



ENGINEERING THE ULTIMATE BURGER

BURGER FUEL GROUP LIMITED

Board Manual

BURGER FUEL GROUP LIMITED
Board Manual – Table of Contents

Item

- 1. Board Management & Corporate Governance**
 - 1.1 Role of the Board
 - 1.2 Director’s Duties
 - 1.3 Code of Ethics
 - 1.4 Remuneration
 - 1.5 Appointment, Rotation & Retirement
 - 1.6 Board Committees
 - 1.7 Execution of Documents
 - 1.8 Calendar
 - 1.9 Constitution

- 2. Board Policies**
 - 2.1 Securities Trading Policy & Guidelines
 - 2.2 Market Disclosure Policy

- 3. NZX Listing Rules**
 - 3.1 Keeping the market informed
 - 3.2 Waivers

- 4. Takeovers Code**
 - 4.1 Takeovers code & major shareholders
 - 4.2 Scheme of the Takeovers Code

- 5. Board Meetings**
 - 5.1 Agenda
 - 5.2 Minutes
 - 5.3 Company records

- 6. Statutory Records & Returns**
 - 6.1 Directors interests & disclosure requirements
 - 6.2 Interests register
 - 6.3 Annual returns – Companies Office
 - 6.4 Solvency Test

- 7. Half Year & Annual Announcements & Reports**
 - 7.1 Preliminary Announcements
 - 7.2 Annual & Half Yearly Reports

- 8. Shareholders**
 - 8.1 Register
 - 8.2 Communications
 - 8.3 Shareholder monitoring

Appendix 1 Sample Agenda

1. Board Management & Corporate Governance

1.1 Role of the Board

The board of Directors (“Board”) of Burger Fuel Group Ltd (“BFG”) is responsible for the corporate governance of the company and all its subsidiary companies (“the Company”). “Corporate Governance” involves the direction and control of the business by the Directors and the accountability of Directors to shareholders and other stakeholders for the performance of the Company and compliance with applicable laws and standards.

The Board is responsible for the overall direction of BFG business and affairs on behalf of all shareholders. The Board’s key role is: *to ensure that corporate management is continuously and effectively striving for above-average performance, taking account of risk.*

The Board establishes the objectives of BFG, approves major strategies for achieving those objectives, oversees risk management and compliance, sets in place the policy framework within which BFG operates, and monitors management performance against this background. The Board has delegated the day-to-day leadership and management of the Company to the Chief Executive Officer.

The Board monitors financial results and compares them to annual plans and forecasts on a regular basis, and on a quarterly basis reviews the Company’s performance against its strategic planning objectives.

1.2 Director’s Duties

Under the Companies Act 1993, company Directors have a duty to act in good faith and in what the director believes to be in the best interests of the Company. A director must exercise the *care, diligence* and *skill* that a reasonable director would exercise in the same circumstances taking into account (but not limited to):

- the nature of the Company.
- the nature of the decision.
- the position of the Director.
- the nature of their responsibilities.

A Director must not allow the Company to trade recklessly.

A Director may rely on reports, statements, financial data and other information prepared or supplied by, and on professional or expert advice given by, any of the following persons:

- an employee of the Company who the Director believes, on reasonable grounds, to be reliable and competent in relation to the matters concerned.
- a professional advisor or expert in relation to matters which the Director believes, on reasonable grounds, to be within the person’s professional or expert competence.
- any other Director or committee of Directors upon which the Director did not serve in relation to matters within that other director’s or committee’s designated authority.

The instances identified above only apply if the Director:

- acts in good faith.
- makes proper enquiry where the need for enquiry is indicated by the circumstances.
- has no knowledge that such reliance is unwarranted.

In order for these general duties to be properly discharged, it is essential that the Director:

- has a working knowledge of the Company activities.
- devotes the time necessary to do the job.

Directors are still expected to make informed business judgments, and they must have a rational belief that their decisions are in the best interests of the Company. Generally, Directors are expected to have at least a basic knowledge of financial reports and be capable of reading and interpreting them.

1.3 Code of Ethics

1.3.1 Introduction & Purpose

This Code of Ethics sets out the ethical and behavioural standards expected of BFG's Directors, officers, employees and contractors.

The purpose of the Code of Ethics is to uphold the highest ethical standards, acting in good faith and in the best interests of the shareholders at all times.

The main ethical objectives are:

- At all times act ethically in pursuing the goals of BFG.
- Ensure compliance with all laws and regulations.
- Not engage in activity that adversely reflects on BFG.
- Disclose any potential conflicts of interest and follow guidelines to resolve any potential conflicts of interest.
- Use BFG corporate information only in the best interests of the Company and not for personal gain.
- Enforce strict procedures to maintain confidentiality of information at all times.

