

CONSTITUTION OF THE PACIFIC CATASTROPHE RISK INSURANCE COMPANY

A Segregated Portfolio Company

Amended and Restated by Special Resolution of the Foundation Council passed on the 1st day of October 2021, and intended to come into force on the Commencement date of the Act, being 6 December 2021.

INTERPRETATION

1. In this Constitution words and expressions, except in so far as the context or subject-matter otherwise indicates or requires, shall have the same meaning as in the Act. For ease of reference some terms defined in the Act are repeated below together with definitions applicable in this Constitution -

Act means the Pacific Catastrophe Risk Insurance Facility Act 2021 as amended from time to time and includes any regulations made thereunder.

2016 Act means the Pacific Catastrophe Risk Insurance Facility Act 2016.

Board means the board of directors of the Company.

Commission means the Financial Supervisory Commission.

Company means the Pacific Catastrophe Risk Insurance Company established pursuant to the 2016 Act and continued by the Act.

Council Member means the representative of the member country or the developing partner appointed to the Foundation Council pursuant to the Foundation Rules.

Facility means the Pacific Catastrophe Risk Insurance Facility established by the 2016 Act and continued by the Act.

Foundation means the Pacific Catastrophe Risk Insurance Foundation established by the 2016 Act and continued by the Act.

Foundation Council means the council of the Foundation as constituted pursuant to the Foundation Rules.

Foundation Rules means the rules of the Foundation as amended from time to time.

General Assets means the assets of the Company that are not segregated portfolio assets.

Member Country means a country that is treated as being a Council Member under the Foundation Rules.

Secretary means the person who the directors appoint from time to time to perform the duties of the secretary of the Company pursuant to clause 43 of this Constitution.

Segregated Portfolio means a segregated portfolio created by the Company in accordance with the

Act and this Constitution.

Segregated Portfolio Assets means those assets of the Company held within or on behalf of the segregated portfolios of the Company.

the **Captive Insurance Act** means the Captive Insurance Act 2013 as amended from time to time, and shall include any regulations made thereunder.

the **business address** means the office of the Trustee Company being Asiaciti Trust Pacific Limited, Bermuda House, Tutakimoa, Avarua, Rarotonga, Cook Islands or such alternative address as is determined by the Board from time to time.

the **seal** means the common seal of the Company.

Trustee Company means the trustee company appointed by the Foundation pursuant to clause 6 hereof.

ALL PROVISIONS OF THIS CONSTITUTION SHALL, WHERE THE CONTEXT PERMITS, BE READ SUBJECT TO THE SEGREGATED PORTFOLIO PROVISIONS SET OUT IN CLAUSES 59 TO 63 OF THIS CONSTITUTION. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE SEGREGATED PORTFOLIO PROVISIONS AND ANY OTHER CLAUSE IN THIS CONSTITUTION, THE SEGREGATED PORTFOLIO PROVISIONS SHALL PREVAIL

PURPOSE

2. The primary objectives of the Company are to:
 - (a) hold a captive insurance license pursuant to the Captive Insurance Act to undertake captive insurance business;
 - (b) provide disaster risk management services and tools, including but not limited to, catastrophic risk insurance against natural and climatic disasters to Member Countries enabling them to provide liquidity to deliver relief as quickly as possible following a disaster;
 - (c) enhance capacity for disaster risk management and climate change adaptation;
 - (d) develop the strategic plan for the Facility for review and approval by the Foundation; and
 - (e) undertake such other activities, ancillary to its captive insurance business, as may assist in the reduction or mitigation of financial loss to the Member Countries caused by natural disaster events;
 through the establishment of segregated portfolios pursuant to the Act and pursuant to this Constitution.

SHARES

3. The share capital of the Company shall be United States Dollars ONE HUNDRED THOUSAND and consist of one ordinary share.
4. The sole shareholder of the Company shall be the Foundation.

