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## **DELEGATED AUTHORITY POLICY – PUNAKAIKI FUND LIMITED**

**2 February 2018**

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### **1. INTRODUCTION**

- 1.1. Punakaiki Fund is an investor in growth companies. It is structured as a company and has contracted Lance Wiggs Capital Management Limited as its external manager (“Manager”) to source and manage its investments.
- 1.2. The Management Agreement between Punakaiki Fund and the Manager sets out the Manager’s responsibilities and certain authorities contractually conferred to the Manager in order to allow the Manager to undertake investment activities on behalf of Punakaiki Fund.
- 1.3. The day to day operations and other management activities of Punakaiki Fund are generally also undertaken by Manager, in conjunction with direction provided by the Board of Punakaiki Fund (the “Board”).

### **2. PURPOSE**

- 2.1. The purpose of this Policy Document is to:
  - a) detail the framework within which delegation of authorities are exercised; and
  - b) detail the authorities delegated to the Manager.
- 2.2. This Policy Document provides the authority and discretion to:
  - a) commit Punakaiki Fund’s funds (other than for investments), and the subsequent payment for goods and services purchased in the course of Punakaiki Fund’s operations. This part of the policy is an integral part of the Punakaiki Fund’s wider model of financial governance;
  - b) undertake communications to Punakaiki Fund shareholders and other stakeholders, and undertake other operational activities on behalf of Punakaiki Fund; and
  - c) issue shares in Punakaiki Fund for both cash consideration and in exchange for shares in companies that are within Punakaiki Fund’s investment mandate.

### **3. LEGAL FRAMEWORK**

- 3.1. Sections 128(1) and 128(2) of the Companies Act 1993 provide that:

*“The business and affairs of a company must be managed by, or under the direction or supervision of, the board of the company.*

*The board of a company has all the powers necessary for managing, and for directing and supervising the management of, the business and affairs of the company.”*

This is confirmed (and paraphrased) in clause 13.1 of Punakaiki Fund’s Constitution.

- 3.2. Clause 13.3 of Punakaiki Fund’s Constitution (based on section 130 of the Companies Act 1993), provides that:

*“Subject to any restrictions in this Constitution and the Act, the Board may delegate to a committee of Directors, a Director or employee of the Company, or any other person, any one or more of its powers other than the powers listed in Schedule 2 of the Act.”*

- 3.3. Punakaiki Fund has exercised these delegation rights under the Companies Act 1993 and its Constitution when it entered into the Management Agreement with the Manager.

- 3.4. Nothing within this Policy Document shall be interpreted as conferring any authority to enter into a Major Transaction as defined in the Companies Act 1993.

### **4. DELEGATED AUTHORITIES GRANTED BY MANAGEMENT AGREEMENT**

- 4.1. The Management Agreement between Punakaiki Fund and the Manager dated 25 March 2014 sets out the authorities conferred to the Manager to seek out, manage and divest investments on behalf of Punakaiki Fund. In particular clause 2.4 sets out these broad terms:

*“Subject to clauses 2.5 to 2.10, for the purpose of performing its obligations under this Agreement, the Manager shall have the powers and authorities of a natural person to acquire, sell and otherwise deal with and manage the Portfolio and to do all things and execute all documents necessary for the purpose of, acquiring, selling or otherwise dealing with and managing the Portfolio as agent of the Group or any Group Company, provided that nothing in this Agreement shall authorise the Manager to act as agent of the Group or any Group Company in excess of the authorities and powers conferred on the Manager pursuant to this Agreement.”*

- 4.2. Additional details in respect of Manager’s authority to deal with Punakaiki Fund’s investee companies can be found within Section 3 of the Management Agreement.

- 4.3. Clause 2.4 of the Management Agreement provides the Manager relatively wide-ranging powers in respect of Punakaiki Fund's investments, however clauses 2.5 to 2.10 of the Management Agreement list restrictions to the broad powers granted by clause 2.4 of the Management Agreement. The restrictions which relate to Punakaiki Fund assets, and as such requiring Punakaiki Fund Board approval by the Manager, are set out in clause 1.1 of Schedule 1 of this Policy Document.
- 4.4. In addition to the broad powers granted to the Manager by clause 2.4 of the Management Agreement in respect of Punakaiki Fund's investee companies, the Management Agreement also delegates authority to the Manager in respect of the following:
- a) To appoint (as advisers to the Manager and/or to a Punakaiki Fund investee company) such legal, accounting, investment banking, specialist consultant and other advisers as it considers necessary or desirable for performing its obligations, or exercising its powers, under the Management Agreement (clause 2.13);
  - b) To arrange all equity capital raised by the Company including, but not limited to equity placements, rights issues and the exercising of the Company's options (clause 3.6); and
  - c) To arrange for the provision of general administrative and back office functions for Punakaiki Fund (including employing staff on behalf of the company) (clause 3.7).