1.3.2 Application of Code of Ethics

This Code of Ethics applies to the Board of BFG and the Chief Executive Officer and Senior Executive of BFG including:

- The CFO
- Any other employee or officer who has the opportunity to materially influence the integrity, strategy and operation of the business and the financial performance of BFG ("Senior Executives").
- All other employees (including contractors) of BFG.

1.3.3 Compliance with all Laws, Policies, Rules and Regulations

BFG requires and expects its Directors, Senior Executives and other employees to:

- Comply with all laws, rules and regulations that apply to BFG in the conduct of its business and affairs;
- Abide by all applicable rules and standards of bodies empowered to regulate the industries in which BFG operates;
- Comply with all contractual obligations and other undertakings without attempting to evade or delay compliance;
- Abide by all protocols, policies and procedures of BFG, including those of its subsidiary and related entities and business units as are directly applicable to Directors, Senior Executives and other employees respectively.

Employees are encouraged to seek guidance from BFG's Senior Executives concerning the appropriate response to perceived unethical behaviour encountered within the Company or by its competitors or customers.

BFG, its Directors, officers, Senior Executives and employees will cooperate with regulatory bodies in any properly constituted investigation.

Directors, officers, Senior Executives and other employees will, at all times, act honestly and in good faith, and comply with all applicable laws including legislation, regulations, local authority by-laws and Rules (including the NZX Listing Rules) and codes of practice in the countries in which the Company operates.

1.3.4 Conflicts of Interest

A conflict of interest may arise if Directors, officers, Senior Executives or other employees, or their family, friends or business associates have a personal interest in a business decision involving BFG. Directors, officers, Senior Executives and other employees must all use reasonable endeavours to avoid being in a situation in which their personal or external interests could conflict with the best interest of BFG.

Where an employee of BFG has (or becomes aware of) an actual or potential conflict of interest, BFG requires the employee to:

- Disclose the conflict or potential conflict to their manager; and
- Follow their manager's instructions about how to resolve the conflict.

1.3.5 Fair Dealing

BFG expects its Directors, Senior Executives and other employees will not take unfair advantage of any party dealing with BFG through illegal conduct, manipulation, undue influence, concealment, abuse of privileged or confidential information, misrepresentation of material facts, or any other unfair dealing practice.

Directors, officers, Senior Executives and other employees will deal honestly and fairly in all their dealings with BFG shareholders, customers, suppliers, professional advisors, competitors and other stakeholders.

1.3.6 Use of Company Assets and Property

Directors, officers, Senior Executives and other employees must use their best endeavours to protect BFG's assets and property from loss, damage, misuse, waste and theft.

They will only use Company assets and property in their control and care for the legitimate business purposes of the BFG, and will not use that property for any other purpose, including for personal gain.

1.3.7 Use of Company Information

Directors, officers, Senior Executives and other employees will use BFG corporation information gained during their relationship with the Company only in the best interests of the Company and not for personal gain. In particular, they will comply with the provisions of the Companies Act 1993, insider trading legislation and Continuous Disclosure and Corporate Communications provisions set out in the NZX Listing Rules.

1.3.8 Compliance with Corporate Policies

Directors, officers, Senior Executives and other employees will at all times behave and conduct themselves in a manner that is consistent with BFG's vision and values set out in this Code of Ethics, and will comply with all corporate policies, including those listed herein.

1.3.9 Compliance with Code of Ethics

This Code of Ethics should form part of every BFG employees conditions of employment. Failure to comply with the Code of Ethics can result in disciplinary action including, where appropriate, dismissal. Compliance with this Code of Ethics shall also be taken into account on a regular basis when assessing individual performance.

If any person becomes aware of a breach, or suspected breach, of the BFG Code of Ethics they should report it immediately to their manager or the Company Secretary for action. If this is inappropriate or uncomfortable for the individual, the breach or suspected breach, should be reported to another member of the senior management team and the Company Secretary for action.

No action will be taken against any individual reporting a breach, or suspected breach, by virtue of that report. Subject to any legal restriction, the name of the person disclosing the information pertaining to the breach, or suspected breach, of this Code of Ethics will be kept confidential.

1.4 Remuneration

1.4.1 Initial Remuneration

The Directors are entitled to Directors fees, reasonable travelling, accommodation and other expenses incurred in the course of performing duties or exercising powers as Directors.