ALTERATION OF CAPITAL

5. The Company may from time to time by special resolution of the Foundation:
 - (a) increase the share capital by such sum to be divided into shares of such amount, as the

- resolution shall prescribe;
- (b) increase its share capital constituted by shares of no par value by transferring reserves or profits to the stated capital, with or without a distribution of shares;
 - (c) increase the par value of any shares by the capitalization of profits; or
 - (d) repay any paid up capital which is in excess of the needs of the Company or which is otherwise in the interests of the Company as a whole to have paid off.

APPOINTMENT OF LICENCED TRUSTEE COMPANY

6. The Foundation has appointed Asiatic Trust Pacific Limited as the Trustee Company, to provide the registered address, provide the resident director and maintain the records required by the Captive Insurance Act. The Foundation may, by special resolution, remove the Trustee Company hereby appointed and appoint a new Trustee Company in its stead.

DIRECTORS' APPOINTMENT

7. The Company shall have five directors who shall have demonstrable skills and experience in the field of insurance, finance and economics which should be balanced with experience and understanding in regional affairs. Mindful of that criteria, and acting in accordance with Section 29 of the Act, the directors shall be appointed by the Foundation as follows:
- (a) The Foundation shall appoint one director who shall be a resident of the Cook Islands (as required by the Captive Insurance Act), and who shall be an officer or employee of the Trustee Company and have relevant skills and experience.
 - (b) For the purposes of identifying suitable candidates for all and any of the other four director positions, the Company shall appoint a recruitment agency with expertise in the area of insurance generally, and captive insurance particularly, who shall advertise the positions internationally, compile a shortlist of suitable applicants, and submit the shortlist to the Foundation. All applicants identified must have demonstrable skills and experience in the field of insurance, finance and/or economics and at all times two of the directors on the board shall have experience and understanding in regional affairs and be domiciled in the Pacific region. The candidate specification for each position must include an accurate assessment of time commitment, recognizing the need for availability in the event of crises. The recruitment agency may also provide its recommendation as to which of the applicants would be most suited to act as chair of the directors.
 - (c) Upon receipt of the recruitment agency's recommendations, the Foundation shall select such number of directors as are required at that time through consensus vote. If consensus cannot be achieved, then each director shall be selected by special resolution of the Foundation Council.
8. Subject to clause 9, the term of office for the directors appointed pursuant to clause 7 (c) above shall be three (3) years. Such directors shall be eligible for re-election for one further consecutive term of three years. A person may be subsequently re-appointed as a director, provided there has been a period of absence from the Board following the expiry of two consecutive terms. The director appointed pursuant to clause 7(a) shall hold the position for as long as that person remains an officer or employee of the Trustee Company, or resigns the position. In the event of resignation, the Trustee Company shall identify a substitute person available for appointment by the Foundation.
9. Notwithstanding clause 8 above, in the interests of ensuring continuity on the Board, the term of the first members of the Board shall be staggered, such that two of the directors appointed

pursuant to clause 7(c) shall serve an initial term of two years and two of the directors appointed pursuant to clause 7(c) shall serve an initial term of three years. The Foundation Council, in making its appointments pursuant to clause 7(c) shall specify the initial term of each appointee. Following expiry of the initial term, each director shall serve a term of three years as provided in clause 8 above.