## 5. FINANCIAL DELEGATED AUTHORITIES

### *Quarterly Management Fee*

- 5.1. Clause 6.1 of the Management Agreement states that the quarterly management fee payable to the Manager must be paid quarterly in advance on the first business day following the end of the preceding quarter.
- 5.2. In order to facilitate this payment, the Manager shall be authorised to make an interim payment from Punakaiki Fund to the Manager equivalent to 0.5% of the Interim Net Asset Value of Punakaiki as calculated based on investment valuations as at the end of the preceding Valuation Date. The Valuation Date shall be the more recent of either:
- a) The most recent preceding quarter end for which the Board has determined a Net Asset Value; or
  - b) The most recent capital raising event where the Board has determined a valuation for the purposes of setting a Punakaiki Fund share price.
- 5.3. The Interim Net Asset Value shall be calculated as:
- a) The Net Asset Value as at the Valuation Date; plus

- b) Any capital raised since the Valuation Date ; less
  - c) Provision for any known material decrease in the value of any investments since the Valuation Date; less
  - d) Any expenses incurred since the Valuation Date; less (plus)
  - e) Any increase (decrease) in the cash component of the accrued performance fee resulting from the adjustments set out in 5.3(c) and 5.3(d).
- 5.4. Following the Board determining the Net Asset Value as at the end of the previous quarter, and in particular the carrying values of each of Punakaiki Fund's Investments, a final payment will be made to (or a refund will be sought from) the Manager.

***Other Payments to the Manager***

- 5.5. Other payments owing to the Manager as a result of activities detailed in clauses 3.7(a) (general administrative and back office functions) and 3.1(b) (professional due diligence costs) and those specifically identified in clause 7.2 of the Management Agreement may be actioned by the Manager providing that the value of individual payments is less than NZ\$20,000. Where the amount of an individual payment is above NZ\$20,000, Punakaiki Fund Board approval will be required.

**6. OPERATIONAL DELEGATED AUTHORITIES**

***Issuance of Equity Securities***

- 6.1. The Manager is permitted to issue new shares, options and other equity securities in Punakaiki Fund, on behalf of Punakaiki Fund, providing the issuance of those securities has been previously approved by the Board of Punakaiki Fund. For clarity
- a) The Board need only approve the type, price and characteristics of the security, and potentially the volume, (although volumes will be determined by market demand where no minimum or maximum volume has been specified by the Board);
  - b) The Manager may issue new shares arising from the exercise of existing options in Punakaiki Fund, providing the issuance of those options has previously been approved by the Board;
  - c) The Manager may issue new Punakaiki Fund shares in return for cash as well as in exchange for shares in New Zealand companies that are suitable investments for Punakaiki Fund, providing the issuance of those Punakaiki Fund shares (and price) for that specific purpose has been previously approved by the Board;

- d) The Manager will ensure that the requirements of the Anti-money Laundering and Countering Financing of Terrorism Act 2009 and Punakaiki Fund's Anti-Money Laundering and Countering Financing of Terrorism Programme are met;
- e) The Manager will ensure that the requirements of the Financial Markets Conduct Act 2013 are met; and
- f) The Manager will ensure that the requirements of the Takeovers Act 1993 and the Takeovers Code are met.

***Selling Payment Shares***

- 6.2. Under the Management Agreement, the Manager may only dispose of existing Punakaiki Fund investments following approval from the Board. In situations where approval is given for the sale of an investment and that transaction is settled in the shares of the acquiring company ("Payment Shares"), the Manager may dispose of those Payment Shares without seeking further approval from the Board.