1.4.2 Process of agreeing future Remuneration

The NZX Listing Rule 2.11 departs from the *Companies Act 1993* by requiring that any remuneration paid to Directors in their capacity as Directors must be authorised by ordinary shareholder resolution of the issuer (i.e. BFG). Aggregate fees payable to the Board will not exceed \$180,000 per annum, excluding the Group Chief Executive, and Chief Financial Officer/Company Secretary. The Board may authorise payment for work performed by a director in some other capacity. It should be noted that nothing in NZX Listing Rule 2.11 affects the remuneration of executive Directors in their capacity as executives. This means that the remuneration of executives (who are also Directors) may be set by the managing director or chief executive officer, for example, without the necessity for either shareholder or Board approval.

The remuneration of the Managing Director must be authorised by the Board under section 161(1) of the *Companies Act 1993* and only if it considers it is “fair” to BFG.

1.4.3 Disclosure of Remuneration – Interests Register

The central mechanism for disclosure under the *Companies Act 1993* is the **Interests Register** which every company must maintain. So far as the payment of remuneration or other benefits to Directors is concerned, particulars of the remuneration or benefit must be entered in the interests register forthwith after authorisation of the payment (section 161(2)). It is the responsibility of the Board to ensure that this is done. Section 161(1) refers to the payment of remuneration “to a director for services as a director or in any other capacity”. Accordingly, the total remuneration of each director by the Company must be disclosed, including the salary of an executive director which is paid in addition to his or her director’s fees.

Annual Report

The *Companies Act 1993* requires that the Board of BFG prepare an annual report to be sent to shareholders. The information which must be contained in the report is set out in section 211(1) and includes the following:

- Particulars of entries in the interests register made during the relevant period (s211(1)(e)); and
- In respect of each director or former director of BFG, the total of the remuneration and the value of the other benefits received by that director or former director during the relevant period (s211(1)(f)).

1.5 Appointment, Rotation & Retirement

1.5.1 Appointment of Directors

Under clause 9.2 of the BFG Constitution and NZX Listing Rule 2.1 the minimum number of Directors (other than alternate Directors) shall be at least 3 and at least 2 Directors shall be ordinarily resident in NZ.

A person may be appointed as a Director at any time by:

- (i) an ordinary shareholders resolution; or
- (ii) the Board. A person so appointed shall retire from office at the next annual meeting of BFG, but shall be eligible for re-election at that meeting.

1.5.2 Rotation of Directors

A Directors of BFG, must not hold office (without re-election) past the third annual meeting following the Directors appointment of 3 years, whichever is longer. The Director shall retire from office at the annual meeting of BFG each year, but shall be eligible for re-election at that meeting. A Director appointed by the board must not hold office (without re-election) past the next annual meeting following the directors appointment.

However, the following Directors shall be exempt from the obligation to retire under the previous paragraph:

- (i) Directors appointed by the Board of BFG, and
- (ii) One executive director.

1.5.3 Retirement of Directors

A Director who retires at a meeting of shareholders and who is not re-elected or deemed to be re-elected at that meeting shall remain in office until, and his or her retirement shall take effect at, the conclusion of the meeting.

1.6 Board Committees

An Audit Committee has been established to assist the Board of BFG in the execution of its responsibilities. In summary, the Audit Committee is responsible for establishing a framework of internal control mechanisms to ensure proper management of BFG's affairs and appropriate risk management procedures. The Audit Committee is responsible to the Board for the recommendations of the external auditors, directing and monitoring the audit function and reviewing the adequacy and quality of the annual audit process.

The Audit Committee provides the Board with additional assurance regarding the accuracy of financial information for inclusion in the Company's annual report, including the financial statements. The Committee is also responsible for ensuring that BFG has an effective internal control framework. These controls include the safeguarding of assets, maintaining proper accounting records, complying with legislation, including resource management and health and safety issues, ensuring the reliability of financial information, and assessing and

over viewing business risk. The Audit Committee also deals with governmental and NZX Stock Exchange requirements.

Members of the Audit Committee are Peter Brook (Chairman), Alan Dunn and Josef Roberts. Mark Piet as the CFO and Company Secretary of BFG is invited to attend Audit Committee meetings to minute the meeting and provide any financial information.

1.7 Execution of Documents

A deed which is to be entered into by BFG may be signed on behalf of the company by:

- two or more Directors;
- any Director, or other person or class of persons appointed by the Board for that purpose whose signature or signatures must be witnessed; or
- one or more attorneys appointed by the Company in accordance with section 181.

An obligation or contract which is required by law to be in writing, and any other written obligation or contract which is to be entered into by BFG, may be signed on behalf of BFG by a person acting under the express or implied authority of the BFG.

Any other obligation or contract may be entered into on behalf of the BFG in writing or orally by a person acting under the express or implied authority of the company.

1.8 Calendar

The Board of BFG will endeavour to meet six times a year.