10. A person who is a Foundation Council Member shall be eligible for nomination as a director of the Company, but upon appointment as a director of the Company, must immediately resign as a Foundation Council Member.
11. All director appointments must be approved by the Commission as required by the Captive Insurance Act, and any such intended appointment shall not take effect until the approval of the Commission has been received by the Foundation.
12. The remuneration of the directors may be fixed by the Foundation by special resolution and shall be a daily rate; the directors may also be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board or of any committee of the directors or general meetings of the Company or in connection with the business of the Company.
13. The directors shall not be required to hold any shares in the Company. A director may be a company whether incorporated in the Cook Islands or elsewhere and may act as such through a representative or delegate appointed from time to time by written notice lodged with the Secretary.
14. The office of director shall become vacant if the director -
 - (a) for whom approval was granted by the Commission pursuant to the Captive Insurance Act has such approval withdrawn or revoked or otherwise terminated;
 - (b) within the Cook Islands or elsewhere is adjudged bankrupt or insolvent or makes any arrangement or compromise with his creditors generally;
 - (c) becomes prohibited from being a director by reason of any order made under the Act;
 - (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mentally-disordered persons;
 - (e) is removed by special resolution of the Foundation; or
 - (f) resigns his office by notice in writing to the Foundation.
15. In the event of a vacancy on the Board, (other than a vacancy of the director appointed pursuant to clause 7(a)), the process set out in clause 7(b) and (c) shall be applied to all new director appointments. For any vacancy that arises prior to the expiry of the term of that director's appointment, the term of appointment for any new director appointed in his or her stead, shall commence on the date of their appointment and shall terminate on the date upon which their predecessor's appointment would have terminated.
16. The directors shall, by consensus, and having regard to any recommendations made by the recruitment agency pursuant to clause 7(b) above, elect a chair of their meetings and determine the period of which he or she is to hold office.

POWERS AND DUTIES OF DIRECTORS

17. The business of the Company including each Segregated Portfolio, and including the management of capital shall be managed by the directors who may pay all expenses incurred in promoting and

establishing the Company and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Foundation, subject, nevertheless, to this Constitution, to the provisions of the Act and to the provisions of the Captive Insurance Act.

18. Without limiting the generality of the foregoing clause the directors shall deliver and administer the business of the Company and in doing so, shall set appropriate premiums, ensure that the provision of insurance is conducted under clear commercial and sound actuarial principles, and implement strategies that prevent the depletion of the risk capital of the Facility. The directors shall establish procedures to allow for robust internal governance with detailed operational processes, policies and procedures for the Company and make provision for the delegation of powers of the Board and for the development and ongoing review of operation manuals.
19. The directors may exercise all the powers of the Company to employ staff, external contractors, advisors and third party service providers, including, but not limited to, a chief executive officer, an insurance manager (to fulfil the role defined in the Captive Insurance Act), auditors, legal and tax advisors, custodians, managers and investment advisors; on such terms and conditions and remuneration as the Board shall think fit.
20. The directors may exercise all the powers of the Company to borrow money and to mortgage or charge its undertaking, property and uncalled capital, or any part thereof, and to issue debentures and other securities whether outright or as security for any debt liability or obligation of the Company or of any third party.
21. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn accepted, endorsed or otherwise executed, as the case may be, in such manner as the directors from time to time determine.
22. The directors shall cause minutes to be made:
 - (a) of all appointments of officers;
 - (b) of the names of the directors present at all meetings of the Board; and
 - (c) of all proceedings at all meetings of the Board.

Such minutes shall be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting or the Secretary of the Company.

23. All resolutions in writing signed by the Foundation in its capacity as sole shareholder of the Company, or resolutions in writing signed by the directors pursuant to this constitution shall be entered in the minute book of the Company.
24. In carrying out the duties of the directors, each director shall:
 - (a) Act honestly and in good faith, for a proper purpose, and in what the director believes to be in the best interests of the Company;
 - (b) Ensure that all actions are consistent with the obligations of the Company pursuant to the Act and to the Captive Insurance Act;
 - (c) Take into account directions that are properly given by the Foundation Council; and
 - (d) Exercise the care, diligence and skill that a reasonable director would exercise in the same circumstances taking into account the nature of the Company, the nature of the decision, the position of the director and the nature of the responsibilities undertaken by the director.

