incorporate FMIA under the amended Bill. This could include seeking Member approval to a new constitution, depending on the nature of the amendments made to the Bill.

If the constitution is adopted, and once Part 2 of the Bill comes into force (assuming there are no material amendments to the Bill), the constitution will take effect when the Registrar of Companies receives a copy of the constitution certified by a director. The director must certify that the constitution has been approved by the Members of FMIA as the initial constitution of the Mutual in accordance with the enacted Bill.

By approving the resolution at item [1], Members give the Board authority to update references in the constitution to clauses of the Bill if Parliament amends the number or order of clauses in the Bill. This allows the Board to ensure the references are to the correct clauses in the Bill passed by Parliament.

### **Summary of key provisions of the proposed constitution**

The following is a summary of the key provisions of the proposed constitution.

#### ***Membership of Farmers' Mutual Group***

Regulation 2 of the constitution deals with membership. In general terms, it makes every legal holder of a rural insurance policy (qualifying policy) issued by the Mutual or one of its subsidiaries eligible to be a Member of the Mutual. It provides that persons who were Members of FMIA will continue as Members of the Mutual, and that a Member who ceases to hold a qualifying policy can remain a Member provided the person continues to be a customer of the Mutual or of one of its subsidiaries.

#### ***Management of the Mutual***

Regulation 3 is concerned with the management of the Mutual and makes the Board generally responsible for the day-to-day business of the Mutual. This regulation also allows the Board to delegate certain powers it has, and to appoint a chief executive officer of the Mutual.

The Mutual will be required to obtain Members' approval by special resolution before it enters into a major transaction. A major transaction is a transaction in which the Mutual acquires or disposes of assets worth more than half the value of the Mutual's assets. A special resolution is

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a resolution passed by Members where at least 500 Members vote and the resolution is approved by a majority of 75% of those Members who voted.

### ***Meetings of Members***

Regulation 4 requires annual meetings of Members to be held and sets out the procedures for both annual and special meetings. Members are given the right to put forward proposals to be considered at meetings of Members.

The quorum for a meeting of Members is set at 20. Members are given the right to appoint proxies to attend and vote for them at meetings by giving notice to the Board.

### ***Directors' duties***

Regulation 5 imposes obligations on Directors of the Mutual that are similar to those imposed on directors of companies. These include the duty to act in good faith and in what the Director believes is the best interests of the Mutual, and the duty to exercise reasonable care, diligence and skill when performing their duties as a Director.

### ***Self interest transactions***

Regulation 6 requires Directors interested in a transaction by the Mutual to record their interest in the interests register. This regulation prohibits Directors from voting at a board meeting on any transaction they are interested in but otherwise deals with transactions involving self-interest in substantially the same way as the Companies Act 1993.

### ***Appointment and removal of Directors***

Regulation 7 requires the Mutual to have at least five Directors, of which a majority must be Members. One-third of the Directors must retire at each annual meeting. Each retiring Director is eligible for re-appointment. Three or more Members may nominate a person to be a Director (other than a specialist director – see below). Directors are appointed by an ordinary resolution of Members.

The persons who are Directors of FMIA prior to incorporation under the enacted Bill will continue in office as Directors of the Mutual.

Regulation 7 also allows the Board to appoint specialist directors. Specialist directors can be appointed for a maximum term of 3 years (and may be reappointed), need not be Members, and must have skills, qualifications or experience which the Board considers will complement those of the other Directors and be of benefit to Members.

The appointment of a specialist director must be ratified by Members at the first annual meeting after the appointment.

### ***Directors' meetings***

Regulation 8 sets out the procedures for Directors' meetings. These are very similar to the procedures for meetings of directors of companies.

### ***Remuneration and other benefits***

Regulation 9 requires Member approval to the payment of Director remuneration or compensation for loss of office of Director. All other payments to Directors may be authorised by the Board provided it is satisfied the payment is fair to the Mutual.

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Directors are entitled to be paid reasonable travelling, accommodation and other expenses, and special remuneration for any work additional to that expected of the other Directors. These payments do not require Member approval.

### ***Indemnity and insurance***

Regulation 10 requires the Mutual to indemnify Directors and employees of the Mutual or a related company for:

- costs in respect of proceedings in which judgment is given in the persons favour, where they are acquitted, or which are discontinued; and
- liability to third parties which is not criminal liability or arising from breach of Directors' or fiduciary duties.

The Board may also obtain insurance for Directors and employees for non-criminal liability and costs for non-criminal proceedings, and for criminal proceedings where the Director/employee is acquitted.

The Mutual must not otherwise provide indemnities or insurance to Directors and employees. These indemnity and insurance provisions mirror those in the Companies Act 1993.

### ***Method of contracting***

Regulation 11 sets out the methods by which the Mutual can enter into contracts. These are the same methods that a company can use.

### ***Auditor***

Regulation 12 requires the Members to appoint an Auditor for the Mutual at each annual meeting.

### ***Alteration of Constitution - change of name***

Regulation 13 allows the Members to amend the constitution at any time by special resolution and the Board to change the name of the Mutual without Member approval.

### ***Accounts***

Regulation 14 requires the Board to prepare financial statements for the Mutual that comply with the Financial Reporting Act 1993.

### ***Manner of service on Members and creditors***

Regulation 15 sets out the methods by which documents may be sent to a Member or creditor. If a Member is a natural person notices and documents may be delivered to the person or posted to a post-office box, faxed, or (with the consent of the Member) emailed.

### ***Removal from the register***

Regulation 16 permits the Members, by special resolution, to remove the Mutual from the New Zealand register if it has ceased to carry on business or has no surplus assets after paying its debts in full.

### ***Registered office and address for service***

Regulation 17 permits the Board to change the Mutual's address details.

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