From time to time the Company Secretary will provide the Board with an updated board of directors meeting timetable.

1.9 Constitution

Copies of the Constitutions for Burger Fuel Group Limited and its subsidiary companies are available upon request from the Company Secretary and it is available on the website.

2. Board Policies

2.1 Securities Trading Policy & Guidelines (“Policy”)

This Policy came into force on 26 February 2008 and applies to all (“Restricted Persons”) of BurgerFuel and its subsidiaries who intend to trade in BFG’s listed securities. In this Policy ‘trade’ includes buying or selling listed securities, or agreeing to do so, whether as principal or agent, but it does not include subscription for, or the issue of, new securities.

*In addition to this Policy, furthermore specific and stringent rules also apply to trading in BurgerFuel’s securities, by Restricted Persons under the **Additional Trading Restrictions for Restricted Persons**.*

A. Introduction and Purpose

This document details BFG’s policy on, and rules for dealing in the following securities (“Restricted Securities”):

- BFG ordinary shares;
- BFG options; and
- Any other listed securities of BFG or its subsidiaries, and any listed derivatives (including futures contracts listed on an authorised futures exchange) in respect of BFG’s securities, from time to time.

B. Persons covered by BurgerFuel’s Trading Policy

The trading restrictions set out below apply to the following persons or entities:

- (a) all directors of BFG in respect of BFG’s listed securities and all directors of BFG subsidiaries in respect of each subsidiary’s listed securities;
- (b) any and all trusts and companies controlled by the persons named in (a);
- (c) all direct reports to the Chief Executive Officer;
- (d) all employees in the Senior Management Team;
- (e) all employees in the finance department; and
- (f) spouses and direct close family members of all persons named in (a) through (e).

The above-named employees, officers and directors will be considered responsible for the actions of trusts and companies controlled by them. In this respect, “control” is not to be construed in a technical way but by looking at how decisions are made in practice.

The requirements imposed by this Policy are separate from, and in addition to, the legal prohibitions on insider trading in New Zealand and any other country where those securities may be listed.

If you do not understand any part of this Policy, or how it applies to you, you should raise the matter with the Company Secretary or Financial Controller before dealing with any securities covered by this Policy.

C. Requirements before Trading

Before trading in Restricted Securities, at any time, Restricted Persons must, in writing:

- Notify BFG's Company Secretary or Financial Controller of their intention to trade in securities, and seek consent to do so (using the **Request for Consent to Trade in Listed Securities** form attached in **Appendix 1**);
- Confirm that they do not hold Material Information (as defined below); and
- Confirm that there is no known reason to prohibit trading in Restricted Securities.

A consent, if granted by the BurgerFuel Audit Committee, is only valid for a period of 10 trading days after notification. A consent is automatically deemed to be withdrawn if the person becomes aware of Material Information prior to trading.

D. Requirements after Trading

If the trade relates to securities issued by BFG or any BFG subsidiary, a person that trades Restricted Securities must advise the Company Secretary or Financial Controller promptly following completion of any trade, and the person concerned must comply with any disclosure obligations it has under the Securities Markets (Disclosure of Relevant Interests by Directors and Officers) Regulations

E. Fundamental Rule – Insider Trading is prohibited at all times

If you possess Material Information, then you must not:

- Trade Restricted Securities;
- Advise or encourage others to trade, or hold any Restricted Securities; or
- Pass on the Material Information to others.

The prohibitions apply regardless of how you learn of the information, and regardless of why you are trading.

The prohibition on insider trading applies not only to information concerning BFG's securities. If a person has Material Information in relation to listed securities of another issuer (including futures contracts listed on an authorised futures exchange) over listed securities, that person must not trade in those securities.

F. Insider Trading Laws

If you have any **Material Information about any Issuer (including BurgerFuel) of Restricted Securities**, it is illegal for you to:

- Trade the Restricted Securities;
- Advise or encourage another person to trade or hold the Restricted Securities;
- Advise or encourage a person to advise or encourage another person to trade or hold the Restricted Securities;
- Pass on the Material Information to anyone else – including colleagues, family or friends – knowing (or where you ought to have known) that the other person will

use that information to trade, continue to hold, or advise or encourage someone else to trade, or hold, the Restricted Securities.

This offence, called “insider trading”, if committed can subject you to criminal liability including large fines and/or imprisonment, and civil liability, which may include being sued by another party or BurgerFuel, for any loss suffered as a result of illegal trading.

G. Confidential information

In addition to the above, you also have a duty of confidentiality to BFG. You must not reveal any confidential information concerning BFG to a third party (unless that third party has signed a confidentiality agreement with BFG and you have been authorised to disclose the confidential information), or use confidential information in any way which may injure or cause loss to BFG, or use confidential information to gain an advantage for yourself. You should ensure that any and all external advisers keep BFG information confidential.