PROCEEDINGS OF DIRECTORS

25. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. A director may at any time, and the Secretary shall on the requisition of a director, summon a meeting of the directors. It shall not be necessary for the directors to meet personally in the Cook Islands for the discharge of their functions and duties and directors' meetings may be held by telephone, teleconference, skype or similar electronic means of communication provided that all persons participating in the meeting can hear each other at the same time.
26. Subject to this constitution, the directors shall endeavor, as a general rule to determine questions arising at any meeting of directors on the basis of consensus. In the event that consensus cannot be reached within a reasonable time, the chairman of the meeting may determine that the matter be decided by a majority of votes and a determination by a majority of directors shall for all purposes be deemed a determination of the directors. In case of an equality of votes the chair of the meeting shall have no second or casting vote.
27. A director must disclose any conflict or conflicts of interest and may not vote or be counted in the quorum on any resolution in respect of any contract or arrangement or proposed contract or proposed arrangement between such director and the Company, or in which the director is otherwise interested. The Company shall not enter into any contract or arrangement in which a director is interested unless the Foundation Council is aware of the interest of the director and has provided its prior written consent to such contract or arrangement being entered into by the Company.
28. Any director with the approval of the directors may appoint any person to be an alternate or substitute director in his place during such period as he thinks fit, provided however that the directors shall not approve an appointment of an alternate unless the directors are satisfied that exceptional circumstances exist (to be determined by the directors in their discretion) necessitating such an appointment. Any person while s/he so holds office as an alternate or substitute director shall be entitled to notice of meetings of the directors and to attend and vote thereat accordingly, and to exercise all the powers of the appointor in his place. An alternate or substitute director shall not be required to hold any share qualification, and shall ipso facto vacate office if the appointor vacates office as a director or removes the appointee from office. Any appointment or removal under this clause shall be effected by notice in writing under the hand of the director making the same and a facsimile or email communication from the director shall be deemed to be in writing under the hand of the director for the purpose of this provision.
29. The quorum necessary for the transaction of business of the directors may be fixed by the directors; but until so fixed shall be three directors.
30. The directors may act notwithstanding any vacancy in their body or failure to appoint the total number of directors fixed by or under this constitution but, if and so long as their number is less than the number fixed by or under this constitution as the necessary quorum of directors, the directors or director may act for the purpose of increasing the number of directors to that number, but for no other purpose.
31. If at any time there is no chair of the board, or if at any meeting the chair is not present within 10 minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chair of the meeting.
32. The directors may delegate any of their powers to committees consisting of such member or

members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on it by the directors.

33. A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chair shall have no second or casting vote.
34. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, notwithstanding that it is discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that they or any of them were disqualified or had never been qualified, be as valid as if every such person had been duly appointed and was qualified to be a director.
35. A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting of the directors, shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more directors. An email purporting to have been sent by a director or a facsimile or scanned copy of a resolution in writing signed by a director shall be deemed to be a resolution in writing signed by the director pursuant to this clause unless and until it is proved not to have been sent by that director.

CONTRACTS BY THE COMPANY

36. Any contract, including a deed which if made by private persons would by law be required to be in writing under seal, may be made on behalf of the Company either:
 - (a) in writing under the common seal of the Company and signed by a director or by some other person appointed by the directors for that purpose; provided that such signature need not be made contemporaneously with the affixing of the common seal of the Company; or
 - (b) in writing and signed by any two directors.
37. A contract which if made between private persons would by law be required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing and signed by any person acting under its authority, express or implied.
38. A contract which if made between private persons would be valid although made by parole only, and not reduced into writing, may be made by parole on behalf of the Company by any person acting under its authority, express or implied.
39. Any document or proceedings requiring authentication by the Company may be signed by an authorised officer of the Company and need not be under its common seal.
40. The directors may from time to time by power of attorney executed under seal, appoint any company, firm or person or body of persons to be the agent or attorney or attorneys of the Company, and any instrument executed by such agent or attorney or attorneys on behalf of the Company, if executed as a deed, shall have the same effect as if it was under the common seal.
41. A person having dealings with the Company is, subject to clause 42 entitled to make, in relation to those dealings, the following assumptions, that:

- (a) at all relevant times, this constitution has been complied with;
- (b) a person who is held out by the Company to be a director, employee, attorney or agent of the Company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercisable or performed by a director, employee, attorney or agent of the kind concerned;
- (c) a document has been duly authorised and executed by the Company in accordance with clause 35, whether or not the common seal of the Company has been affixed and without the need to enquire whether or not the person signing had the requisite authority.