***Transfer of Equity Securities***

- 6.3. The Manager is delegated the authority to approve and process any requests for the transfer of Punakaiki Fund equity securities, providing that:
- a) The requirements of the Anti-money Laundering and Countering Financing of Terrorism Act 2009 Punakaiki Fund's Anti-Money Laundering and Countering Financing of Terrorism Programme are met;
  - b) The requirements of the Financial Markets Conduct Act 2013 are met; and
  - c) The requirements of the Takeovers Act 1993 and the Takeovers Code are met.
- 6.4. The Manager, via Punakaiki Fund, is permitted to operate an auction and act as a clearing house for the sale of shares (and options if applicable) between Punakaiki Fund share-holders and other parties. These activities may include Punakaiki Fund taking receipt of share or option sale proceeds from share or option buyers and redistributing those proceeds to the sellers.
- 6.5. The Manager shall not unreasonably withhold the transfer of Punakaiki Fund's equity securities between applicants. Where the transfer has not been permitted by the Manager, the matter should immediately be referred to the Board of Punakaiki Fund.

***Communications***

6.6. The Manager is authorised to:

- a) Send communications to Punakaiki Fund shareholders relating to the day to day operation of Punakaiki Fund including, but not limited to, announcements in relation to new investments, divestment, capital raisings (including the exercise of options) and general administration matters;
- b) Co-ordinate Punakaiki Fund's strategy in dealing with the media, including making press releases, engaging in social media, media interviews and providing opinions. This also extends to providing updates, postings comments and answering questions to non-shareholders during capital raising processes; and
- c) Liaising with potential investors and investor channels (such as investment banks) outside of periods of capital raising as a method of introducing Punakaiki Fund.

***Regulatory Compliance***

6.7. The Manager is authorised to administer Punakaiki Fund's regulatory compliance requirements, including:

- a) Anti-Money Laundering and Countering Financing of Terrorism Act requirements, including nominating one of its employees as a Compliance Officer;
- b) Financial Markets Conduct Act 2013 requirements;
- c) Takeovers Act 1993 and the Takeovers Code requirements; and
- d) Health and Safety Act requirements, including nominating one of its employees as a Health and Safety Officer.

6.8. In respect of the previous clause, nothing within this policy document removes the statutory responsibilities of the directors of Punakaiki Fund in relation to their regulatory responsibilities.

6.9. The Board of Punakaiki Fund must immediately be informed whenever the Manager identifies a meaningful reputational, financial or regulatory risk in the course of undertaking regulatory compliance duties.

**7. NON-PERMITTED ACTIVITIES**

7.1. Activities which are specifically not permitted to be undertaken by the Manager without the prior approval of the Board of Punakaiki Fund are set out in Schedule 1.

## **8. ASSOCIATED POLICIES**

### ***Special Delegation***

- 8.1. The Board may provide special delegation to employees of or contractors to Punakaiki Fund, or to the Manager, providing that this delegation is in writing, specifying both limits and any special conditions.
- 8.2. A delegation provided, as set out in the previous paragraph, shall be revocable at the will of the Board.

### ***Revocation***

- 8.3. The Board has the right to revoke any delegated authority set out in this Policy, including any special delegated authority provided in accordance with paragraph 8.1 above, from the Manager, any employee or contractor, without prior notice. The Board does not, however, have the right to alter the delegations provided under the Management Agreement without the agreement of the Manager.

### ***Monitoring and Compliance***

- 8.4. It is the responsibility of the Board to ensure that there are adequate financial controls to safeguard the financial resources of Punakaiki Fund.
- 8.5. Full compliance with this Policy Document is required by the Manager and employees and contractors (if such special delegation has been provided to Punakaiki Fund employees and contractors by the Board).

### ***Consequences of Non-Compliance***

- 8.6. Failure by the Manager to comply with this policy will be dealt by the Board, who at their discretion may use the processes outlined Part 9 of the Management Agreement “Term and Termination”.
- 8.7. Failure by a Punakaiki Fund employees or contractors to fully comply with this policy may amount to misconduct or serious misconduct by the staff-member, (which may result in Punakaiki Fund taking disciplinary action), or may result of the contractor’s service to Punakaiki Fund being terminated.

### ***Operating Expenditure Splitting***

- 8.8. Operating Expenditure amounts may not be split into smaller amounts, or across time periods, in an attempt to suit the prescribed delegated authority. Any attempt to split a transaction amount will be considered a breach of this Policy Document.