For the avoidance of doubt, Confidential Information means all information relating to BFG, and any of its subsidiaries or related entities, the Franchise System, the Intellectual Property and any confidential or commercially sensitive or valuable information used by BFG, its subsidiaries or related entities.

H. What is “material information” ?

Material Information is information that:

- a reasonable person would expect, if it were generally available to the market, to have a material effect on the price of quoted financial products of the listed issuer; and
- relates to particular financial products, a particular listed issuer, or particular listed issuers, rather than to financial products generally or listed issuers generally.

Information is generally available to the market if it has been released as a BurgerFuel announcement, or investors that commonly invest in the Restricted Securities can readily obtain the information (whether by observation, use of expertise, purchase or other means).

It does not matter how you come to know the Material Information (including whether you learn it in the course of carrying out your responsibilities, or in passing in the corridor, or in a lift, or at a social function).

Information includes rumours, matters of supposition, intentions of a person (including BFG), and information, which is insufficiently definite to warrant disclosure to the public.

I. What are some examples of material information ?

The following list is illustrative only. Material Information could include, but is not limited to information concerning:

- The financial performance of BFG;

- A possible change in the strategic direction of BFG;
- The introduction of an important new product or service;
- A possible acquisition or sale of any assets or company by BFG;
- Entry into or the likely entry into or termination or likely termination of material contracts or other business arrangements which are not publicly known;
- A possible change in BurgerFuel's capital structure;
- A change in the historical pattern of dividends;
- Senior management changes;
- A material legal claim by or against BurgerFuel; or
- Any other unexpected liability

which has not been released to the market.

J. Exceptions

This Policy does not apply to:

- Acquisitions and disposals by gift or inheritance;
- Acquisitions through an issue of new listed securities, such as an issue of new shares on the exercise of options, under a rights issue, or a dividend reinvestment plan.

K. Short term trading discouraged

You should not engage in short-term trading (the buying or selling of listed securities within a 6 month period) unless there are exceptional circumstances discussed with and approved by the BurgerFuel Audit Committee.

Short-term trading can be a key indicator of insider trading, particularly if undertaken on a regular basis or in large amounts. Therefore, to reduce the risk of an allegation of insider trading, do not trade listed securities on a short-term basis.

L. If in doubt, dont

The rules contained in this Policy do not replace your legal obligations. The boundary between what is (and is not) in breach of the law is not always clear. Sometimes behaviour that you consider to be ethical may be insider trading, so if in doubt, don't trade.

M. Breaches of Policy

Strict compliance with this Policy is a condition of employment. Breaches of this Policy will be subject to disciplinary action, which may include termination of employment.

N. Monitoring of Trading

BFG may monitor the trading of Restricted Persons as part of the administration of this Policy.

O. Application of Policy

The Board of BurgerFuel has approved this Policy. The Board or Audit Committee may approve updates, amendments to and exemptions to this Policy from time to time, which may be implemented by written notice to you.

To the extent of any inconsistency with any previous policy or rules relating to this subject matter, this Policy prevails over them.

P. Additional Trading Restrictions for Restricted Persons

1. Persons covered by Restricted Securities Trading Restrictions

The additional trading restrictions set out below apply to:

- (a) all directors of BFG in respect of BFG's listed securities and all directors of BFG subsidiaries in respect of each subsidiary's listed securities;
- (b) any and all trusts and companies controlled by the persons named in (a);
- (c) all Direct reports to the Chief Executive Officer;
- (d) all employees in the Senior Management Team;
- (e) all employees in the finance department; and
- (f) spouses and direct close family members of all persons named in (a) through (e).

Persons covered by these additional restrictions are called "**Restricted Persons**". These persons will be considered responsible for the action of trusts and companies controlled by them. In this respect, "control" is not to be construed in a technical way but by looking at how decisions are made in practice.

2. Additional trading restrictions for Restricted Persons (trading window)

Restricted Persons are prohibited from trading in any Restricted Securities except in the 30 days commencing on the first trading day after:

- Release of the half year results to NZX;
- Release of the full year results to NZX;
- Release of a general prospectus for a general public offer of the same class of Restricted Securities.

Restricted Persons are not permitted to trade any Restricted Securities during any other period unless BurgerFuel's Audit Committee provides a specific exemption.

Please note that if you hold Material Information you must not trade Restricted Securities at any time – regardless of these periods.