42. Notwithstanding clause 41 a person is not entitled to make an assumption referred to in clause 40 in relation to dealings with the Company if he had actual knowledge or suspected that the matter that, but for this clause, he would be entitled to assume is not correct; but a person shall be presumed to act in good faith unless the contrary intention is proven.

SECRETARY

43. The Secretary shall be appointed by the directors for such term, and at such remuneration, and upon such conditions as the directors shall determine. The directors shall fix the respective duties and functions of the secretary and may be removed by the directors as determined by them. Until determined otherwise the secretary shall be the chief executive officer of the Company.

SEAL

44. The directors shall provide for the safe custody of the seal, which shall be used only by the authority of the directors or of a committee of the directors authorized by the directors in that behalf, and every instrument to which the seal is affixed shall be signed by or on behalf of two directors or by some other person appointed by the directors for the purpose; provided that such signatures need not be made contemporaneously with the affixing of the seal.

ACCOUNTS

45. The directors shall cause proper accounting and other records to be kept as required by the Act, and as required by the Captive Insurance Act.

46. The Board shall, no later than four months after the end of each financial year, submit to the Foundation Council a report of the Company's operations during that year, which report must include:

- (a) Statements, current to that financial year's end, which detail separately the Company's General Assets and undertaking and the assets and undertaking of each Segregated Portfolio and each of those statements must, in each case, address the following:
 - (i) Financial position;
 - (ii) Financial performance;
 - (iii) Cashflows;
 - (iv) Borrowings;
 - (v) Paid-in capital from donors;
 - (vi) Other financial commitments;
- (b) The auditor's report on those statements; and
- (c) An assessment of specific fiscal risks identified by the Board.

The Company must ensure that, when it provides financial data that information is accurate, full and transparent; and that all accounts, reports and statements must be prepared using generally accepted accounting practices, as approved by the Commission from time to time.

47. In addition to the reporting requirements referred above, and without limiting the obligations contained in clause 45, the Board shall comply with all reporting requirements contained in the Act and in section 23 of the Captive Insurance Act.

AUDIT

48. The Board must appoint an auditor who meets the requirements of section 19 of the Captive Insurance Act and is approved by the Commission.
49. The accounts and records of the Company must be audited annually and the audit report must comply with all requirements set out in section 20 of the Captive Insurance Act.

PROFIT MANAGEMENT

50. The directors may set aside out of the profits of the Company such sums as they think proper as reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the Company may be properly applied, and pending any such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments as the directors may from time to time think fit.
51. The directors may resolve that it is desirable to capitalize any part of the amount for the time being standing to the credit of any of the Company's reserve accounts or to the credit of the profit and loss account.

DOCUMENTS TO BE KEPT AT THE BUSINESS ADDRESS OF THE COMPANY

52. The directors must keep at the business address of the Company accurate reliable records including electronic and hard copies of the Company:
- (a) that show and explain transactions in relation to the Company and its operation;
 - (b) that enable the financial position of the Company to be determined with reasonable accuracy at any one time;
 - (c) that allow financial statements to be prepared and audited;
 - (d) that record minutes of meetings, transactions and decisions made by the Board; and
 - (e) achieve and demonstrate, in respect of each Segregated Portfolio, compliance with both section 33 of the Act and sections 19 to 27 of the Act.
53. All records to be kept pursuant to clause 52 above must be kept for at least seven years after the date on which the record is made.

NOTICES

54. A notice may be given by the company to the Foundation by sending it in accordance with Section

50 of the Act.