***Other Matters***

- 8.9. No person or group of persons may exercise a delegated authority on behalf of Punakaiki Fund if they stand to materially gain personally from the transaction, or if they have some other conflict of interest, other than those specifically envisaged as accruing to the Manager under the Management Agreement and this Policy. Non-material personal gains from the transaction are not intended to be limited by this clause, such as the accrual of benefit via a membership scheme such as Airpoints or Flybuys.
- 8.10. The exercise of a financial delegation must be in the best interests of Punakaiki Fund and be executed in good faith.
- 8.11. Delegations may only be exercised within approved annual:
- a) Business plans; or
  - b) Operating budgets.
- 8.12. All authority limits in this policy are exclusive of G.S.T.

**9. CONFLICTS BETWEEN DOCUMENTS**

- 9.1. Should any clause in this Policy Document conflict with any clause in Punakaiki Fund's Constitution or the Management Agreement, then Punakaiki Fund's Constitution or the Management Agreement (as the case may be) shall take precedence.

**10. REVIEW**

- 10.1. The Board will review this Policy Document:
- a) every year on or near to the anniversary of the previous review;
  - b) at anytime there is a change to the Constitution, the corporate structure of Punakaiki Fund or any legislation or regulation which impact the policies outlined in this Policy Document; or
  - c) at any other time as it sees fit.
- 10.2. Any change to the Delegated Authority Policy must be authorised by the Board.



**SCHEDULE 1: ACTIVITIES NOT PERMITTED WITHOUT BOARD APPROVAL**

- 1.1. The following financial activities are not permitted to be undertaken by the Manager without the prior approval of the Board of Punakaiki Fund:
- a) Investing Punakaiki Fund assets into a single transaction or series of transactions where the aggregate value of the investment is greater of NZ\$2 million or 20% of Punakaiki Fund's net asset value (per clause 2.5(a) of the Management Agreement);
  - b) Investing Punakaiki Fund into a business which is not primary associated with or carrying on business in New Zealand (per clause 2.5(b) of the Management Agreement);
  - c) Selling any investment unless it is bound to do so (per clause 2.6 of the Management Agreement);
  - d) Establishing borrowing facilities for Punakaiki Fund (including granting any security interest over Punakaiki Fund's investments or other assets), drawing down borrowings, or incurring borrowing which exceeds 25% of the Net Asset Value of Punakaiki Fund (per clauses 2.7 and 2.8 of the Management Agreement);
  - e) Dealing, on behalf of a Punakaiki Fund investee company, with companies and other entities related to the Manager, which gives rise to fees, brokerage and commissions (per clause 2.10 of the Management Agreement);
  - f) Making an investment on behalf of Punakaiki Fund in a company in which the Manager or an officer of the Manager has an interest in without the consent of Punakaiki Fund (per clause 4.1 of the Management Agreement);
  - g) Making an investment on their own account which is suitable for investment by Punakaiki Fund without Punakaiki Fund first having the opportunity to invest, without the consent of Punakaiki Fund (per clause 4.2 of the Management Agreement);
  - h) Assigning any portion of activities to raise equity capital by Punakaiki Fund to third parties (per clause 3.6 of the Management Agreement);
  - i) The payment of brokerage to the Manager for capital raising services provided to Punakaiki Fund by the Manager (as set out in clause 6.4 of the Management Agreement);
  - j) Setting investment values including writing down of investment values;
  - k) Calculating and paying the cash component of the Manager's performance fee (as set out in clause 6.3 and Schedule 1 of the Management Agreement);

- l) Opening bank accounts, using financial instruments or entering into financial arrangements, establishing a debt arrangement, setting funding requirements, hedging foreign currency receipts or expenses, or approving counterparties;
- m) Establishing preferred supplier agreements, or entering into significant purchase contracts;
- n) Making employment related decisions on behalf of Punakaiki Fund, including making offers of employment;
- o) Paying fines, and paying or agreeing to donations, sponsorship or koha;
- p) Writing off debt;
- q) Issuing any type of equity security or contracting Punakaiki Fund to issue any type of equity securities;
- r) Issuing a Punakaiki Fund quarterly report;
- s) Issuing a Punakaiki Fund annual report;
- t) Seek a shareholders' resolution from Punakaiki Fund's shareholders; or
- u) Issuing the formal announcement and papers for the Annual General Meeting.