Q. Disclosure of interests by Directors and officers of BFG

In respect of any acquisition or disposition of an interest in shares or options in BFG at any time, a Director or officer of BFG must notify the Company Secretary of any such transaction so that he can carry out the following:

- (i) Within 5 trading days of the acquisition or disposal of the shares or options in BFG disclose the transaction to the NZX, and
- (ii) Enter details of such acquisition or disposal in the Interests Register of BFG.

R. Disclosure of interests by large shareholders of BFG

In most major stock markets around the world, there is a regulatory obligation on large shareholders in listed companies to disclose their identity and details of their holding.

Under section 276 of the Financial Markets Conduct Act 2013 a person who is a “substantial security holder” (a 5% or greater holding) in a listed NZ company must disclose certain information to BFG and to NZX. Once a person is above the 5% threshold, they must disclose again if their holding goes up or down by a whole percentage point or more. Disclosure must be made to NZX and BFG using an appropriate form and must be made “as soon as the person knows or ought to know”.

2.2 Market Disclosure Policy

A. Continuous Disclosure Policy

A1. Disclosure Principle

2.2.1 First Guiding Principle – Immediate Notice of Material Information

BFG must immediately notify the market via an announcement to NZX of any information concerning BFG that a reasonable person would expect to have a *material* effect on the price of value of BFG securities.

2.2.2 What is ‘material’ information ?

Information is *material* if there is a substantial likelihood that the information would influence investors in deciding whether to buy, hold or sell BFG securities.

Usually, *materiality* is assessed using a qualitative test, taking into consideration BFG’s business activities, size and place in the market.

2.2.3 Exception to the guiding principle

Disclosure is not required where:

- (i) A reasonable person would not expect the information to be disclosed; and
- (ii) The information is confidential and the NZX has not formed the view that the information has ceased to be confidential; and

(iii) One or more of the following applies:

- The release of information would be a breach of the law;
- The information concerns an incomplete proposal or negotiation;
- The information comprises matters of supposition or is insufficiently definite to warrant disclosure;
- The information is generated for the internal management purposes of the Issuer; or
- The information is a trade secret.

Each of the above three requirements must be satisfied for material information to be exempt from disclosure.

A2. Disclosure Responsibilities & Procedures

2.2.4 Immediate market disclosure via NZX

BFG must immediately notify the NZX once it becomes aware of any information which meets the materiality test and which does not fall within the exception to the first guiding principle. BFG must not release information publicly that is required to be disclosed via the NZX.

2.2.5 Significant announcements

Any proposed announcements regarding a matter of serious or potentially serious significance for BFG, such as *future prospects*, must be referred by the Chief Executive to the Chairman (or any other Director appointed by the Chairman) who will determine whether the relevant disclosure should be considered by the Board.

2.2.6 Periodic Disclosure

BFG is obliged to make periodic disclosures pursuant to the NZX Listing Rules and company legislation. Compliance with periodic disclosure requirements does not extinguish BFG's continuous disclosure obligations under NZX Listing Rule 3.1.

2.2.7 Disseminating material information

Once the Company Secretary has received acknowledgement from the NZX that an announcement made under paragraph 2.4 has been released, BFG will promptly inform investors that the announcement has been made.

2.2.8 Timing

BFG must not release any information publicly that is required to be disclosed through the NZX until the Company Secretary, Chairman or Chief Executive has received formal confirmation of its release by the NZX.

2.2.9 Correcting & Updating Information

If BFG discovers that information disclosed to the market under paragraph 2.2.4 is or has become incorrect due to subsequent information, BFG must release an announcement correcting or updating the relevant statement immediately following the discovery of the inaccuracy.

A3. Market speculation, rumours and external communication

2.2.10 No comment policy

BFG generally does not respond to market speculation or rumours unless required to do so by law. Whether a comment is to be made in response to market speculation or a rumour is a decision for the Chairman (or such other director as he nominates) and the Chief Executive.

2.2.11 Managing market speculation and rumours

The Chairman (or such other director as he nominates) or Chief Executive must formally disclose the information to the market via the NZX as soon as practicable. If unauthorised information is disclosed by way of market speculation or rumours and the information which is the subject of the unauthorised disclosure meets the materiality test and does not fall within the exception to the first guiding principle.

2.2.12 Statements regarding market speculation and rumours

A statement in relation to market speculation or a rumour must be issued where:

- (i) The Board considers that BFG has an obligation at that time to make a statement to the market about a particular matter, or
- (ii) BFG is required to respond to a formal request for information from the NZX.

For example, a statement may be required to correct or prevent a false market.