INDEMNITY

55. Every director, managing director, agent, auditor, secretary and other officer or servant for the time being of the Company, acting in relation to any of the affairs of the Company and each of them, shall be indemnified and secured harmless out of the assets and profits of the Company from and against all actions, costs, charges, losses, damages and expenses, which they or any of them, shall or may incur or sustain by reason of any contract entered into or any act done, concurred in, or omitted in or about the execution of their duty or supposed duty in their respective offices, except such (if any) as they shall incur or sustain by or through their own willful act, neglect or default respectively, and the amount for which such indemnity is provided shall immediately attach as a lien on the property of the Company and have priority as against the Foundation over all other claims. None of the foregoing shall be answerable for the acts, neglects, or defaults of the other or others of them, or for any bankers, brokers, or other persons into whose hands any money or assets of the Company may come, or for any defects of title of the Company to any property purchased, or for insufficiency or deficiency of or defect of title of the Company to any security upon which any moneys of or belonging to the Company shall be placed out or invested, or for any loss, misfortune or damage resulting from any such cause as aforesaid, or which may happen in the execution of their respective offices or trust, or in relation thereto, unless the same shall happen by or through their own willful act, neglect or default respectively. It is expressly acknowledged that this indemnity shall include the funding of all and any costs for which a director or other officer may be liable in connection with the defence of any claim of wrongdoing against that director or other officer, PROVIDED HOWEVER that if such claim results in a finding by a reputable court having jurisdiction in relation to that claim, of a willful act, neglect or default on the part of that director or other officer, such defence funded costs shall be immediately repayable by that director or officer. The Company shall be entitled to obtain director and officer liability insurance on behalf of its directors and officers (which shall be in addition to, rather than in substitution for, the indemnity contained herein), and pay all premiums due in relation to such insurance, at such cost and providing such cover as the Board shall reasonably determine.

ALTERATION OF CONSTITUTION

56. The Foundation may by special resolution, alter the provisions of this constitution.

NAME OF COMPANY

57. The name of the Company may be changed by special resolution of the Foundation.

GENERAL MEETINGS OF THE COMPANY

58. A general meeting of the Company shall be a meeting of the Foundation Council and shall be regulated in accordance with the Foundation Rules.

SEGREGATED PORTFOLIO PROVISIONS

59. The Company may by resolution of the Board establish one or more Segregated Portfolios, each of which shall be separately designated and shall include in such designation the words "Segregated Portfolio" together with an identifier to identify the particular segregated portfolio.

- 60.** At all times, both in respect of its internal administration and its dealings with third parties, and whenever the Company executes any deed, agreement, contract, or instrument, which is to be binding on or to enure to the benefit of a Segregated Portfolio, the Company must use the words “Segregated Portfolio” together with the relevant identifier to ensure that the one or more Segregated Portfolios to which the action, dealing or document relates is correctly identified.
- 61.** Prior to establishing a new Segregated Portfolio, the Company must obtain the written approval of the Commission and receive “no objection” from the Foundation Council.
- 62.** In order to satisfy the “no objection” requirement referred to in clause 61 above the Company must:
- (a) Provide each Council Member with the same detailed documentation as to the proposed new Segregated Portfolio as is provided to the Commission for the purposes of seeking the consent of the Commission to the new Segregated Portfolio.
 - (b) The documentation referred in paragraph (a) above shall be delivered to each Council Member in accordance with the requirements of Section 50(3) of the Act. Delivery shall be deemed to have occurred in accordance with the provisions of Section 50(4) of the Act.
 - (c) If, after the expiry of 10 working days from the last date of delivery (as determined in accordance with paragraph (b) above), no objection has been received by the Company from any Council Member, the Company can proceed with the establishment of the new Segregated Portfolio.
 - (d) If any objection has been received from a Council Member, the Company shall engage with that Council Member to discuss the basis for the objection and attempt to resolve the objection, such that the objection is withdrawn by the Council Member.
 - (e) If, after 10 working days from receipt of the objection, resolution cannot be achieved and each objection is not withdrawn, the Company shall be obliged to share the basis of each objection with all Council Members and enable the Foundation Council the opportunity to discuss the objection or objections.
 - (f) At any time after the expiry of 10 working days from the date that the basis of each objection was shared with all Council Members, any Council Member may call for the passing of a special resolution of the Foundation Council to approve the establishment of the new Segregated Portfolio referred in this clause.
 - (g) For the avoidance of doubt, the process outlined in this clause shall apply to each new Segregated Portfolio that the Company wishes to establish.
- 63.** The following provisions shall apply in relation to each Segregated Portfolio and the General Assets of the Company:
- (a) The Segregated Portfolio Assets of each Segregated Portfolio shall be segregated and kept segregated, separate and separately identifiable from the General Assets and from the Segregated Portfolio Assets of any other Segregated Portfolio.
 - (b) The Board shall establish and maintain (or cause to be established and maintained) procedures to ensure that assets and liabilities are not transferred between Segregated Portfolios or between a Segregated Portfolio and the General Assets other than at full value.
 - (c) Where any asset is derived from another asset (whether cash or otherwise) such derivative asset shall be an asset of the Segregated Portfolio from which the related