2.2.13 Second guiding principle – false market

If NZX considers that there is or is likely to be a false market in BFG securities and asks BFG to give it information to correct or prevent a false market, BFG must give the NZX the information needed to correct or prevent the false market. The obligation to give information under this rule arises even if the exception to the first guiding principle applies. There is no formal definition of “false market” but the ASX provides the following guidance on its meaning:

“Reasonably specific rumour or media comment in relation to the entity that has not been confirmed or clarified by an announcement by the entity to the market and there is evidence that the rumour or comment is having an impact on, or the Exchange forms the view is likely to impact, the price of the entity’s securities”.

A4. Trading halts

2.2.14 Trading halts

It may be necessary to request a trading halt from the NZX to ensure that orderly trading in BFG's securities is maintained and to manage disclosure obligations. It is the responsibility of the Chairman (or such other Director as he nominates) and the Chief Executive in consultation with the Company Secretary, to make all decisions in relation to trading halts.

3. NZX Listing Rules

3.1 Keeping the market informed

BFG is required to comply with Financial Markets Conduct Act 2013 in respect of Director, officer and substantial security holders interests in BFG and the appropriate disclosure of the same via the NZX and the Company's Interests Register. For specific details reference should be made to paragraph 2.2 Market Disclosure Policy of this Board manual.

3.2 Waivers

Pursuant to NZX Listing Rules the NZX may in any particular case, by written notice to BFG concerned, waive the application of any one or more of the provisions of the NZX Listing Rules for such period (whether commencing before or after the date of the notice) and on such terms and conditions as NZX may determine. If a waiver is granted to BFG, ordinarily the terms of the waiver and the NZX decision to grant the waiver, and the facts of the application will be disclosed by NZX on its website.

4. Takeovers Code

4.1 Takeovers Code

The Takeovers Code regulates takeover bids for "code companies". A code company is:

- A company that is (or has been, within the past 12 months) a party to a listing agreement with a registered exchange (ie. BFG); or
- Has 50 or more shareholders and \$30 million or more in assets (medium sized).

Clearly then, BFG is a code company to which the Takeovers Code began applying on the day that it listed on the NZX.

4.2 Scheme of the Takeovers Code

The scheme of the Takeovers Code, broadly, is to set 20% control of voting rights as the trigger for the provisions for the code to apply. In the case of a person who holds or controls between 50% and 90%, there is an exception that allows that person to increase that total by 5% annually. A person who holds or controls 90% or more of the voting rights may compulsorily acquire the balance.

5. Board Meetings

5.1 Agenda

A copy of the standard agenda to be used in BFG meetings is attached as **Appendix 1**.

5.2 Minutes

The Board of BFG must ensure that minutes are kept at all meetings of the Board (schedule 3, clause 6, *Companies Act 1993*). The minutes form part of the records of BFG and must be kept at the company's registered office (section 189(1)(d) of the *Companies Act 1993*). They must be available to Directors for inspection but shareholders have no right of access to them.

The minutes are evidence that a particular resolution has been passed, but the validity of a resolution is not affected by the failure to record the resolution in the minutes, even if the minutes have been confirmed (*Saunders v The Liquidator of Woodward Products Ltd (in liq) (1982)*). The validity and force of a resolution depend on its being the decision of the majority of the Directors present at a duly convened meeting of the Board (*Toole v Flexihire Pty Ltd (1992)*) whether it is subsequently confirmed or not.

5.3 Company records

BFG must keep the documents specified in section 189(1) of the *Companies Act* at its registered office. These include the constitutions of the companies, minutes and resolutions of shareholders meetings, an interests register, minutes and resolutions of Directors' meetings, certificates given by Directors under the Act, financial statements, accounting records and the share register. The Directors are not required personally to maintain the documents, but each director commits an offence if the company fails to do so (section 189(5)(b)). However, the Act does require the Directors to ensure that adequate measures exist to prevent the records being falsified and to detect any falsification should this occur (section 190(2) of the *Companies Act 1993*). The Directors have delegated this function to the Company Secretary and Financial Controller of BFG.

6. Statutory Records & Returns

6.1 Directors interests & disclosure requirements

In relation to this topic, reference should be made to paragraph 2.1(E) of this manual.

6.2 Interests register

Reference should be made to paragraph 1.4.3 of this manual in respect of this topic.

6.3 Annual returns – Companies Office

The Board must ensure that an annual return is delivered to the Registrar (section 241(1)). This must be done in the month allocated to the Registrar for making the return (section 214(2)), and the return must be signed by a director or by a chartered accountant or a

solicitor authorised for that purpose (section 214(3)). Schedule 4 of the Act sets out the information which must be provided in the annual return.

6.4 Solvency Test

The overriding criterion for judging whether a Board may make a distribution (eg.a dividend) is the solvency test. Put simply, the Board may not make a distribution if it leaves the company insolvent. The Board must be able to show that, the distribution having been made, the company is still solvent.

Solvency may not be easy to determine. For the purposes of distributions to shareholders, the *Companies Act 1993* requires that a Company demonstrate solvency in both of two senses (section 4(1)). First the Company must be able to pay its debts as they become due in the normal course of business. Secondly, the value of the Company's assets must be greater than the value of its liabilities, including contingent liabilities. These 2 aspects of solvency are known as "trading" and "balance sheet" solvency, respectively.

The Act now requires the Directors, in determining balance sheet solvency, to have regard to (section 4(2)(a)):

- The most recent financial statements of the company that comply with section 10 of the Financial Reporting Act 1993; and
- All other circumstances which the Directors know or ought to know affect, or may affect, the value of the company's assets and the value of its liabilities.

In addition, the Directors may rely on valuations of assets or estimates of liabilities that are reasonable in the circumstances (section 4(2)(b)).

7. Half Year & Annual Announcements & Reports

7.1 Preliminary Announcements

BFG as an NZX Issuer shall make a preliminary announcement pursuant to NZX Listing Rule 3.5 through NZX for public release, in the prescribed manner as soon as the Material Information (i.e. information that a reasonable person would expect, if it were generally available to the market, to have a material effect on the price or value of BFG) is available, and in any event:

- (i) before the release of each annual report, and not later than 60 days after the end of the financial year to which that report relates; and
- (ii) not later than 60 days after the end of the financial half year to which that report relates.

7.2 Annual & Half Yearly Reports

BFG shall issue an annual report to NZX and its shareholders within 3 months after the end of each financial year of BFG. That annual report shall be received by NZX at the same time as it is sent to BFG shareholders, and shall contain all information:

- (i) required by law;
- (ii) required in a preliminary announcement by NZX Listing Rule 3.5; and
- (iii) required by NZX Listing Rules 3.6 and 3.7

The financial statements in the annual report shall be audited and shall be accompanied by an audit report in accordance with the requirements of the Financial Reporting Act 1993.

NZX Listing Rule 3.6.1 states that annual reports are sent in an electronic form which complies with the requirements of the Electronic Transactions Act 2002 will comply with the requirements of NZX Listing Rules 3.6, 3.7 and 3.8. BFG shall upload through NZX MAP an electronic copy of each annual report, in the same format and at the same time as they are sent to holders of shareholders of BFG.

8. Shareholders

8.1 Register

Every company must maintain a share register that records the shares issued by BFG (section 87(1)). The Directors of BFG are not required to maintain the share register themselves, but the Act in reality renders the Directors responsible for maintenance of the register. Under section 90 it is the duty of each Director to take reasonable steps to ensure that:

- The share register is properly kept; and
- Share transfers are promptly entered on the register in accordance with section 84 of the *Companies Act 1993*.

Section 84 stipulates that a share is transferred by entry of the name of the transferee on the share register. Generally a Director discharges his or her obligations under section 90 by ensuring that a reliable procedure is implemented for processing share transfers and updating the share register accordingly, and that the procedure is undertaken by a competent person. In the case of BFG all Directors can take comfort from the fact that maintenance of our share registry has been outsourced to Computershare Investor Services Limited who are experts in this area. Section 87(3) specifically permits outsourcing to an agent that maintains a company's share register.

8.2 Communications

The Board will work in conjunction with Computershare Investor Services Limited to communicate with its shareholders in respect of all notices, reports, accounts and other documents required to be sent to a shareholder. These shall be sent in the manner provided in section 391 of the *Companies Act 1993* or by any form of electronic communication permitted by the Electronic Transactions Act 2002 with the consent of the relevant shareholder.

8.3 Shareholder monitoring

The Company Secretary has an ongoing duty to monitor movements on the register of shareholders to identify any apparent "stake-building" in BFG's shares by potential bidders;

and making inquiries of shareholders as to certain beneficial ownership of holdings. In respect of any noteworthy changes to the share register, the Company Secretary will advise the Board when and as necessary.

8.4 Annual Meeting of Shareholders

Under section 120 of the *Companies Act 1993*, BFG is ordinarily required to call a meeting of shareholders not later than 6 months after the balance date of the company with the exception that it 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.

Appendix 1 – Sample Agenda

BURGER FUEL GROUP LIMITED

BOARD MEETING AGENDA

(Time) – (Date)

AT THE OFFICES OF BURGERFUEL

Members are reminded that they must declare any interest that relates to an item of discussion

1. Apologies
2. Chairman's opening remarks
3. Minutes of previous meeting
4. Matters arising
5. Financial Reports
6. Operational Reports
7. General Business
8. Broker and Media Reports
9. Resolutions & Disclosures
10. Compliance & NZX disclosures