asset was derived and on each revaluation of an investment the increase or diminution in the value thereof (or the relevant portion of such increase or diminution in value) shall be credited to the relevant Segregated Portfolio;

- (d) In accordance with the Act, the assets held within or on behalf of each Segregated Portfolio shall be only be available to and used to meet liabilities to the creditors of the Company in respect of that particular Segregated Portfolio who shall thereby be entitled to have recourse to the Segregated Portfolio Assets attributable to that Segregated Portfolio and such Segregated Portfolio Assets shall not be available or used to meet liabilities to, and shall be absolutely protected from, the creditors of the Company who are not creditors in respect of that particular Segregated Portfolio and who, accordingly, shall not be entitled to have recourse to the Segregated Portfolio Assets attributable to that Segregated Portfolio.
- (e) Where a liability of the Company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular Segregated Portfolio such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to the Segregated Portfolio Assets attributable to such Segregated Portfolio. Such liability shall not extend to, and that person shall not, in respect of such liability, be entitled to have recourse to the Segregated Portfolio Assets attributable to any other Segregated Portfolio or to the General Assets.
- (f) Where a liability of the Company to a person arises or is imposed otherwise than from a matter in respect of a particular Segregated Portfolio or Segregated Portfolios, such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to the General Assets.
- (g) Liabilities of the Company not attributable to any of the Segregated Portfolios shall be discharged from the General Assets.
- (h) Income, receipts and other property or rights of or acquired by the Company not attributable to any of its Segregated Portfolios shall be applied to and comprised in the General Assets.
- (i) Notwithstanding the foregoing, expenses incurred or income received on behalf of the Company as a whole or two or more Segregated Portfolios may be allocated between the General Assets and/or the Segregated Portfolios on such basis as the Board determines to be fair and reasonable in its absolute discretion. This provision is without prejudice to protection of Segregated Portfolio Assets from the claims of creditors outlined above and provided for by the Act.

Current as at 6 December 2021

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Note the proposed changes to the Constitution that are required due to minor changes between the Pacific Catastrophe Risk Insurance Facility Bill 2021 and the Pacific Catastrophe Risk Insurance Facility Act 2021. It is proposed that these changes be tabled for approval by the Foundation Council Members at the next scheduled Council Meeting in 2022:

1. Clause 6 – “registered address” be amended to read “business address”
2. Clause 7 – “Section 29” be amended to read “Section 27”
3. Clause 52 – “section 33” be amended to read “section 31” and “sections 19 to 27” be amended to

read "Part 3, subpart 3"

4. Clause 54 – "Section 50" be amended to read "Section 64"
5. Clause 62(b) – "Section 50(3)" be amended to read "Section 64(3)" and "Section 50(4)" be amended to read "Section 64(4)"